

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of S.C.S., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONNA SLAYTON,

Respondent-Appellant,

and

DENNIS COLIN MUNDAY,

Respondent.

UNPUBLISHED
December 3, 2002

No. 233068
Livingston Circuit Court
Family Division
LC No. 99-300021-NA

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

PER CURIAM.

Respondent Donna Slayton appeals as of right from an order terminating her parental rights to the minor child, SCS, under MCL 712A.19b(3)(c)(i), (g) and (j). The family court also terminated the parental rights of SCS's father, Dennis Colin Munday, but he does not appeal. We affirm.

I. Basic Facts And Procedural History

On December 14, 1998, when SCS was eleven years old, the Family Independence Agency (FIA) filed a petition alleging delinquency and domestic violence. Specifically, the FIA alleged that there had been a physical altercation between Slayton and SCS. The FIA filed a separate petition on January 13, 1999, alleging that SCS assaulted his school gym teacher. The FIA filed a third petition on April 23, 1999, after SCS assaulted Slayton, prompting the family court to make SCS a temporary court ward. SCS was removed from Slayton and Munday's home and temporarily placed in detention in Jackson County.

The FIA initiated the present action when it filed an abuse/neglect petition on September 14, 1999. The petition recapitulated Slayton's involvement with the FIA dating back to 1987.

At the preliminary hearing on September 16 and 17, 1999, the referee heard testimony from Karen Luck, the FIA caseworker, who explained her involvement with Slayton and Munday. In her opinion, SCS's behavioral problems were the "direct result of the environment that he lives in, and the relationship between he [sic] and his mother." Dr. Leslie Robinson, an expert in child psychology, testified that SCS was at risk of severe emotional harm if he remained in the home. In pertinent part, Dr. Robinson said that Slayton had failed to ensure that SCS attended therapy sessions, took appropriate medication, and was not in the home with his older half-brothers, one of whom had sexually abused him previously. Dr. Robinson also said SCS had been diagnosed with a major depressive disorder, a severe oppositional defiant disorder, and was classified as dysthymic. Because SCS had threatened to commit suicide, he was prescribed two anti-psychotic medications: Risperdal and Zyprexa. The child's behavior changed for the better when he was placed in foster care, but his poor mood and behavior came back after he returned to Slayton's home. According to Dr. Robinson, SCS's problems were closely associated with the home environment and his relationship with Slayton. Thus, Dr. Robinson concluded that Slayton's continued custody of SCS presented a substantial risk of harm to his well-being and also put Slayton at risk of physical harm.

Slayton called Mary Warzecha, the principal at SCS's school, to testify on her behalf. Warzecha said that Slayton was concerned about SCS's education, that SCS was not a disciplinary problem, and that he did not present a behavioral problem.

Following the preliminary hearing, the family court, in an order entered on September 23, 1999, authorized the petition, removed SCS from the home, and placed him with his paternal grandfather. Specifically, the family court found that SCS's continued placement with Slayton presented a substantial risk of harm to his well-being and physical health.

On November 9, 1999, Slayton entered a no contest plea to the allegations in the petition in accordance with MCR 5.971. Slayton was allowed to plead no contest to avoid potential civil liability. In exchange for the plea, the FIA agreed that it would not ask the family court to terminate her parental rights at the initial dispositional hearing. On the record, Slayton acknowledged that she was tendering her plea voluntarily and that "I have not been threatened but I've been told if I take it to trial that termination will follow." To provide a factual basis for the plea and to support a finding that SCS came within the family court's jurisdiction, the family court admitted Plaintiff's Exhibit 1, a thick file of numerous FIA documents and hospital records detailing Slayton's involvement with the FIA. The family court also took testimony from FIA caseworker Luck regarding the allegations in the petition. Luck said that, based on the documentary evidence, her consultations with the medical professionals involved in this case, and her own case work with Slayton, she concluded that SCS has chronic anxiety and depression that results in "inappropriate acting out." Further, she believed that Slayton lacked the skills necessary to maintain a suitable environment to prevent SCS from being anxious, depressed, and agitated to the point that he places himself, his family, and the community at risk. The family court accepted the plea, finding an adequate factual basis in the record for the plea and that Slayton had given the plea knowingly, voluntarily, and understandably. Specifically, the family court found:

[T]here is evidence as contained in Plaintiff's Exhibit Number One and the testimony of Ms. Luck here that [SCS] has been diagnosed as suffering from depression and anxiety that has led to inappropriate acting out including violence

inflicted on his mother and on a teacher and on other people including students. That he's done things that have placed himself in danger and other people in danger, including driving an automobile at age 12 from Brighton to Howell, all that being, needless to say, is a danger for someone with so little experience and training and in a state of anger at the same time. And then I would have to look at the assaults to conclude that in fact it is a dangerous situation for himself and others.

The Court would also indicate on the basis of the testimony that I have here that there is evidence to indicate that the mother does lack at this time at least the parenting skills and apparently the ability to recognize her role in a treatment plan of action with respect to this boy, especially insofar as it might come to controlling or diffusing some of his violent reactions and violent actions, as a matter of fact.

The family court conducted the initial disposition hearing on January 19, 2000, at which time the FIA submitted an initial service plan and a parent agency agreement to the family court. Slayton signed the parent agency agreement and specifically stated that she knew what the agreement required. According to the parent agency agreement, Slayton had to complete a psychological and psychiatric evaluation by February 15, 2000; comply with treatment services by June 15, 2000; participate in parenting education, focusing on the needs of her "special needs" child, and complete the program by June 15, 2000; provide a stable home environment; maintain a stable legal source of income; and maintain supervised visits with the child, beginning with one hour per week. The family court adopted the parent agency agreement on the record and issued the dispositional order, which adopted the case service plan and continued SCS's foster care placement.

The family court held review hearings on April 3 and May 8, 2000, at which the family court continued its jurisdiction over SCS, noting that Slayton had failed to make significant progress toward reunification with her child. At the May 8, 2000, hearing, the family court admitted multiple records into evidence and adopted the amended parent agency agreement on the basis of recommendations from the FIA and Slayton's evaluations. The amended parent agency agreement called for Slayton to participate in intensive individual therapy and maintain appropriate psychotropic medication, parenting classes, a stable source of income, a stable home environment, family therapy, and visitation. On May 15, 2000, the family court entered a supplemental dispositional order.

The family court held another review hearing on August 21, 2000, accepting five additional records. At the hearing, the family court granted Slayton's discovery motion, compelling the FIA to provide her with a copy of Dr. Nick Boneff's psychological evaluation of SCS in which the psychologist said, "I cannot see any psychological good for [SCS] coming out of the severing of parental rights of either parent." At the review hearing, the FIA also revealed that it had decided to seek termination of Slayton's parental rights.

On August 24, 2000, the FIA filed its termination petition, alleging that Slayton failed to (1) participate in intensive individual therapy to gain personal insight into how to parent SCS adequately, (2) incorporate successfully special parenting skills for her special needs child, (3) maintain a stable source of income, and (4) provide a suitable home environment. At the

permanency planning hearing on September 8, 2000, the family court continued SCS's placement in foster care and scheduled the termination hearing.

The termination hearing commenced on September 18, 2000. On September 19, 2000, Slayton presented a letter to the family court stating that she had fired her attorney, Kathleen Goetsch. According to Slayton, she dismissed her attorney because she was dissatisfied with counsel's advice that she enter a no contest plea. Slayton claimed that she was "backed in a corner and coerced" and "threatened" into entering the plea. On September 27, 2000, the family court granted attorney Goetsch's motion to withdraw and entered an order on October 4, 2000 appointing Thomas Matthews to represent Slayton.

On October 17, 2000, Slayton appeared with her new attorney and requested an adjournment, which the trial family granted. Thereafter, on November 22, 2000, Slayton filed a motion to withdraw her no contest plea. She claimed that she did not knowingly, voluntarily, and understandably enter the plea. Following a hearing on November 29, 2000, the family court entered an order denying the motion.

The family court finally began hearing evidence on January 9, 2001. Dr. Robinson testified that she evaluated SCS from February 1999 to November 1999, and found that he behaved fine in the foster home placement, but appeared troubled when he returned to Slayton's home. In Dr. Robinson's opinion, even with a lot of family therapy, Slayton could not become an adequate parent within a reasonable time considering SCS's age. Dr. Robinson asserted that there was a "very slim" chance that Slayton, with good therapy, could improve in time to be an adequate parent for her child. According to Dr. Robinson, SCS's problems were caused by the environment that Slayton had created for him, not by his medical or psychiatric problems.

Stuart McAllister, a therapist at Pine Rest Christian Mental Center for Psychiatric Residential Services who treated SCS during his placement starting on July 5, 2000, testified that he conducted family therapy for Slayton and SCS during approximately twenty-five visits from August to November 2001. During the first hour, Slayton visited with her child, while the second hour consisted of a family therapy session. While McAllister believed that it was in SCS's best interests to continue with individual therapy as well as family therapy, he did not believe that returning to Slayton and Munday's home would be good for SCS because neither parent "could provide him with the permanency that he needs." McAllister was opposed to reunification because neither Slayton nor Munday could provide the child with a "stable environment."

The FIA called Dr. Richard Zipper, a psychiatric social worker Slayton initially retained to review the case records, to testify. Dr. Zipper, who never examined Slayton, presented the family court with his opinion:

I have just read numerous recommendations, numerous assessments, all of which said that [SCS] needed stability in the home, and assessments and statements about his mother which indicated that she either could nor or – or did not provide that, whether it was the emergency rooms and pleas for some help at controlling him, controlling his aggressive outbursts. There just did not appear to be, as of the final dates of the readings that I did, any indication that Mrs. Slayton was going to be able to do that.

Dr. Zipper stated that, in his opinion, “[i]t does not appear that there’s enough time and no history of – of success at creating stability in either household” and that the child did better in “protected environments outside the home.” Dr. Zipper thus concluded that SCS would benefit if the family court terminated Slayton’s parental rights.

At the hearing, Luck again explained her extensive involvement with Slayton and SCS, who was the youngest of Slayton’s four sons. Slayton’s and SCS’s lives had, to say the least, been chaotic, marked by domestic violence, drug use, recurrent homelessness, a variety of mental health problems, Slayton’s suicide attempts, and an unstable family life. Munday and Slayton’s older children left and reentered the home at different times, and SCS had been removed from and returned to Slayton’s care multiple times. Luck noted that the police had been called to Slayton’s home dozens and dozens of times, and once responded to a report that Slayton “was running around the yard . . . threatening to kill everyone in the household,” and that she had an eleven inch knife and a .357 Magnum in her home. Slayton had never been able to maintain employment for any significant period, and SCS had been chronically absent from school. Luck observed that Slayton refused some services offered to her, and had not benefited from the services she actually received. There was also a troubling incident in which a neighbor molested SCS’s older brother and then harassed the boy and SCS, causing the family to move.

In the late 1990s, SCS found himself in increasing trouble. Slayton filed a missing person’s report regarding SCS, whom the police arrested for panhandling. In 1998, the police also stopped SCS, who was then 11 years old, after he took Slayton’s care and drove a distance in an attempt to go to his grandparents’ house in Canton. When the police stopped him, SCS was wearing only a sweatshirt and tennis shoes. Luck said that SCS “was out of the home for three months during this year, and out of home care. He was suspended from school on more than six occasions.” SCS also achieved limited progress in school. Because of “significant emotional and behavioral concerns” in the home, SCS was hospitalized at the University of Michigan Hospital on two different occasions and evaluated at McPherson Hospital “on more than eight occasions” for his behavior. Although treatment was provided, “there was not follow-through nor significant benefit from those services.”

In January 2000, SCS was placed at Children’s Home of Detroit in order “to address the behaviors and the issue . . . of depression,” as “he was diagnosed with major depressive disorder, with no psychoses, and with oppositional defiant disorder.” According to Luck, “[t]here was a dispositional hearing at that time,” at which Slayton supported the child’s placement and the treatment he was receiving. At that point, Munday was living with Slayton once again, and Slayton reported to Luck that “he drank daily, that he often made use of cocaine.” Because SCS had made dramatic improvement, he was transferred from his “residential type” of home in Ferndale to “a setting that was very similar to a group home” in Grosse Pointe Woods.¹

During this period, Slayton failed to complete a psychological evaluation that Luck asked her to complete. As a result, Slayton’s treatment “was being delayed because of that lack of – of assessment and recommendations for appropriate services.” Luck said that Slayton was offered

¹ Children’s Home of Detroit maintains campuses in Ferndale, Grosse Pointe Woods, and Warren, all in the Detroit area.

funding for services as well as a “Wraparound team” to assist her. However, Slayton did not take advantage of the Wraparound program, which is “a family-based service.”

Beginning in February 2000, Luck testified, SCS had supervised visits at Children’s Home of Detroit with his father after Munday completed a substance abuse assessment, which found that he was “alcoholic-dependent.” During this time, Slayton “was working with a psychologist and a psychiatrist that were doing her assessments,” and had been approved for visits starting in February. Luck recounted that Slayton’s assessments revealed that she suffered from “major depression, histrionic dependent,” while her “psychiatric evaluation spoke of a major depressive disorder, cocaine, alcohol in remission, and a personality disorder.” According to Luck, SCS was quite excited about seeing his father for the first visit.

As for SCS’s progress more recently, Luck testified:

There was a psychological completed in April, and in that psychological by Dr. Boneff, he describes ambivalent attachment with borderline personality and formation. He suggests termination of parental rights could be very difficult for [SCS] because of the ambivalent attachment, and that there needed to be much work done for [SCS] to overcome the fantasy that he had regarding his parents, especially his mother.

In May 2000, when SCS turned thirteen years of age, he was required to leave the Children’s Home of Detroit. While SCS “was doing extremely well,” his parents had a “chaotic” relationship. Because SCS had not been living at home for fifteen out of twenty-two months, Luck was required to seek termination of parental rights “if it is not possible for him to return home.” When he graduated from the Children’s Home of Detroit in June 2000, SCS received academic and citizenship awards, and was eventually relocated to Pine Rest in Grand Rapids.

In the meantime, Luck said, Slayton was again having difficulty keeping a job; she had been unemployed for four months, after having at least seven jobs in a three-month period. During this time, Slayton was living with Munday in Fowlerville. However, in July 2000, Munday left Slayton to live in a hotel in Plymouth and the FIA “had a very difficult time establishing visits” for Slayton with SCS, who was still at Pine Rest. In addition, Slayton had not started any individual or parenting treatment. Luck informed Slayton that she was considering termination of parental rights because it was mandated, which caused “a kind of frenzied behavior where she really tried to find some way to engage in treatment and demonstrate to me that she was participating in these activities.” By August 2000, Luck determined that there was “lack of compliance” and thus filed the petition to terminate Slayton’s parental rights. At the time, SCS was doing very well in his placement. Meanwhile, Slayton was evicted from her Fowlerville apartment and was homeless for a time. Slayton had several sessions with Advanced Behavior Medicine, but she did not like the psychiatrist because he “spoke too softly.” Slayton was seen by a therapist, Pat Hoeft, who concluded that Slayton “wasn’t interested in really engaging in treatment, and until she made that kind of commitment that she would not want to see her anymore.”

The family court also heard from Renee Jones at the termination hearing. She said that she provided family therapy for Slayton and SCS. According to Jones, it was difficult to provide therapy to Slayton because she was always in crisis and could not focus on family therapy issues.

Jones asserted that there were traumatic attachment problems between Slayton and SCS, which Jones attributed to Slayton's parenting style. Slayton failed to follow through with the family therapy she offered, terminating the sessions in fall 1998. In her opinion, termination of Slayton's parental rights was in SCS's best interests.

Dr. Joseph Bono, a clinical psychologist, said that he briefly provided therapy for Slayton. She stopped seeing him after two sessions, despite the fact that he was highly qualified to provide the recommended treatment regarding parenting and family therapy.

Slayton called Gayle Stroh, a Master-level clinical psychologist who treated her after the termination petition was filed on August 24, 2000, to testify on her behalf. According to Stroh, Slayton needed treatment for post-traumatic stress disorder and borderline personality disorder, but had responded "fairly well" to therapy and had progressed beyond blaming the system and was taking more personal responsibility. Stroh said that Slayton's therapy consisted of intensive individual therapy, and that it would take two to five to eight years of counseling for Slayton to be able to handle her own problems. Stroh also outlined a six-month family therapy plan, which involved Slayton and SCS child living with each other and interacting so that they could profit from what they learned in therapy. Stroh did not recommend terminating Slayton's parental rights, but suggested that Slayton continue with intensive family therapy. On cross-examination, Stroh acknowledged that she did not provide child/parent therapy or specialize in family therapy, that Slayton's problems of inconsistency, overreacting, tangential thinking, instability, lack of focus, and failure to understand how her actions contributed to her own problems, and that her generally unhealthy lifestyle negatively affected her ability to parent. Stroh also was not able to pinpoint when Slayton would be capable of being an adequate parent for SCS, with whom she had not had any contact.

Julie Eastin, a psychology intern from the University Center for the Child and Family at the University of Michigan, provided Slayton with parent guidance treatment for ten sessions beginning September 5, 2000. According to Eastin, Slayton was open, honest, and able to respond to and integrate information thoughtfully. Eastin nonetheless believed that Slayton had problems following through with therapy as a result of poor planning and judgment. Although Eastin testified that Slayton's parenting skills were likely to improve with time and continued therapy, she admitted that she never saw Slayton with SCS and thus was not in a position to predict whether Slayton would ever be an adequate parent SCS, even after an intensive family therapy program.

Lesley Menhart, a therapist and supervisor of therapists at Pine Rest Center for Psychiatric Residential Services, said that family therapy started at the end of August 2000, and was discontinued on November 20, 2000, because it was not achieving results. She added that the therapy was also detrimental to SCS, principally because of Slayton's disruptive behavior. According to Menhart, SCS needed sustained stability in his life, and for him to wait even another six months would increase his anxiety and prove damaging to his well-being. Menhart observed that Slayton's pattern of chaotic behavior had not changed while SCS was in residence at Pine Rest.

Mary Warzecha, SCS's principal at a school he attended for a short time, testified that she did not observe anything alarming about SCS's behavior as a student or Slayton's conduct as a mother before the FIA took custody of SCS. Barbara Tanner, SCS's sixth grade teacher,

similarly testified that she did not notice any behavioral problems with SCS before the FIA took custody of him.

Slayton then testified on her own behalf. Slayton claimed that she had made much progress in therapy with Stroh and Eastin, outlining a plan for gradual reunification with SCS and continuing therapy over a six-month period if her parental rights were not terminated. Nonetheless, Slayton acknowledged that she had not complied with the treatment plan. She also conceded that her treating therapists and counselors had said she had problems involving inconsistency, overreaction, tangential thinking, inability to focus, and her inclination to blame the system for her problems.

On January 26, 2001, the family court stated on the record that there was clear and convincing evidence to terminate Slayton's parental rights to SCS under MCL 712A.19b(3)(c)(i), (g) and (j). On January 31, 2001, the family court issued its order terminating Slayton's parental rights to SCS. The family court entered an amended termination order on February 7, 2001.

II. Jurisdiction

Slayton argues that the family court did not properly assume jurisdiction over SCS because her no contest plea to the jurisdictional allegations was not knowingly and voluntarily made. Jurisdiction may be established by a plea of admission or no contest.² Matters affecting the family court's exercise of jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights.³ In this case, Slayton did not appeal the family court's jurisdictional order or contest its jurisdictional decision in a timely motion for rehearing and, therefore, may not now collaterally challenge the family court's exercise of jurisdiction. Thus, this issue is not properly before this Court.

Regardless of this procedural bar to considering this issue, the record of the plea hearing does not support Slayton's claim that her plea was not knowingly and voluntarily made. Slayton specifically acknowledged to the family court that she was tendering her plea voluntarily and had not been threatened. Her present assertion that she "was uncomfortable with the agreement" does not establish that it was not knowingly and voluntarily made. Thus, even if the issue were properly before us, we would conclude that the family court did not abuse its discretion in denying Slayton's untimely request to withdraw her plea.⁴

III. Termination

A. Standard Of Review

² See MCR 5.971; *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001).

³ See *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995), citing *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993).

⁴ See *In re Zelzack*, 180 Mich App 117, 125-126; 446 NW2d 588 (1989).

Slayton claims that the family court erred in terminating her parental rights under MCL 712A.19b(3)(c)(i), (g) and (j). Appellate courts review a family court's decision to terminate parental rights for clear error.⁵

B. 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.⁶ 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."⁷

MCL 712a.19b(3)(g) permits a family court to terminate parental rights if it finds clear and convincing evidence that

[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.

The record in this case, especially Luck's testimony, provides ample evidence that Slayton had failed to provide proper care and custody for SCS in the past. When Slayton was able to provide a home for SCS, it was a home that was rampant with violence by virtually every family member against each other, as well as drug abuse and neglect. Slayton's mental health problems and her inability to maintain employment also affected when she was able to provide housing for SCS, which is critical for any child. Clearly this unsuitable custodial environment affected SCS; a number of the experts attributed his behavioral problems to this poor environment.

The testimony from the clinicians treating Slayton and SCS at the termination hearing also made clear that Slayton would be unable to provide proper care and custody for SCS within a reasonable time considering his age. Slayton had never consistently followed through with her parenting agreement and the services offered to her. The services she did access benefited her little, if at all. Further, Slayton was again living with Munday, who was abusive to her and SCS. According to Menhart, waiting even another six months for Slayton to improve would be detrimental to SCS. Even Stroh, who testified on behalf of Slayton, foresaw between two and eight *years* of treatment before Slayton's progress would be substantial. There was almost universal agreement that SCS needs stability, and that Slayton was not able to provide that stability for him at the time of the termination hearing, or within a reasonable time after the hearing. On the basis of this evidence, the family court did not err when it found clear and convincing evidence to terminate Slayton's parental rights. Having determined that there was

⁵ *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 5.974(I).

⁶ MCL 712A.19b(3); see *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

⁷ *Trejo*, *supra* at 354; MCL 712A.19b(5).

clear and convincing evidence of at least one ground to terminate her parental rights,⁸ we need not address whether the evidence of the other grounds was adequate.

Affirmed.

/s/ William C. Whitbeck

/s/ Harold Hood

/s/ Kirsten Frank Kelly

⁸ See *IEM*, *supra* at 450-451.