

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRIDGET MARIE CLARK,
HARDIE WEBSTER CHRISTOPHER, III,
CHANTA TENESHA M. CHRISTOPHER, and
ROBERT THOMAS LITTLE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LINDA DEE NOBLES,

Respondent-Appellant.

UNPUBLISHED

February 8, 2002

No. 233706

Wayne Circuit Court

Family Division

LC No. 98-369343

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to four minor children, entered on January 30, 2001.

I. Facts and Procedural History

On August 7, 1998, Referee David Perkins conducted a preliminary hearing on a petition filed by the Family Independence Agency (FIA). The petition alleges that respondent used heroin for fifteen years and that she neglected and failed to provide care and support for her minor children, Hardie, Chanta and Robert. At a hearing on September 30, 1998, respondent admitted to the allegations in the petition and testified that she left the children for periods of time with her mother, but returned when her Aid to Dependent Children (ADC) checks or food stamps arrived in the mail. Though unemployed, respondent maintained that she bought food for the children and paid their rent, but that she did not live with the children and regularly did not tell her mother her whereabouts. She admitted to using heroin and crack cocaine and, despite prior unsuccessful attempts to quit, she expressed a desire to enter a drug treatment program.

Based on respondent's admissions and testimony, Referee Perkins made the children temporary wards of the court and directed respondent to (1) enter an in-patient drug rehabilitation program, (2) upon completion, participate in a twelve-step program three times per week, (3) obtain suitable housing for the children, (4) obtain a legal source of income, (5) attend

all court hearings, (6) attend supervised visits with the children and act appropriately with them, (7) submit to random drug screenings, (8) undergo a psychological evaluation, and (9) attend parenting classes.

At a dispositional review hearing on December 11, 1998, FIA representative William Campbell reported that respondent made no contact with the agency and that her whereabouts were unknown. On March 15, 1999, the record reflects that respondent had made efforts to visit the children, but did so without supervision and in violation of the court order. The record also shows that respondent entered a detoxification program on March 10, 1999. As of June 10, 1999, respondent was enrolled in a drug rehabilitation program at Elmhurst House and she submitted to five drug screens that showed no evidence of drug use.

By September 13, 1999, based on her progress with the Elmhurst substance abuse program, her employment at Elmhurst and her participation in parenting classes, FIA workers recommended that respondent move back in with the children with intensive in-home services. However, by March 1, 2000, respondent relapsed into drug use and was no longer complying with any of the terms of the agency agreement. By May 25, 2000, however, respondent made a renewed attempt to become employed and she made efforts to visit the children. However, respondent continued to use drugs and did not submit to random drug screens as required. The record reflects that conditions deteriorated thereafter and that respondent ceased her compliance with the terms of the agency agreement. Accordingly, on July 19, 2000, Referee Perkins recommended that FIA file a petition for permanent termination of custody. Respondent failed to attend several court appearances thereafter and, on November 5, 2000, respondent gave birth to Bridget, who was born addicted to heroin and crack. Based on her condition at birth and these proceedings, FIA filed an original petition to terminate respondent's parental rights to Bridget.

The referee conducted the bench trial on both petitions on January 30, 2001. At the termination hearing, Raina Harris, an FIA foster care worker, testified that respondent failed to comply with the agency agreement and recommended that the court terminate her parental rights to all four children. Harris acknowledged that, following her disappearance during the fall of 1998 and winter of 1999, respondent participated in the Elmhurst House drug treatment program. According to Harris, respondent visited the children, participated in parenting classes and otherwise progressed with the agency agreement while in the structured environment of Elmhurst. However, Harris also testified that respondent was unable to maintain her progress after she left the program, that she failed to complete an outpatient program, that she stopped working after she left Elmhurst and also stopped submitting to any drug screens.

Harris further testified that, when respondent was allowed to move back in with the three older children in December 1999, she only stayed for three weeks and again left the home. Harris stated that respondent failed to maintain contact with her, failed to attend numerous court hearings and continued to regularly use cocaine and heroin. Some evidence indicates that respondent obtained employment during the spring of 2000, but no evidence established that she held the job for more than three or four months. Harris stated that, in her opinion, the children need a permanent home and that, despite the children's love for respondent, her failure to discontinue her drug use and her failure to stay with the children resulted in their psychological and behavioral problems. Regarding Bridget, Harris testified that it was premature for doctors to determine whether she might suffer permanent injuries from prenatal drug exposure, but that she continued to suffer tremors from her addiction at birth.

FIA Protective Services Worker, Yvette Spear, testified that respondent admitted to her that she used heroin and crack cocaine while pregnant with Bridget and that respondent reported that she and Bridget's father engaged in a physical fight just prior to her going into labor with Bridget. Respondent also testified at the termination hearing. She admitted that she was not legally employed, she used heroin every morning while pregnant with Bridget, she used drugs as recently as the day before the termination hearing, and that she tried to enter another drug treatment program on the morning of the hearing, but learned that Medicaid would not cover the cost. Following this testimony, Referee Perkins found that clear and convincing evidence supported the termination of respondent's parental rights under numerous statutory grounds and the circuit court entered the termination order on January 30, 2001.¹

II. Analysis

Respondent argues that clear and convincing evidence did not support the termination of her parental rights. We disagree.

In a termination hearing, the petitioner bears the burden of proving by clear and convincing evidence at least one statutory basis for termination. MCR 5.974(F)(3); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once a statutory basis for termination is shown, the trial court shall terminate the respondent's parental rights unless it finds that termination of those rights is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*, 462 Mich 341, 354; 612 NW2d 407 (2000).

This Court reviews a trial court's termination decision for clear error. MCR 5.974(I); *Trejo, supra*, 462 Mich 356-357. A decision is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The court terminated respondent's parental rights to Hardie, Chanta and Robert based on the following statutory grounds under MCL 712A.19b:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(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 either of 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.

¹ The court also terminated the parental rights of Hardie Christopher, father of Hardie and Chanta, and the parental rights of John Doe, the unknown father of Robert Little. Neither father participated in the proceedings and neither has appealed the termination orders.

(g) The 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.

(j) There 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.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(i) Abandonment of a young child.

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(ii) A violation of a criminal statute, an element of which is the use of force or the threat of force, and which subjects the parent to sentencing under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

In addition to MCL 712A.19b(3)(c)(i), (g), (j) and (n), above, the court terminated respondent's parental rights to Bridget based on the following statutory grounds:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

Based on clear and convincing evidence in the record, we hold that the court did not clearly err in terminating respondent's parental rights to Hardie, Chanta, Robert and Bridget under several statutory factors. The three oldest children were brought to the attention of the court in August 1998 based on respondent's frequent drug use and neglect. While respondent showed some progress toward resolving her addiction while she stayed at Elmhurst House, she relapsed into drug use soon after she left the program and, thereafter, utterly failed to comply with the terms of the agency agreement. Though she may have been employed while at Elmhurst and sporadically employed during the spring of 2000, respondent failed to sustain or demonstrate that she held any job for any significant period of time.

Furthermore, respondent failed to stay in touch with her caseworker, failed to visit her children under the terms of the agency agreement, failed to obtain suitable housing and failed to take advantage of services offered to help with her drug addiction. At the time of the termination hearing, respondent continued to use drugs, she had no income or home and she was not participating in any follow-up treatment. Clearly, after 2-1/2 years, the conditions that led to the adjudication continued to exist and, despite many months and opportunities to correct those conditions, respondent failed to do so. Therefore, there was no reasonable likelihood that the conditions would improve within a reasonable time. Based on this clear and convincing evidence, the court properly terminated respondent's parental rights under MCL 712A.19b(3)(c)(i).

Though the court must terminate parental rights once it finds clear and convincing evidence of one statutory ground to support termination, we also find that the trial court properly terminated respondent's parental rights to Hardie, Chanta, Robert and Bridget under MCL 712A.19b(3)(g) and (3)(j). Based on plaintiff's failure to stop using drugs, her failure to obtain a legal source of income and a suitable home, respondent was clearly unable to provide proper care and custody for any of the four children. Further, because respondent made no lasting progress in her attempts at sobriety and in fulfilling the other terms of the agency agreement, the court properly found no reasonable likelihood that respondent would be able to assume the care and custody of the children within a reasonable time. Moreover, because respondent was unable to stop her drug use and, given her history of abandoning the children, clear and convincing evidence supported the court's determination that there was a reasonable likelihood that the children would be harmed if left in respondent's care.

The court did not clearly err in terminating respondent's parental rights to Hardie, Chanta and Robert under MCL 712A.19b(3)(k). Undisputed evidence showed that, after the court allowed respondent to return home to care for the three children, respondent stayed for just three weeks before she again left the home and children. Accordingly, clear and convincing evidence

established that respondent abandoned the children, all of whom were under the age of eleven at the time.

We also find that clear and convincing evidence established grounds for termination of respondent's parental rights to Bridget under MCL 712A.19b(3)(b)(i). As discussed above, Bridget was born addicted to heroin because respondent admittedly used the drug every day while pregnant. Given her constant drug use during her pregnancy, clear and convincing evidence established that respondent caused Bridget's prenatal exposure and addiction.² However, we find that the court clearly erred by terminating respondent's parental rights to Bridget based on MCL 712A.19b(3)(b)(ii). While respondent clearly had the opportunity to prevent Bridget's cocaine and heroin exposure while in the womb, no evidence established that respondent would continue to expose Bridget to narcotics if returned to her care or that Bridget would be exposed to other physical abuse. However, because there was overwhelming evidence to support the termination of respondent's parental rights to Bridget under numerous other factors, the court's reliance on this factor does not invalidate its decision.

In addition to the grounds discussed above, because respondent's parental rights were terminated to the three older children after serious neglect and abandonment and many months of unsuccessful help and treatment, respondent's parental rights to Bridget were properly terminated under MCL 712A.19b(3)(i) and MCL 712A.19b(3)(l).³

Respondent further contends that the trial court erred in terminating her parental rights because termination was clearly not in the best interests of the children.

"After a family court finds a statutory basis for termination, it lacks the discretion to decline to terminate a parent's parental rights unless termination is clearly against the child's best interests." *In re Powers*, 244 Mich App 111, 120; 624 NW2d 472 (2000). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, *supra* at 354.

Here, based on the whole record, no clear evidence establishes that termination was not in the best interests of the children. Some evidence suggests that, when respondent visited the children consistently while at Elmhurst House, she behaved appropriately and bonded with Hardie, Chanta and Robert. However, thereafter, Hardie and Chanta suffered emotional and behavioral problems stemming from respondent's continued drug use and her sporadic presence in their lives. Indeed, after respondent again abandoned the children in late 1999 and early 2000,

² FIA concedes and, we agree, that the record does not support termination of respondent's parental rights to the children under MCL 712A.19(b)(3)(n) or to Bridget under MCL 712A.19(b)(3)(c) because respondent was not convicted of an offense and because 182 days did not elapse since the issuance of the dispositional order regarding Bridget.

³ Contrary to respondent's claim that this appeal prevents the trial court from basing a termination on MCL 712A.19(b)(3)(l), this statutory basis was met once the court terminated respondent's parental rights to Hardie, Chanta and Robert. Because we affirm the court's ruling, we need not discuss whether this would change if we reversed the termination order regarding the other three children.

the older children began to demonstrate serious behavioral problems at school. Clearly, respondent's inability to sustain her sobriety and to commit to residing with and caring for her children have had an adverse effect on the older children. Further, respondent's drug use and continued abandonment of the older children, and her failure to correct those conditions after 2-1/2 years and numerous offered services, suggests that termination was in the best interests of Bridget who, as a heroin-addicted infant, will require significant care and attention. Harris testified at the termination hearing, and the children concur on appeal, that they need a stable home and consistent care, both of which respondent has proven she cannot provide.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad