STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CEEM, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JENNESE MASSENGALE,

Respondent-Appellant,

and

ELI CHAMBERS III,

Respondent.

UNPUBLISHED
January 18, 2002

No. 227896
Wayne Circuit Court
Family Division
LC No. 98-365928

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Respondent-appellant (herein "respondent") appeals as of right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). We affirm.

Respondent first came to the trial court's attention in April 1998 pursuant to a petition filed by petitioner Family Independence Agency (FIA), as a result of a complaint made by respondent's sister that respondent abandoned the child. Respondent ultimately stipulated to the petition. At the hearing on the petition, respondent admitted leaving the child at her sister Marchelle Criswell's home. She admitted that from time to time she would leave the child with relatives without making a definite plan to return and pick up the child. Respondent stated that she was employed, but she did not have a place to live. Respondent, age thirty-eight at the time of the hearing, testified that she began smoking marijuana at age twenty-four and that she has used drugs "off and on" for the past fourteen years. She stated that she had not smoked marijuana during the previous three months. She testified that the only drug she used was marijuana, and she drinks beer occasionally.

At the conclusion of the hearing the trial court took jurisdiction over the child and ordered a treatment plan for respondent. The court ordered respondent to: (1) establish and maintain a drug- and alcohol-free lifestyle; (2) submit to drug and alcohol screens; (3) participate in a drug and alcohol assessment and evaluation for the purpose of determining whether she is to participate in an inpatient or an outpatient substance abuse program; (4) attend parenting classes; (5) obtain a legal source of income and suitable housing; and (6) cooperate with the FIA and attend all court hearings. The court also ordered regular, supervised visitation with the child.

Over the next year, the trial court held several dispositional review hearings. On October 28, 1998, the trial court noted that no progress had been made toward fulfilling the requirements of the treatment plan. At the February 3, 1999 hearing, the FIA's report showed that respondent had been minimally compliant with the plan. Respondent did not provide verification that she had enrolled in a substance abuse program, nor did she provide evidence of drug screens. On May 10, 1999, the trial court indicated that no progress had been made regarding the treatment plan, and that the issues that brought the case to the court's attention still needed to be addressed. The court scheduled a permanency planning hearing for August 2, 1999.

At the permanency planning hearing, Tiffany Jackson, the FIA caseworker in this matter, testified that respondent was living with her sister, Melinda. The child was living with respondent's other sister, Marchelle. Jackson testified that respondent's visitation with the child was sporadic. Jackson provided the results of three drug screens submitted by respondent. Two of the drug screens were negative and the other one was positive for marijuana and cocaine. Respondent had not attended parenting classes, nor had she enrolled in any drug treatment program or counseling. Jackson identified the barriers to reunification as respondent's lack of housing, respondent's drug problem, and her need of counseling and further assessment. Jackson recommended a continuation of treatment and the filing of a petition to terminate respondent's parental rights.

At the conclusion of the hearing, the referee stated that the most important issue to be addressed was respondent's drug problem. One year had elapsed with no showing that the problem had been addressed. Respondent had failed to comply with any of the terms of the treatment plan to the referee's satisfaction.

On September 20, 1999, the FIA filed a supplemental petition seeking the termination of respondent's parental rights. The petition alleged that respondent has failed to acknowledge her drug addiction and she failed to provide consistent random weekly drug screens as ordered by the court. The petition also alleged that respondent failed to obtain or maintain a suitable home.

Termination proceedings began on December 6, 1999. Jackson testified that respondent was inconsistent in submitting the drug screens, and also that of the fifteen drug screens that were submitted, six were positive for cocaine. The last positive screen was submitted on October 13, 1999. Respondent entered treatment in August 1999, but prior to that time there had been no submission of drug screens on a consistent basis. Jackson characterized respondent's visitation with the child as sporadic and without a consistent day or time. Jackson stated that there had been no improvement in visitation since August 1999.

The court took judicial notice of respondent's employment and her completion of parenting classes. Evidence showed that respondent did not complete counseling as ordered by

the plan. Despite her enrollment and participation in an outpatient drug treatment program, respondent continued to use cocaine, as evidenced by the positive drug screens. The proceedings were continued until April 12, 2000.

When the trial resumed, Jodi Luster, a substance abuse counselor at Vantage Point, testified that respondent's drug screens since October 1999 have been negative. Luster testified that respondent was motivated and does not deny being a drug user. Luster was aware that respondent was also taking drug screens elsewhere, but she was unaware that respondent tested positive for marijuana on February 7, 2000 and positive for cocaine on March 28, 2000. The referee admitted evidence of the drug screens.

At the conclusion of the trial, the referee found three statutory grounds to terminate respondent's parental rights. The referee ordered termination pursuant to MCL 712A.19b(3)(c)(i), finding that 182 days had elapsed since the initial dispositional order and the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions would be rectified within a reasonable time considering the child's age. The referee also found that termination was warranted under § 19b(3)(g) because respondent, without regard to intent, failed to provide proper care and custody of the child and there is no reasonable expectation that she would be able to do so within a reasonable time considering the child's age. Finally, the referee found a reasonable likelihood based on the conduct or capacity of respondent that the child will be harmed if she is returned to respondent's home, § 19b(3)(j). The trial court entered an order terminating respondent's parental rights to the child.

On appeal, respondent argues that the referee's findings that statutory grounds for termination exist were not supported by clear and convincing evidence. We disagree.

In order to terminate parental rights, the trial court must find clear and convincing evidence that a statutory basis for termination has been established. MCL 712A.19b(3); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If the court so finds, it must terminate parental rights unless the court finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000). On appeal, we review the trial court's findings for clear error, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), and we will not reverse unless we are left with a definite and firm conviction that a mistake has been made. *Id.*

MCL 712A.19b(3)(c)(i) authorizes the termination of parental rights when:

> (c) 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 . . .
>
> (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.

Respondent argues that she was in "substantial compliance" with the treatment plan. She testified that she is no longer homeless; she is living with her sister, Melinda. Respondent also

testified to her continuous employment throughout these proceedings. Respondent maintains that she is "drug-free" and is committed to continuing her treatment through Vantage Point.

It is apparent from the record, and respondent acknowledges on appeal, that the primary reason the trial court assumed jurisdiction over the child was respondent's admission of her fourteen-year history of using marijuana. At one of the dispositional hearings, the referee admonished respondent that her drug problem was the main issue that needed to be addressed. Although respondent underwent outpatient treatment, she continued to test positive for marijuana and cocaine as recently as February and March 2000, respectively. The documentation of these drug screens contained in the record constitutes clear and convincing evidence that the primary condition that led to the adjudication continues to exist. Further, the child had been under the jurisdiction of the court for almost two years. Because these positive drug screens were submitted after termination proceedings had begun, the trial court did not err in finding no reasonable likelihood that the situation would be rectified within a reasonable time considering the age of the child, who was three years old at the time the court took jurisdiction over her and five years old when the termination order was entered. We conclude that the referee's findings were not clearly erroneous and that the statutory ground for termination was supported by clear and convincing evidence.

Because only one statutory ground for termination is required to terminate parental rights, it is not necessary to decide whether termination was also warranted under § 19b(3)(g) and § 19b(3)(j). *In re Trejo, supra* at 360.

Affirmed.

/s/ Michael J. Talbot
/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder