

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARMAINE R. HARRIS,

Respondent-Appellant.

UNPUBLISHED

September 17, 2002

No. 239010

Muskegon Circuit Court

Family Division

LC No. 99-027863-NA

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Respondent Charmaine Harris appeals as of right the family court's order terminating her parental rights to her minor child, SH, pursuant to MCL 712A.19b(3)(g), (i), and (j). We affirm.

I. Basic Facts And Procedural History

Harris gave birth to SH approximately ten weeks prematurely. On October 25, 2001, the Family Independence Agency (FIA) filed a petition to terminate Harris's parental rights to SH. The petition alleged that, in 2000, Harris's parental rights to three other children were terminated because she was a substance abuser, she had neglected the children, and she failed to provide the children with a suitable home. The petition alleged that, while that protective proceeding was pending, Harris failed to comply with the terms of her parent-agency agreement. Further, the petition alleged, Harris was involved in criminal behavior. After a hearing on, the family court made SH a temporary ward of the court.

The family court held a permanent custody hearing on December 5, 2001. At that hearing, Harris indicated that, after she lost her parental rights to her three other children, she began attending mental health counseling. She was not attending substance abuse counseling. Harris admitted that she was unemployed and lived with her mother. Overall, Harris contended that she was making progress in stabilizing her life, and that she could take proper care of SH.

Harris also stated that she was on probation and had other criminal charges pending against her, including charges of uttering and publishing and assault and battery. She believed that when she was sentenced on the uttering and publishing charge she would likely receive jail

time. Nevertheless, Harris asserted that she was willing to comply with a parent-agency agreement in order to regain custody of SH. Harris said that when she learned that she was pregnant with SH, she and an FIA worker discussed steps she could take to retain custody of the child, but that she did not follow up on the suggested steps because she did not believe that her parental rights would be terminated. Harris said that she took the proceedings seriously, and that she was willing to take the necessary steps to regain custody of SH.

A number of other witnesses also informed the family court of Harris's background. Michelle Housler, a probation agent for the Department of Corrections, testified that Harris violated her probation by committing an assault and battery. Linda Nikkels, a coordinator for Even Start, a literacy program, stated that Harris's attendance was poor and that the program did not seem to meet Harris's needs. Sharon Scott, a protective services worker, said that she had known Harris since Harris was in foster care as a teenager. Scott confirmed Harris's testimony that when Harris was pregnant with SH, she and Harris had discussed what Harris needed to do in order to retain custody of the child. However, Scott stated, Harris was unwilling or unable to take those steps.

The family court found that clear and convincing evidence existed to terminate Harris's parental rights. In the family court's opinion, the undisputed evidence showed that Harris's parental rights to three other children were terminated in 2000, she had failed to comply with the terms of her parent-agency agreement, and her circumstances had remained essentially unchanged. The family court added that Harris was unemployed, did not have suitable housing, had committed multiple criminal offenses, and was likely facing incarceration. The family court also found that terminating Harris's parental rights was in SH's best interests.

II. Standard Of Review

Appellate courts review a family court's decision to terminate parental rights for clear error.¹

III. Clear And Convincing Evidence

The family court must find clear and convincing evidence on the record proving that at least one statutory ground for termination exists before it terminates parental rights.² MCL 712A.19b(3)(i) is one of the three statutory grounds the family court cited for its decision to terminate Harris's parental rights. That provision states that the family court must terminate parental rights if there is clear and convincing evidence that the parent's "[p]arental 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."

Harris does not dispute that her parental rights to three other children had been terminated, that her rights were terminated for one of the reasons listed in subsection (i), or that these children are SH's older siblings. Rather, she challenges the family court's finding that her

¹ *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 5.974(I).

² MCL 712A.19b(3); see *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

efforts at rehabilitation were unsuccessful. In her view, her life had stabilized considerably. Her own mother's home, in which she was living, was suitable for her and SH. She was no longer using drugs, even recreationally, and was participating in drug screening as a condition of her probation. She also claims that, through the Even Start program and counseling, she had gained parenting skills, which would allow her to be a good mother to SH. Further, she claims, her mother and sister would be able to help her care for SH.

While, in comparison to the past, Harris's life may have improved somewhat, we see no clear error in the family court's finding that her efforts at rehabilitation, on the whole, had failed. Nikkels' testimony cast a legitimate doubt on whether Harris had benefited at all from the Even Start program. Though drug abstinence and testing was a good start, Harris had discussed what she needed to do to improve while she was pregnant. However, according to Scott, Harris was unwilling to make necessary changes. That Scott had known Harris since Harris was a teenager gave her a good perspective on Harris, including Harris's capacity to change. Though Harris had affirmed her commitment to making the changes that would help her be a good parent, she was also facing additional jail time, which suggested that she had neither taken any steps in a positive direction, nor would she be able to do so until after she was released from jail. At the time of the termination hearing in this case, there was no evidence suggesting that Harris's efforts at rehabilitation, no matter their scope and sincerity, had been successful. On the basis of this record, the family court did not err in finding statutory authority in subsection (i) to terminate Harris's parental rights. Having determined that there was clear and convincing evidence of at least one ground to terminate her parental rights,³ we need not address whether the evidence of the other statutory grounds the family court cited was sufficient.

Once there is clear and convincing evidence of at least one statutory ground for termination, the family 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."⁴ Harris claims that the evidence suggested that termination was contrary to the children's best interests. In making this argument, she points to her testimony that she had changed and was trying to regain custody. While this argument reflects, perhaps, Harris's love for her child, it does not tell us anything about SH's needs and how termination would affect those needs. In contrast, Scott testified that termination was in SH's best interests. Thus, there is no evidence demonstrating that the family court clearly erred in finding termination consistent with SH's best interests.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly

³ See *IEM*, *supra* at 450-451.

⁴ *Trejo*, *supra* at 354; MCL 712A.19b(5).