STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DAKOTA HARRIS and ARI DESHON TAYLOR, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHEILA HARRIS, a/k/a DIANE TAYLOR,

Respondent-Appellant,

and

BRYANT TAYLOR

Respondent.

UNPUBLISHED
March 1, 2002

No. 236396
Berrien Circuit Court
Family Division
LC No. 00-000074-NA

Before: Jansen, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Respondent-appellant ("respondent") appeals by right from the family court's order terminating her parental rights to two minor children, Dakota Harris (born December 15, 1995) and Ari Taylor[1] (born October 12, 1997), under MCL 712A.19b(3)(c)(i) ("[t]he 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 . . . [that] 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"), MCL 712A.19b(3)(g) ("[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"), and MCL

[1] The parental rights of Ari's father were terminated on the basis of abandonment, and he has not appealed the ruling.

712A.19b(3)(c)(h) ("[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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"). We affirm.

This Court reviews for clear error a family court's finding that a statutory basis for termination has been met. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Once a statutory basis has been proven by clear and convincing evidence, the court must terminate parental rights unless the court finds that termination is clearly not in the best interests of the child. *Trejo*, supra at 344, 355. A court's finding on the best interests prong is also reviewed by this Court for clear error. *Id*. at 356-357, 365.

Respondent pleaded no contest to the initial petition, filed in June 2000. The petition alleged, among other things, that respondent (1) had been arrested in May 2000 for retail fraud, cocaine possession, and resisting arrest and was currently incarcerated and awaiting sentencing; (2) had recently served thirteen months in prison for another offense; (3) was a chronic cocaine abuser and had an extensive history of retail fraud offenses; (4) tested positive for cocaine at Ari's birth; (5) had failed to obtain proper medical care for the children; (6) allowed the children to be cared for by an abusive woman during respondent's incarceration; and (7) failed to properly provide for the children's financial needs during her incarceration. The termination petition, filed in the spring of 2001, additionally alleged that after being released from jail in November 2000, respondent committed another retail fraud offense within twelve days and was returned to jail with an earliest release date of January 2002. The family court concluded that respondent's incarceration, neglect, and cocaine use warranted termination of her parental rights.

Respondent essentially contends that the family court erred in terminating her parental rights because if she obtained additional services after leaving jail, she could become an effective parent. We disagree with respondent's argument. Indeed the family court's decision in this case was supported amply by the testimony of a supervising foster care worker, who stated at the July 2001 termination hearing that (1) appellant, forty-two at the time of the hearing, had been out of jail for only thirteen days in the previous year; (2) after being released from jail in November 2000 and promising to reform for the sake of her children, respondent stole clothes from a store and returned to jail on December 6, 2000; (3) respondent received a sixteen-to-sixty-month term of incarceration for the clothing theft and would not be eligible for parole until January 2002; (4) respondent was incarcerated for a year between March 1999 and March 2000 and began testing positive for cocaine after her release; (5) respondent attended inpatient drug counseling from April 2000 to May 2000 but tested positive for cocaine on May 8, 2000, during outpatient therapy; (6) respondent pleaded guilty to cocaine possession and retail fraud in June 2000 and received a six-month sentence; (7) both children had attention deficit disorder; (8) after the end of her current jail term, respondent would need a long period of reformation before she would be ready to parent her children; and (9) there was a Children's Protective Services referral regarding appellant in October 1998 because the children had been missing medical appointments. Moreover, respondent herself acknowledged that since March 1999, she had been out of jail and inpatient programs for approximately six weeks total.

In light of the foregoing evidence, and giving due regard to the trial court's special ability to judge the credibility of the witnesses before it, see MCR 2.613(C) and *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989), the trial court did not clearly err in concluding that at least one statutory basis for termination existed, see *Trejo*, *supra* at 355, and that termination of respondent's parental rights was in the best interests of the children. Indeed, given the children's ages, the trial court concluded that a permanent family situation was necessary and that "it's not fair to the boys to make them wait" for a suitable mother. We discern no clear error with regard to this conclusion.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Patrick M. Meter