STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TDA, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JUANITA GERALDINE WARES,

Respondent-Appellant,

and

CURTIS ARNOLD,

Respondent.

UNPUBLISHED
September 17, 2002

No. 239206
Cass Circuit Court
Family Division
LC No. 98-000462-NA

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

PER CURIAM.

Respondent Juanita Wares appeals as of right from an order terminating her parental rights to the minor child, TDA, under MCL 712A.19b(3)(c)(i), (g), and (j). The family court also terminated respondent Curtis Arnold's parental rights, but he does not appeal. We affirm.

I. Basic Facts And Procedural History

Wares has a history of substance abuse. When she gave birth to TDA, the baby tested positive for marijuana. TDA's small size and failure to thrive has been a concern for much of his life. TDA came to the attention of protective services in October 1998, when he was left in the care of two teenage half-brothers, both of whom had been adjudicated as delinquents, after Wares was incarcerated at the Cass County jail. Wares' home was dirty, in disrepair, and strewn with her empty beer cans. Wares entered a plea of admission to a second amended petition alleging neglect. The family court then entered an initial dispositional order requiring her to comply with a parent-agency treatment plan. Among other things, the plan required her to undergo a psychological evaluation, attend parenting classes, avoid alcohol and drugs, and maintain a safe environment for the child.

Wares made some progress with the plan's requirements. In January 1999, she found a new apartment in Elkhart, Indiana, where she worked full-time, after her fire destroyed her house in Michigan. Clinical psychologist William Schirado evaluated Wares in February 1999 and found that she had a history of relationships involving domestic violence and substance abuse. He also reported that she tended to minimize her child's needs and her problematic relationships. Wares was discharged from outpatient substance abuse therapy in May 1999. By July 1999, she had supervised parenting time with TDA and, starting in February 2000, she had frequent unsupervised overnight visitation. She successfully completed parenting classes in March 2000. After she tested positive for marijuana in June 2000, she successfully completed treatment at another substance abuse facility and was discharged with a very good prognosis. Caseworker reports indicated that TDA had bonded well with both his foster family and Wares.

In April 2001, TDA was returned to Wares' care after she began receiving intensive in-home services through the Family Reunification Program. On June 5, 2001, TDA's adult half-sister (Arnold's daughter), Roxanna Hall, informed FIA foster care specialist Cindy Underwood that she recently discovered that, contrary to Wares' representations to Underwood, Wares and Arnold had been living with each other at the Indiana apartment since it was leased in January 1999. Hall characterized Arnold as a chronic alcoholic and reported that he and Wares were drinking heavily and regularly, which one of Arnold's other children confirmed. Hall also said that TDA had been left unsupervised and in an unsafe environment. Underwood also discovered that TDA was allowed to eat candy and potato chips and was not fed his daily nutritional supplement. TDA was returned to foster care the next day. The caseworker reported that TDA's weight dropped from twenty-eight to twenty-six pounds during the six weeks he was in Wares' care. She also reported that TDA, now aged 3½, did not want to go back to his mother's house.

The FIA filed a supplemental petition seeking to terminate Wares' parental rights on August 29, 2001. At the termination trial, psychotherapist Robin Zollar reported that TDA described incidents of domestic violence between Wares and Arnold, and indicated that the pair often yelled and fought. TDA also said that Arnold gave him "a whoopin' with a belt" and one of his half-brothers roughed him up. TDA expressed a great deal of fear about being in Wares' home. Zollar described him as "pretty bright," but she expressed concern about his size and bone development. The boy spoke of his foster family as his family and their home as his; he did not appear to be bonded with Wares. Zollar asserted that it would not be in the child's best interests to return him to his mother's care.

Pediatric endocrinologist Martin Draznin recommended that TDA not be returned to Wares because his growth rate dropped significantly while he was in her custody. He explained that the boy was the length and weight of a typical 3½-month-old when he was 10 months old and still in his mother's care. There was no organic explanation for his small size, suggesting either emotional problems or inadequate nutrition. After being in foster care, he looked good and had gained three inches and four pounds, but his growth slowed again after his return to Wares.

Family Reunification Program worker Kathryn Zeigler said that she made at least ten prearranged visits to Wares' apartment and never noticed signs that Arnold was living there, nor any signs of alcohol, although she never specifically checked. Hall, on the other hand, said that Arnold was there each time she visited, and he was always drinking. She said that whenever she visited, Wares would go into the bedroom and Arnold would not supervise the child. She

expressed concern that Arnold could not handle an emergency. She worried because there was a sheathed filet knife on a table within the boy's reach the majority of the times she went there. She also recalled a time that Arnold stood TDA on chair in front of the stove so that the boy could flip a cooking hamburger.

The family court issued a ruling from the bench on December 18, 2001. The family court found clear and convincing evidence that termination was warranted under MCL 712A.19b(3)(c)(i), (3)(g), and (3)(j). The court further found that termination was in TDA's best interests, citing the boy's bond with the foster family, his fear of returning to Wares' home, and his need for stability and attention to his physical and perhaps emotional problems.

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] Wares, however, challenges the family court's findings that supported each statutory provision it cited when terminating her parental rights.

Wares first argues that there was not clear and convincing evidence warranting termination under subsection (3)(c)(i) because the conditions that led to the adjudication had been rectified. Wares is correct that her new housing was apparently in better repair than the house in which she was living when TDA first came to the FIA's attention. However, there was clear and convincing evidence that her alcohol abuse problem still existed and that she was still unable to provide proper care for TDA. His growth slowed and he lost weight while he was in her custody. There was evidence that she left him in the care of a person who was seemingly unconcerned about his safety. As for her contention that much of the testimony against her was not particularly credible because of a variety of factors, it was the family court's job to weigh the evidence.[3] Thus, the family court did not clearly err in determining that it was proper to terminate Wares' parental rights under subsection (3)(c)(i).

Wares has similarly failed to show that the family court clearly erred in finding that subsections (3)(g) and (j) were proven by clear and convincing evidence. With regard to subsection (3)(g), Wares minimizes one witness' testimony about her ongoing alcohol abuse, but another witness corroborated that testimony. The evidence established that Wares lacked the judgment necessary to provide a safe and stable environment for the child and her continued relationship with the father negated any reasonable expectation that she would be able to do so in a reasonable time. For the same reasons, termination was appropriate under subsection (3)(j).

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[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).

[3] See *In re BKD*, 246 Mich App 212, 220; 631 NW2d 353 (2001).

Wares' indifference to the child's nutritional needs, along with her pattern of leaving him with inattentive caregivers, made it likely that the child would be harmed if returned to her. There was clear and convincing evidence on both these statutory grounds.

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] Wares, however, argues that the family court erred in concluding that termination was in the child's best interests. We disagree. Though the family court commented on TDA's bond with his foster parents, it is not clear that the family court decided, contrary to case law,[5] that termination was in TDA's best interests *because* of that bond. Further, although TDA and Wares may have developed some bond at one point, TDA's fear of being returned to his mother and his poor development under her care was the most direct evidence that terminating Wares' parental rights was not contrary to his best interests. Thus, the family court did not commit clear error.

Affirmed.

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

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

[5] See *In re Atkins*, 112 Mich App 528, 541-542; 316 NW2d 477 (1982).