STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MELISSA JO-ANN KISER, LINDSEY NICOLE KISER, JEANA MARIE FIELDS and TERRELL MWENDEL-EUGENE MARK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

VINCENT EUGENE MARK,

Respondent-Appellant,

and

DONNA LEE KISER and ROBERT GLENN KISER,

Respondents.

UNPUBLISHED
November 20, 2003

No. 245575
Wayne Circuit Court
Family Division
LC No. 00-393368

In the Matter of MELISSA JO-ANN KISER, LINDSEY NICOLE KISER, JEANA MARIE FIELDS and TERRELL MWENDEL-EUGENE MARK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONNA LEE KISER,

Respondent-Appellant,

No. 245692
Wayne Circuit Court
Family Division
LC No. 00-393368

and

VINCENT EUGENE MARK and ROBERT GLENN KISER,

Respondents.

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

In these consolidated appeals, respondents Vincent Eugene Mark and Donna Lee Kiser appeal as of right from the trial court's order terminating respondent Kiser's parental rights to all of the minor children, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), and respondent Mark's parental rights to Jeana and Terrell, pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

The court took jurisdiction over the three eldest minor children on the grounds of cruelty by respondent Mark and failure of respondent Kiser to protect the children. The evidence clearly supported the conclusion that respondent Kiser remained unable to protect the minor children and that this condition would not be rectified in the reasonable future. Until the final day of trial, respondent Kiser continued to live with respondent Mark even though she stated that he was abusive to her. While there was some suggestion that respondent Kiser could parent the children at some time in the future if she resolved her drug problem, there was unfortunately no evidence to suggest that she was likely to do so in the reasonable future. Respondent continued to test positive even while undergoing drug treatment and, only one week before trial, admitted she was still using cocaine. There was ample basis in the record to conclude that respondent would not be able to protect her children from abuse in the reasonable future. Therefore, the trial court did not clearly err by terminating her parental rights under MCL 712A.19b(3)(c)(i). *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The trial court also did not err by terminating the parental rights of both respondents on the ground that the children would be harmed if returned to them. MCL 712A.19b(3)(j). As already noted, respondent Kiser continued to live with respondent Mark even though he was abusive to her and the children. Her continuing use of cocaine would certainly compromise her ability to separate from an abusive partner in order to protect her children, and her use of cocaine while pregnant with Terrell further suggests a likelihood that drugs will take priority over the children's needs in the future as well. Respondent Kiser's failure to complete the domestic violence and anger management classes required by the parent-agency agreement supplies further evidence that she is likely to fail to make appropriate judgments to protect the children from physical abuse as she has done in the past.

The evidence also supported the trial court's finding that Jeana and Terrell would likely be harmed if returned to respondent Mark. We are disturbed, as the trial court was, by respondent's open display of the belt that he had used on the children on the wall even after being asked to remove it. His statements in the Clinic for Child Study minimizing his actions indicate little likelihood of a change in respondent Mark's future conduct. The risk of harm to

the children is only compounded by his drug use and by his lack of commitment to the children, the latter shown by his infrequent and irregular visits. We find that the trial court did not clearly err by terminating both respondents' parental rights under MCL 712A.19b(3)(j). *Sours, supra*.

With regard to respondent Kiser, we further conclude that the trial court did not err by terminating her parental rights on the ground that she failed to provide proper care and custody for the children and would be unable to do so in the reasonable future. Respondent failed to provide proper care and custody for the three eldest children by failing to protect them from physical abuse. She failed to provide proper care and custody for Terrell by ingesting cocaine during her pregnancy. Respondent failed to carry out several important requirements of her treatment plan, including remaining drug free and completing domestic violence and anger management classes. A parent's failure to carry out the parent-agency agreement is evidence of the parent's failure to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Especially where respondent Kiser continued to use cocaine until the time of trial, we conclude that the trial court did not clearly err by terminating her parental rights pursuant to MCL 712A.19b(3)(g). *Sours, supra*.

With regard to respondent Mark, we conclude that the termination of his parental rights to Terrell was not warranted under MCL 712A.19b(3)(g). Because Terrell was placed in care immediately after his birth and was never in the custody of respondent Mark, there is no evidence that he failed to provide proper care or custody for him. However, reversal is not warranted because another ground for termination was clearly established. Termination need be based on only one statutory ground. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999). The trial court did not clearly err by finding that respondent Mark failed to provide proper care and custody for Jeana and would remain unable to do so in the reasonable future. All of the evidence already cited with respect to respondent Mark applies equally under statutory subsection (g). Also extremely significant was respondent's failure to visit the children regularly. His infrequent and irregular visits indicate little commitment to the children, a factor reflecting on respondent's ability to provide proper care and custody for Jeana in the future.

We are unpersuaded by respondent Mark's contention on appeal that termination of his parental rights was premature because he had only seven months to complete the requirements of his parent-agency agreement, from the time when termination of his parental rights was first sought until the time of trial. We note that the establishment of jurisdiction over a child empowers the court to make determinations against any adult. *In re CR*, 250 Mich App 185, 202; 646 NW2d 506 (2002). Indeed, the court may even terminate the parental rights of a person with respect to whom adjudication was not concerned. *Id.* at 203.

In this case, while termination was not sought with respect to respondent Mark until March 2002, he was provided with a parent-agency agreement well before that time, at least by November 2001. Even before that point, respondent Mark was specifically directed by the court to enroll in parenting classes and establish paternity of Jeana. Therefore, respondent's contention that he was not given adequate time to comply with the requirements of the treatment plan is without merit.

Finally, the evidence did not show that termination of respondents' parental rights was clearly not in the children's best interests. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Although respondent Kiser was well bonded with Melissa and Lindsey, it was clear that

she had not resolved her drug problem, and there was no evidence that she had permanently separated from respondent Mark, who was physically abusive to the three older children. Under these circumstances, the trial court did not clearly err by finding that termination of respondent Kiser's parental rights was not clearly contrary to the best interests of the children. With respect to respondent Mark, there was no evidence to suggest that termination of his parental rights was clearly contrary to the best interests of his children. Terrell had never lived with respondent and Jeana was removed from his care at approximately one year of age. Furthermore, he visited his two young children infrequently.

Affirmed.

/s/ Karen M. Fort Hood
/s/ William B. Murphy
/s/ Janet T. Neff