

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ZDB, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ZACHARY BASS,

Respondent-Appellant,

and

DIANA DEE FLYNN,

Respondent.

In the Matter of ZDB, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DIANA FLYNN,

Respondent-Appellant,

and

ZACHARY BASS,

Respondent.

UNPUBLISHED
February 19, 2002

No. 233106
Wayne Circuit Court
Family Division
LC No. 97-354034

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

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to the minor child. The court terminated respondent mother's and respondent father's parental rights under MCL 712A.19b(3)(g), (3)(j), and (3)(l). We affirm.

This matter came to the attention of petitioner Family Independence Agency (FIA) by referral from Henry Ford Hospital after the mother gave birth to the child on June 11, 2000 and both the mother and the child tested positive for cocaine. The child is the mother's tenth child. In 1999, the trial court had entered an order terminating the parental rights of the mother and the father to their nine other children based on their inability to provide a home for the children, continuing neglect, and substance abuse. The mother admitted to using cocaine during her pregnancy. On June 19, 2000, the FIA filed a petition asking the trial court to take permanent custody of the child and terminate both the mother's and the father's parental rights.

The adjudicative trial was held on November 15, 2000. FIA caseworker Karen Robinson testified that she had asked the mother whether she had a plan for the child, and the mother indicated that the father was interested in planning for the child. The mother admitted she has a history of cocaine addiction. She stated that she has been in treatment since August 26, 2000 and she is committed to ending her drug use. The FIA's progress report dated November 13, 2000 indicated that the mother tested positive for cocaine on September 13, 2000 and on September 27, 2000. The mother denied testing positive for illegal drugs. The mother also testified that she has a home for the baby, but she has no income and no job. On September 27, 2000, the father was referred to Quest Diagnostic Center for weekly random drug screens. As of the date of the report, the FIA had received no response concerning drug screens or drug counseling. The father had completed parenting classes.

The trial court found that the mother was a user of cocaine and neglected the health of the child by using cocaine during her pregnancy. The court took jurisdiction over the child, and continued the matter for a hearing to determine whether the disposition would be for temporary or permanent custody.

Proceedings resumed on December 15, 2000. Najee Snorden is a permanency planning specialist with the FIA and was assigned this case. He prepared a case service plan for reunification with the child and both parents signed the plan. The elements of the mother's treatment plan included having weekly random drug screenings, parenting classes, drug counseling courses, and weekly supervised visits with the child. Snorden referred the mother to Quest Diagnostic Center (hereinafter "Quest"). The mother told Snorden she was going to attend the WD Lee Center as an alternative. The Lee Center provides drug counseling and weekly drug screens. The Lee Center sent reports to Snorden indicating that the mother had not attended a session there as of October 10, 2000, and forwarded a letter to him that had been sent to the mother warning her that her case would be closed for lack of participation. The Lee Center informed Snorden of the mother's two positive drug screens in September 2000. Although the mother claims she was attending parenting classes, Snorden received no documentation. Both parents visited the child regularly. During one visit, both parents were found asleep with the

child sleeping on the mother's lap. The father told Snorden that he would also be going to the Lee Center for drug screens and drug counseling.

The mother testified that she had been going to Quest for the last few weeks since the Lee Center was closed. She testified that she has attended sixteen parenting classes. She admitted canceling two visitation sessions, once due to a housing problem, and the other because she was ill. She stated that she has secured housing that will be ready for move-in in January. The mother disputed the drug screens and said the last time she used cocaine was June 10, 2000. She testified that she has been in full compliance with the requirements at the Lee Center.

The father admitted his history of drug use, but stated that the last time he used drugs was December 1998. He entered and completed substance abuse treatment at Sacred Heart Substance Abuse Center in Memphis, Michigan. He continued to attend AA and NA meetings, and he provided documentation of some of the meetings he attended in October, November, and December. He stated that he goes to meetings three times per week and he no longer has a drug problem. In accordance with the plan, he took drug screens at Quest. His income consisted of disability benefits he receives for his epilepsy. The trial court adjourned the hearing to allow Snorden to obtain the results of the father's drug screens.

When proceedings resumed on January 17, 2001, Snorden testified to receiving the father's six drug screen results from Quest. Although all the drug screens were negative for illegal substances, the creatinine levels in the urine suggested that the samples were adulterated in some fashion. Snorden received one negative drug screen from the mother in December 2000. At Snorden's request, both the mother and the father submitted a drug screen on January 5, 2001. Snorden received verbal confirmation from Quest that the results were negative, but as before, the creatinine levels in the urine made the validity of the results questionable. The mother offered evidence that she attended 12 AA/NA meetings between December 20, 2000 and January 13, 2001. After the last hearing, Snorden set up a system for the parents to contact him daily to find out whether they were supposed to give a drug screen. He testified that they complied "somewhat." He never received a phone call from both parents on the same day; either one or the other would call him. They visited the child regularly since the last hearing. Snorden testified the parents' house had some plumbing problems and he knew they were looking for new housing.

At the conclusion of the hearing, the trial court found three statutory grounds to terminate respondents' parental rights. The court ordered termination pursuant to MCL 712A.19b(3)(l), finding that parental rights to one or more siblings of the child have been terminated as a result of proceedings under section 2(b) of this chapter. The trial court also found that termination was warranted under § 19b(3)(j) because a reasonable likelihood exists that the child will be harmed if she is returned to the home of the parents based on the conduct or capacity of the parents. Finally, the court found that the parents, without regard to intent, failed to provide proper care and custody of the child and there is no reasonable expectation that they would be able to do so within a reasonable time considering the child's age, § 19b(3)(g). The trial court also found that termination of parental rights was in the best interest of the child.

On appeal, the mother argues that the trial court's findings were not supported by clear and convincing evidence and the evidence did not establish that termination was in the best

interest of the child. The father argues that the trial court clearly erred in terminating his parental rights and that termination was clearly not in the best interest of the child. 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 interest. 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.* MCR 5.974(I).

MCL 712A.19b(3)(l) authorizes the termination of parental rights on the ground that "[t]he 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." The mother does not dispute that her parental rights to nine other children have been terminated due to neglect and drug use. The father argues that no evidence was presented to establish that he fathered other children or that he had his parental rights to other children terminated. His argument is contradicted by his own testimony in which he admits that he lost his parental rights to several of his children because of his cocaine use. We conclude that the trial court's findings were not clearly erroneous and that the statutory ground for termination was supported by clear and convincing evidence. Further, the record is void of any evidence that termination of their parental rights is contrary to the child's best interest.

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/ Hilda R. Gage
/s/ Kurtis T. Wilder