# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of DSR, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner -Appellee,

v

PATRICIA ANN REID,

Respondent -Appellant,

and

DONALD OWENS ALLEN, JR.,

Respondent.

UNPUBLISHED
March 2, 2001

No. 224098
Wayne Circuit Court
Family Division
LC No. 90-288479

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

Respondent-appellant Patricia Ann Reid appeals by delayed leave granted.[1] She challenges the family court's order terminating her parental rights to her daughter, DSR, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(c)(i), (g), and (j). We affirm.

## I. Basic Facts And Procedural History

The original petition filed in this case alleged: Reid is addicted to crack cocaine; both Reid and DSR tested positive for cocaine when DSR was born on November 5, 1997;[2] Reid was

[1] Donald Owens Allen, Jr., is DSR's putative father. The family court terminated his parental rights pursuant to MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(a)(ii) for deserting his daughter. He does not appeal.

[2] There was no evidence that DSR suffered from any health or developmental problems because of her exposure to cocaine before birth.

discharged from a substance abuse treatment program after she failed to comply with program requirements; on December 7, 1997, Reid left DSR with friends and failed to return for her; Reid's mother, DSR's maternal grandmother, had custody of Reid's three older children; Reid's whereabouts was unknown.

The FIA evidently made contact with Reid soon after this preliminary hearing. The lower court record reflects that Reid entered into a parent/agency agreement with the FIA on January 26, 1998. The agreement articulated eleven goals for Reid. Reid would: (1) attend scheduled visits; (2) obtain suitable housing within 180 days and maintain it for no less than six consecutive months; (3) obtain, maintain, and document legal income; (4) attend all court hearings and comply with all recommendations; (5) make weekly contact with her case manager at Orchards Children's Services, the agency serving Reid on behalf of the FIA; (6) attend, complete, and certify her participation in parenting classes; (7) undergo drug screening within thirty days; (8) attend, complete, and certify her participation in an in-service substance abuse treatment program that would be three months in duration or as long as recommended by program staff; (9) remain drug and alcohol free, as confirmed by tests; (10) participate in three months' therapy, or for as long as recommended, to start within thirty days; (11) attend and document her participation in Narcotics Anonymous/Alcoholics Anonymous (NA/AA) three times a week. The agreement also included the names of the agencies where Reid could receive the services necessary to meet these goals.

Reid appeared at the adjudication on January 29, 1998, and, after being advised of her rights, she admitted to the allegations in the petition. She explained that she was residing in a substance abuse treatment facility in Holly, Michigan, and had been there for the two previous weeks. She expected to complete the forty-day program and noted that she believed that it had been helping her.

Over the next twenty-one months, Reid participated in six different substance abuse treatment programs, completed parenting classes, visited DSR, and attended Narcotics Anonymous/Alcoholics Anonymous (NA/AA) meetings. However, she also tested positive for cocaine several times and missed some of her random drug tests because she knew she would test positive. Although she found several jobs, none lasted very long. At one point she found suitable housing, but that opportunity ultimately did not work out. All the while, DSR remained in foster care.

The supplemental petition seeking termination, filed on January 22, 1999, restated the original allegations and the terms of the parent/agency agreement. The petition further stated that "[t]he parents have been inconsistent and non-compliant in their adherence to treatment plan provisions. Birth family visits have been sporadic, the mother does not have a legal source of income, she does not have suitable housing, and she has admitted to drug abuse on November 5, 1998, and during the weekend of November 13[,] 1998." By the time the family court held the termination hearing on October 1, 1999, Reid had admitted herself to a seventh drug treatment program because she was again using cocaine. According to Rebekah Visconti, the Assistant Attorney General representing the FIA, Reid's case worker at the new treatment program, Barbara Presnow, stated that Reid would need at least six months of inpatient treatment followed by another six months of outpatient treatment. When Richards testified, she recounted Reid's

progress and relapses with her drug problem as well as the requirements under the parent/agency agreement. She confirmed Presnow's recommendation for treatment, including NA meetings and random drug screens for the rest of Reid's life following the treatment program, but stated that Presnow did not predict a good outcome for Reid because of her history of relapses. Richards also noted that there was a problem with admitting Reid into the newest treatment center because she had already been in inpatient treatment for longer than the time permitted by Detroit's managed care program. Reid was only eligible for thirty days of inpatient care followed by fifteen days of outpatient care.

As for Reid's compliance with the parent/agency agreement, Richards said that Reid had not fulfilled all the goals. Reid called Richards fairly regularly, completed parenting classes, completed two of the substance abuse treatment programs she participated in, visited DSR about seventy-five percent of the time, and improved her bond with the baby. However, Reid tested positive for drugs more than once, did not complete random drug tests as required, was unable to hold a job for more than a month or two, did not have stable housing despite financial assistance, and failed to document her attendance at NA/AA meetings if and when she did attend.

When Reid testified, she said that she was benefiting from the new treatment program at Hutzel, she had no desire to use drugs again, she felt confident she would be able to complete the program successfully, and she was willing to comply with outpatient treatment. She said that she felt a bond to DSR and that, having completed parenting classes, she would be able to care for her baby. Reid acknowledged that she had a choice when it came to using drugs. She learned that if she were using drugs, she could not provide a healthy environment for a child. Further, she knew that using drugs while pregnant was dangerous to the fetus, but she had used drugs on more than one occasion while pregnant. She said that she had shown Richards proof that she had attended NA/AA meetings, but that Richards had failed to make a copy of her documentation. Reid claimed that the stress of being homeless and a single parent were two factors that contributed to her relapses into drug use. Reid explained that her failure to comply with at least two drug tests was because she lacked transportation and had not received the bus tickets the FIA ordinarily provided. She candidly admitted that other times she did not undergo drug testing because she would have likely tested positive and she "didn't want to" take the tests. Reid conceded that she had been using drugs for twelve years, which was one reason why her mother had guardianship of her other children.

Reid said that she made efforts to find housing but, on at least one occasion, the FIA failed to provide the advance rent the landlord wanted, so she lost the apartment. She tried to get into shelters, but could not get in each time. She could not recall a time when she refused to enter a shelter that was available to her. She also said that she tried to find a job, but was unable to keep a job because of her uncertain housing. She ended her direct testimony by stating that she wanted to care for DSR. The letter she introduced into evidence at the hearing reiterated this point, stating:

> I'm writing this [to] plead to the Court because I would like to have another chance to Have [DSR] back into My custody. I'm willing to do whatever it takes to have her back. She's My child and I love her with all my heart. So

> please don't take her Away from me. I'm willing to do whatever. I'm in treatment at this time and will stay here as Long As Recommended.

After reciting Reid's history of drug use, rehabilitation, and relapse, the family court proceeded to make findings concerning each of the grounds alleged in the supplemental petition. The family court found clear and convincing evidence to terminate Reid's parental rights under subsection (c)(i) because the conditions leading to adjudication, drug use and lack of housing, continued to exist and she had no way to support DSR. Apparently, in the family court's opinion, nothing but Reid's "bald promise" demonstrated that she would be able to refrain from using drugs. Further, the family court stated:

> The conditions as I stated, no housing, she's in an inpatient [treatment] program, no housing during the course of the wardship, drug usage through the course of the wardship, drug usage while currently pregnant with another child as she was with DSR a year and 10 months ago, or so.
>
> That these conditions continue to exist and the Court finds that they will not be rectified within a reasonable time considering the age of the child.

Commenting on the support for termination under subsection (g), the family court found that Reid loved DSR, but she had "failed in everything" while the case was pending. In particular:

> The mother during the period of wardship has failed to provide proper care and custody for the child, and at the present time she has used drugs recently, within a week, or at least it has been evidence within a week, that there is no reasonable expectation considering the 6 drug programs that have not deterred her from the usage of drugs, the child being out of her home, the court wardship, and the court concludes that she will be unable to provide proper care and custody within a reasonable time considering the age of the child.

The family court emphasized the amount of time Reid would need to have treatment, at least a year, to underscore that DSR could not wait for parental support. The family court also found that Reid's history of drug use made it likely that DSR would be harmed if returned to her, which merited termination under subsection (j).

Finally, the family court noted that termination was in DSR's best interests because DSR

> needs a competent parental figure, a caregiver, one who is free of drugs, one who has an income, one who has housing, and one who will not relapse into drug usage.
>
> That the health, the physical, mental, emotional and developmental health of the child must be served by such a caregiver, and this mother cannot do that.

## II. Standard Of Review

This Court reviews a trial court's findings of fact supporting termination of parental rights for clear error.[3]

## III. Arguments on Appeal

Reid challenges all three statutory subsections the family court cited as grounds for terminating her parental rights. However, she advances a substantive argument only concerning subsections (c)(i) and (j). She effectively abandoned her appeal concerning subsection (g), which concerns her failure to provide proper care and custody for DSR, because she failed to present any argument concerning that subsection.[4] The family court needed clear and convincing evidence of only one statutory ground in order to terminate Reid's parental rights.[5] Reid, by failing to challenge the family court's factual findings and legal conclusions concerning subsection (g), implicitly concedes that there was such evidence. If this were not enough to affirm the family court's order, Reid's arguments concerning the other grounds for termination lack merit.

## IV. Conditions Leading to Adjudication

MCL 712A.19b(3)(c); MSA 27.3178(598.19b)(c) requires a family court to terminate a parent's parental rights if

> the parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . the following:
>
> > (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Reid contends that the family court lacked sufficiently clear and convincing evidence to terminate her parental rights under this subsection because she substantially complied with the parent/agency agreement. Evidently, she intends to argue that her compliance with the agreement indicates that she will cure the problems that originally led to the adjudication within a reasonable time considering DSR's age. She points out that at the time the family court terminated her parental rights she had entered treatment, had prospects for housing, had a bond with DSR, and was motivated to stop her drug habit. Furthermore, she had visited with DSR and completed parenting classes.

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[3] MCR 5.974(I); *In re Hall-Smith*, 222 Mich App 470, 473, 564 NW2d 156 (1997), rejected on other grounds by *In re Trejo*, 462 Mich 341, 352; 612 NW2d 407 (2000).

[4] See *Richmond Twp v Erbes*, 195 Mich App 210, 220; 489 NW2d 504 (1992).

[5] See *Trejo*, *supra* at 355.

Nevertheless, the record in this case speaks for itself. Reid's drug use was the primary condition leading to the adjudication in this case. While Reid has been completely willing to enter treatment programs, even completing two programs successfully, she has not been able to make any progress toward permanently abstaining from drug use. She candidly admitted to Richards and during her testimony at the termination hearing that she had relapsed into drug use a number of times while this case was pending in the family court. This led her to avoid complying with the order to undergo random drug testing.

Furthermore, whether Reid "substantially" complied with the parent/agency agreement is in dispute. She attended most, but not all, scheduled visits with DSR. She failed to cancel some of the visits she missed. Although Reid did maintain contact with Richards as required, there is a dispute about whether she provided Richards with the documentation necessary to prove that she was attending NA/AA meetings. Reid did find several jobs, but was never able to keep any job for any significant period, much less the six consecutive months required under the agreement. She failed to provide any proof that she had another legal source of income that would be sufficient to support her and DSR. Reid's participation in inpatient treatment may have prevented her from finding suitable housing at certain times, but the record is clear that she never occupied suitable housing with appropriate furnishings for the six consecutive months described in the agreement. Reid did have legitimate medical excuses for missing the February and July 1999 hearings, but she also failed to attend other hearings as the agreement mandated.

In the best of all possible worlds, Reid's testimony at the termination hearing that she was benefiting from her most recent substance abuse treatment would suggest that she is likely to recover fully from her drug problem within a reasonable amount of time. However, as Richards and Presnow intimated, Reid's prospects for this sort of improvement are not good in light of her history of relapses. Further, even if it were available, the most appropriate treatment recommended for Reid included six months of inpatient treatment followed by another six months of outpatient treatment. If Reid did not relapse during this period, which would extend this treatment further, she would not have been able to be reunited with DSR for at least six months following the termination hearing. The reunion could have also been delayed past the outpatient portion of the treatment while Reid was establishing a home in which to raise her daughter.

Reid correctly cites *In re Moore*[6] for the proposition that failure to comply with a parent/agency agreement does not establish that there is neglect unless the services and steps outlined in the plan "were actually needed to improve neglectful behavior . . . ." However, *Moore* does not cover the facts of this case. The mother in *Moore* did not attend parenting classes as required under the agreement.[7] The Court concluded that that one failure did not merit terminating the mother's parental rights because the evidence on the record indicated that she was a good parent, making parenting classes unnecessary.[8] In contrast, the steps outlined in the

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[6] *In re Moore*, 134 Mich App 586, 598; 351 NW2d 615 (1984).

[7] *Id.*

[8] *Id.*

parent/agency agreement Reid executed were necessary for her improvement as a parent because she needed to improve in the areas identified in the agreement, especially with respect to her drug use. Moreover, the point the *Moore* Court made in the portion of the opinion Reid cites is that failure to comply with an agreement does not – alone – demonstrate neglect; there must be clear and convincing evidence of actual neglect. As the facts detailed above indicate, there is clear and convincing evidence that Reid did not remedy the conditions leading to the adjudication and would not be able to do so within a reasonable time considering DSR's age. Thus, there was clear and convincing evidence of the conditions described in subsection (c)(i), a statutory ground for termination.

Reid also suggests that termination was improper because she told Richards that she was having problems dealing with her separation from DSR and her drug use and Richards failed to offer her services to deal with these problems. The record suggests that while Reid was participating in substance abuse treatment, she was offered counseling of some sort. Further, she was also offered extensive services ranging from drug treatment and parenting classes to housing assistance and supervised visits. While there may have been other services that Reid could have benefited from, MCL 712A.18f; MSA 27.3178(598.19f) does not require the FIA to provide every conceivable service to work toward reunifying her with DSR; MCL 712A.18f(4); MSA 27.3178(598.19f)(4) suggests that a parent need only be offered reasonable services. Unlike the circumstances present in *In re Newman*,[9] in which the individual assigned to help the parents correct the conditions leading to the adjudication refused to do so, the services that the FIA offered to Reid were calculated to help her with her individual problems. Thus, the alleged absence of specific counseling services does not, in this case, contradict the clear and convincing evidence supporting termination under subsection (c)(i).

## V. Proper Care and Custody

MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(g) requires a family court to terminate a parent's parental rights if there is clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." As noted above, Reid's brief on appeal does not articulate an argument that appears to address this ground for termination.

Yet, to the extent that she intended for her argument concerning her substantial compliance with the parent/agency agreement to apply to this statutory ground, the reasoning that supported termination under subsection (c)(i) applies equally well here. There is no doubt that Reid failed to provide proper care and custody for DSR when she left her daughter, who was only a newborn, with friends and did not return to care for her. Reid conceded that her drug use played a role in her ability to care for her other children. Further, despite the almost two years in which to stop using drugs, she used cocaine less than a week before having termination hearing. Although Reid was in a new treatment program at the time of the termination hearing, the family court correctly observed that her history made it unlikely that she would make the necessary

[9] *In re Newman*, 189 Mich App 61, 65-66; 472 NW2d 38 (1991).

changes in a reasonable time, considering that DSR had already been a court ward for almost two years.

Additionally, Reid's partial compliance with the parent/agency agreement did not demonstrate a realistic probability of any sort that she would be able to provide DSR with proper care and custody. Not only was this a question of drug use, but Reid had also failed to find and keep a home and job. She lacked the practical means to take care of DSR, even if she felt an emotional bond with her. Thus, there is no reason to conclude that the family court erred in finding clear and convincing evidence of this ground for termination.

## VI. Harm

MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(j) requires a family court to terminate a parent's parental rights if there is clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Because Reid spent only a very short time with DSR before she was placed in foster care, there is little evidence on the record concerning whether DSR would be harmed if returned to Reid. However, the evidence of Reid's ongoing drug use and her initial abandonment of her baby fits within the type of "conduct or capacity" that can signal a risk of future harm. Thus, it is impossible to conclude from the record that the family court clearly erred when it found sufficient evidence that DSR might be harmed if she were returned to her mother.

## VII. Best Interests

MCL 712A.19b(5); MSA 27.3178(598.19b)(5) states that a trial court "shall order termination of parental rights" if it finds clear and convincing evidence to terminate. In other words, termination is mandatory once the court finds evidence of at least one statutory ground to terminate.[10] Only if the trial court finds evidence on the record as a whole that termination is *not* in the child's best interests can it refuse to terminate parental rights.[11] Reid contends that her bond with DSR made termination clearly contrary to DSR's best interests. The flaw with her argument is that this bond is only one part of the evidence on the record. There is far more evidence that termination was in DSR's best interests, supporting the family court's conclusion that DSR needs someone who can care for her, provide housing and income, and avoid drugs. All the evidence suggests that Reid is not such a person. Thus, there is no way to conclude from

[10] See *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

[11] See *Trejo*, *supra* at 353-354.

the record that the family court erred when it concluded that termination was DSR's best interests.

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper