

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAMANTHA HISLER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TINA HISLER,

Respondent-Appellant,

and

RANDY HISLER,

Respondent.

In the Matter of SARINA HISLER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TINA HISLER,

Respondent-Appellant,

and

RANDY HISLER,

Respondent.

UNPUBLISHED
November 16, 2004

No. 254692
Washtenaw Circuit Court
Family Division
LC No. 02-000053-NA

No. 254693
Washtenaw Circuit Court
Family Division
LC No. 02-000052-NA

In the Matter of SONIA HISLER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TINA HISLER,

Respondent-Appellant,

and

RANDY HISLER,

Respondent.

No. 254694
Washtenaw Circuit Court
Family Division
LC No. 02-000054-NA

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Respondent-appellant Tina Hisler (hereinafter respondent) appeals as of right from an order terminating her parental rights to the minor children Samantha, Sarina, and Sonia Hisler pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm.

The minor children were initially made wards of the court in March of 2002, following a report that the children had been left with a neglectful caregiver who allowed them to climb on the roof and walk in the middle of North Territorial Road. Following marked improvement under the guidance of petitioner Family Independence Agency (“FIA”), respondent was reunified with her children in January of 2003. However, respondent was unable to maintain this improvement and the children were again placed into care in May of 2003. After several months, the family court terminated respondent’s parental rights, determining that respondent would be unable to make necessary changes within a reasonable time given the children’s ages.

I. Personal Jurisdiction

Respondent first argues that the circuit court lacked personal jurisdiction to terminate her parental rights because she did not receive personal service of a summons for the termination

¹ The court also terminated the parental rights of the children’s father, Randy Hisler, who is not a party to this appeal.

hearing pursuant to MCL 712A.12. Generally, we review a trial court's determination regarding personal jurisdiction de novo as a question of law.² However, respondent has waived the right to appellate review of her jurisdictional claim. Respondent appeared at and vigorously defended against the termination hearing. Defendant never objected to the lack of notice. Furthermore, although respondent failed to specifically contend that she did not receive proper notice of any prior proceedings, we note that she appeared at and participated in all but one hearing conducted in this matter. Respondent failed to attend only an early dispositional review hearing on May 7, 2002, which was adjourned until May 21, when she appeared. Accordingly, we conclude that respondent has waived any objection regarding notice of the termination petition and hearing.³

II. Termination of Parental Rights

Respondent next asserts that the trial court lacked clear and convincing evidence to support termination of her parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) or (j). Respondent also challenges the court's finding that termination would serve the children's best interests. We review for clear error a trial court's decision that a ground for termination of parental rights has been proven by clear and convincing evidence.⁴ We also review a trial court's determination regarding the children's best interests for clear error.⁵

MCL 712A.19b(3)(c)(i) allows for the termination of parental rights when the court finds that the "conditions that led to the adjudication continue to exist [182 days after the issuance of the an initial dispositional order] and there is no reasonable likelihood that the condition will be rectified within a reasonable time considering the child[ren]'s age[s]." MCL 712A.19b(3)(g) permits the termination of parental rights when "The parent, without regard to intent, fails to provide proper care or custody for the child[ren] 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[ren]'s age[s]." Finally, MCL 712A.19b(3)(j) allows for termination when "there is a reasonable likelihood, based on the conduct or capacity of the child[ren]'s parent, that the child[ren] will be harmed if [they are] returned to the home of the parent."

The trial court did not clearly err in determining that there was clear and convincing evidence to support terminating respondent's parental rights for the given statutory grounds. It is evident that respondent truly loves her children and has made significant progress towards reunification. However, at the time of the termination proceeding, respondent had only been employed by her current employer for a few months and she felt the need to exaggerate her

² *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004).

³ MCR 3.920(G); *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992). See also *Daines v Tarabusi*, 246 Mich 419, 421; 224 NW 416 (1929) (finding that when a defendant enters a general appearance in court through his attorney, he submits to the court's jurisdiction and waives defects in process); *In re Slis*, 144 Mich App 678, 683; 375 NW2d 788 (1985) ("A party who enters a general appearance and contests a cause of action on the merits submits to the jurisdiction of the court and waives service of process objections.").

⁴ MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

⁵ MCL 712A.19b(5); *Trejo*, *supra* at 356-357.

income and benefits. Respondent was only able to secure stable housing with the financial assistance of a would-be suitor. After respondent was ordered by the court to leave her position as an exotic dancer, she continually changed employment and moved residences several times in the months preceding the final termination hearing.

Although respondent and the children had attended individual and family therapy, respondent did not appear to absorb and maintain the information she received at those sessions. The family members continued to exhibit difficulties with anger management. While in respondent's care, respondent twice failed to take Sarina to medical appointments causing an interruption in her medication for attention deficit hyperactivity disorder. Respondent continued to have trouble controlling Sarina and often made comments blaming Sarina for the family's separation. Against the advice of a counselor, respondent discussed the termination proceedings with the children and told them that she might not ever see them again. The care the children received in respondent's home was also inadequate. Respondent admitted that she would be unable to parent her children without the continuation of FIA services on a daily basis. Due to a lack of medical attention, Samantha lost an adult tooth to decay. Furthermore, when the FIA arrived at respondent's trailer to take the children into care, the gas had been turned off, the children had no clean clothes and they were infected with lice and covered in flea bites.

Most significantly, respondent continued to engage in an abusive, codependent and enabling relationship with a drug-addicted younger man despite his failure to comply with court-ordered drug counseling. Respondent allowed her boyfriend to use corporal punishment to discipline her children, she left sexually explicit photographs of the pair in a kitchen cupboard that were found by Sarina, and missed Sonia's birthday party and therapy session to drive him to Tennessee in order to evade an arrest warrant.⁶ A counselor testified that respondent would require years of therapy to ensure that she put her children's well-being first and avoided such victimizing relationships. However, the children required a stable and consistent home environment to overcome their academic obstacles and difficulties with anger and coping.

The evidence is clear that respondent will be unable to provide a stable home and care for her children within a reasonable time given their ages. As at least one ground for termination was established by clear and convincing evidence, the court was required to terminate respondent's parental rights unless the court found that termination was not in the children's best interests.⁷ However, the evidence showed that termination was in the children's best interests.

It is undisputed that respondent and her children loved each other and genuinely hoped for reunification. Respondent completed two sets of parenting classes, improved the quality of her visitation periods over time, and improved her relationships with the children through therapy. At the time of the termination procedure, respondent had maintained housing and employment as an assistant manager of a jewelry store since October of 2003. However, respondent still could not provide the stable home needed by her children. The children had only just begun to exhibit improvement in foster care. Furthermore, a counselor testified that

⁶ Respondent initially told caseworkers that her absence was due to work.

⁷ MCL 712A.19b(5); *Trejo, supra* at 364-365.

respondent did not understand her children's need for stability and consistency and that a return to an unstable environment, in which respondent required years of continued therapy and daily services from the FIA, would impair their mental well-being. Based on this evidence, the trial court did not clearly err in finding that termination was consistent with the children's best interests.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra