

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYLER JESSE LORENZ and
CODY ALEXANDER LORENZ, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRIAN CHRISTOPHER GARNER,

Respondent-Appellant.

UNPUBLISHED
December 30, 2003

No. 247689
Macomb Circuit Court
Family Division
LC No. 00-049643-NA

Before: Schuette, P.J., and Murphy and Bandstra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. FACTS

The trial court terminated the parental rights of respondent¹ Brian Christopher Garner after petitioner, the Family Independence Agency, filed a petition seeking termination of his parental rights to children Tyler Jesse Lorenz and Cody Alexander Lorenz. Tyler and Cody were removed from their home in August 2000 and placed into foster care when they were three and two years old respectively. Tyler and Cody were returned to the home of respondent in January 2002 based on respondent's compliance with the parent/agency agreement at that point in time. When the children were returned to respondent, in-home reunification services were implemented through the Judsen Center.

However, in May 2002, the children were removed from respondent's home after it was alleged that Cody had been tied to a television and suffered a bruise when the television fell on

¹ The court also terminated the parental rights of the children's mother, Noel Teka Lorenz, after she executed a release of her parental rights, but she has not appealed that decision and is not a party to this appeal.

him². It was also alleged that respondent had not followed up on the school's request that the children receive physical examinations and the children were not going to be allowed to attend the Head Start program until the examinations were complete. Protective Services investigated the matter. The petition seeking termination of parental rights was filed September 20, 2002, and the hearing on the petition began December 11, 2002.

At the time of the termination hearing, Tyler was six and Cody was five. Nicole Williams, the foster care worker through Family Independence Agency, testified that both Tyler and Cody have special needs due to emotional problems. The foster mother reported that the children also had problems with bed-wetting, sleeping, and temper tantrums when they were first placed in the foster home and also when they were returned to the foster home in May 2002.

Williams testified regarding the components of respondent's parent/agency agreement. Respondent was required to maintain and obtain appropriate housing and remain in a stable residence for at least six months; complete parenting classes and be able to demonstrate parenting skills learned; participate in individual therapy to address communication skills, coping skills, anger management, and domestic violence; secure a legal source of income and provide documentation to the worker; maintain weekly contact with the case manager; sign any and all releases of information; cooperate with court orders; attend parenting time and use appropriate parenting skills during visitation; attend a domestic violence assessment and follow the recommendations; submit to four random drug screens to determine whether an additional assessment was needed; attend a drug and alcohol assessment and follow through with recommendations; and not allow Lorenz to live with him.

Diana Moore, the foster care case manager, testified regarding respondent's compliance with the parent/agency agreement. With respect to housing, respondent rented a three-bedroom house for \$800 a month. However, there was a concern regarding respondent's ability to keep the home clean. The protective services worker that investigated the referral in May 2002 reported that the home was littered with debris and there were piles of dirty dishes in the sink. In addition, respondent had needed assistance to pay his rent in April 2002. Moore testified that because of respondent's inability to keep the home clean and his money mismanagement, she considered him to be noncompliant with this aspect of the parent/agency agreement.

Respondent participated in two sets of parenting classes. He completed an eight week course during the initial stages of the case. Respondent also participated in another set of parenting classes after the children were removed in May 2002, but had not yet completed them at the time of the termination trial. The course involved twenty-four sessions and met twice a week. Respondent had missed six classes during the second set of parenting classes and had also missed some make-up classes. Respondent attended all of his parenting time with the children except for two visits. However, Moore testified that respondent was unable to demonstrate appropriate parenting skills.

² It was later determined that Cody was not actually tied to the television, but that he had been injured after becoming entangled in the television cord.

Moore testified that she had observed most of respondent's parenting times with the children and that he "struggled" with parenting ninety-five percent of the time. Moore explained that respondent was inconsistent in his parenting skills. Although respondent might improve his parenting skills with more time, Moore testified that he had been given many opportunities and classes and that it was not reasonable to make the children wait any longer considering that they had been in foster care for half their lives.

Respondent successfully completed individual therapy. With respect to a legal source of income, respondent was employed at Superior Communication installing cable. Respondent had been inconsistent in providing documentation of his income to the worker throughout the case. Since the most recent removal of the children, respondent had only provided three pay stubs, each for approximately \$650, for the pay periods ending November 22, September 6, and August 1, 2002. In addition, Moore testified that taxes were not deducted from respondent's paychecks.

The workers were concerned about reports that respondent still had a relationship with the children's mother, Lorenz, who had not complied with the case service plan and who had not addressed her substance abuse problems or her mental health issues. The protective services worker that investigated the referral in May 2002 reported that Lorenz was present in the home and interviewed Lorenz. The protective services worker also reported that the children's daycare provider reported that Lorenz was dropping off the children and picking up the children. In addition, the children reported that Lorenz was living in the home, that Lorenz brought them brownies, gave them money, and took them to the circus. Moreover, in October 2002, the foster parent reported that Lorenz was waiting in respondent's van while respondent attended parenting time. It had been explained to respondent that, in order to parent his children, he needed to sever his ties with Lorenz.

Moore also testified that respondent had participated in a psychological evaluation on October 30, 2002, with Dr. Ryan, which indicated that he showed high degrees of inconsistency in parenting. Moore testified that Dr. Ryan found that respondent was chronically involved in conflict with others and was narcissistic and self-centered. Dr. Ryan recommended that respondent participate in parenting classes. Moore testified that it was difficult to determine whether there was a bond between respondent and Tyler and Cody. Cody often asked whether he had to attend visits and during the last parenting time, Tyler had asked whether it was time to return to the foster home. Moore observed that respondent appeared uncomfortable and unnatural with his children.

Williams testified that parenting skills and stability were the major issues for respondent and that the issues had not been resolved. She indicated that parenting skills and the "behavioral techniques" that respondent had with the children had always been at issue in the case. Williams testified that respondent could not meet the children's special needs or financial needs and that he could not provide the children with the stability they needed. Moreover, Moore recommended terminating respondent's parental rights because issues continued to exist and there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the children's ages.

The court found that respondent did not benefit from services and continued to mismanage his finances, was unable to maintain the cleanliness of the home, and demonstrated poor parenting skills. The court further found that considering the special needs of the children,

the time that the children had been in foster care, and the fact that respondent had not asked for help when he needed it, that respondent would not improve within a reasonable period of time. The trial court entered the order terminating respondent's parental rights.

II. STATUTORY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

A. Standard of Review

A trial court's decision to terminate parental rights is reviewed for clear error. *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Id.* The court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest are reviewed for clear error. *Id.* at 356-357.

B. Analysis

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i),(g), and (j), which provide for termination of parental rights where clear and convincing evidence establishes the following:

(i) 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.

* * *

(g) The 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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The petitioner for termination of parental rights bears the burden of proving at least one ground for termination. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000); MCL 712A.19b(3). Subsection 19b(5) provides in pertinent part that the court shall terminate parental rights if one statutory ground for termination is found unless termination is clearly not in the child's best interest. *Id.* at 350; MCL 712A.19b(5). The court rule, MCR 5.974, similarly mandates termination once one or more grounds for termination is proven, unless termination is clearly not in the best interest of the child. MCR 5.974(E)(2).

The trial court did not clearly err in finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). There was substantial evidence indicating that respondent was not able to provide a stable environment for his special

needs children. Significant examples were the foster mother's reporting that the children, upon their return to her home, continued to have problems with bed-wetting, sleeping, and temper tantrums; Moore's determination that respondent was noncompliant with regard to the housing aspect of the parent/agency agreement³; and Moore's determination that respondent was unable to demonstrate appropriate parenting skills⁴; and respondent's failure to benefit or improve his parenting skills after taking the parenting classes.

Thus, in examining the facts and evidence before the trial court in light of subsections (i), (g), and (j), statutory grounds for termination of parental rights were supported by the facts of this case. While the lower court terminated respondent's rights pursuant to MCL 712A.19b on three separate grounds, we note that the trial court needed clear and convincing evidence of only one statutory ground to support its termination order. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

III. BEST INTEREST OF THE CHILDREN

A. Standard of Review

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interest. MCL 712A.19b(5); *In re Trejo Minors*, *supra* at 353. The trial court's decision regarding the children's best interests is reviewed for clear error. *Id.*

B. Analysis

The evidence did not show that termination of respondent-appellant's parental rights was not clearly in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, *supra* at 356-357. The court found that the respondent had not benefited from the parenting classes, continued to mismanage his finances, was unable to maintain the cleanliness of his home, and demonstrated poor parenting skills. The court further found that considering the special needs of the children and the fact that respondent had not asked for help when he needed it, respondent would not improve within a reasonable period of time.

Thus, in light of the aforementioned, there is no evidence on the record that indicates termination of respondent's parental rights would clearly not be in the best interest of the child.

³ Moore's determination was based, at least in part, on the protective services worker reporting that respondent's home was still "dirty", respondent's previous landlord reporting that respondent left the apartment destroyed, and because respondent needed assistance in paying his rent in April 2002.

⁴ Moore's determination regarding respondent's inability to demonstrate appropriate parenting skills is supported by Dr. Ryan's findings that respondent showed high degrees of inconsistency in parenting.

The trial court did not err in terminating respondent-appellant's parental rights to the children.

Affirmed.

/s/ Bill Schuette

/s/ William B. Murphy

/s/ Richard A. Bandstra