

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHANTALE SHANEE
THOMPSON, SHAKYRAH NICOLE
THOMPSON, WILLIAM DARRELL
THOMPSON, DAI'SHAUN MARQUISE
THOMPSON, KELVIN ANDRE REED,
DAISHARAY DYMOND MOORE, and EXCELL
SHATAIRE PROFESSOR MOORE II, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHILLIAM ARTELLA THOMPSON,

Respondent-Appellant,

and

STEVEN EDWARDS, EDDRICK THOMAS, and
EXCELL MOORE, SR.,

Respondents.

In the Matter of TEQUILA J. MOORE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

EXCELL S. MOORE,

Respondent-Appellant,

and

UNPUBLISHED
October 27, 2005

No. 260347
Wayne Circuit Court
Family Division
LC No. 01-403326-NA

No. 261061
Wayne Circuit Court
Family Division
LC No. 01-403326-NA

MICHILLIAM A. THOMPSON,

Respondent.

Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

In these consolidated appeals, respondent Michilliam Thompson appeals as of right the order terminating her parental rights to the minor children Chantale, Shakyrah, William, Kelvin, Dai'Shaun, Daisharay, and Excell II pursuant to MCL 712A.19b(3)(a)(ii)(desertion),¹ (c)(i)(conditions of adjudication continue to exist), (c)(ii)(other conditions exist), (g)(failure to provide proper care and custody), and (j)(child will be harmed if returned to parent). Respondent Excell Moore appeals as of right the order terminating his parental rights to the minor child Tequila, pursuant to MCL 712A.19b(3)(c)(i)(conditions of adjudication continue to exist), (g)(failure to provide proper care and custody), (h)(imprisonment and children will be deprived of normal home for two years), (j)(child will be harmed if returned to parent), and (l)(rights to another child were terminated).² We affirm.

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Respondent Thompson clearly abandoned her child Dai'Shaun within the meaning of MCL 712A.19b(3)(a)(ii). When Dai'Shaun became a temporary ward in December 2001, respondent Thompson's whereabouts were unknown. The child had been found unrestrained in a car driven by his paternal grandmother, with whom he had been living. The paternal grandmother was driving while intoxicated, and her son's legal status as Dai'Shaun's father had not been established. Respondent Thompson made her first appearance in the matter in February 2003, when her other children were taken into care. She testified that she did not know that Dai'Shaun was a temporary ward. Respondent Thompson explained that she allowed the child's father and the paternal grandmother to have visitation with the child, but in June 2001, they refused to return him. Respondent Thompson claimed that she had contacted the police, who told her that it was a custody dispute and not a kidnapping case. She made no further efforts to have Dai'Shaun returned to her care because of alleged threats made against her by the biological father's family. Because of a defect in service, respondent Thompson's parental rights to Dai'Shaun were not terminated at the original termination trial. Contrary to respondent Thompson's argument, *res judicata* did not then bar re-litigation of the

¹ This subsection applies to the termination of respondent Thompson's parental rights to Dai'Shaun only.

² Although respondent Moore argues against the termination of his parental rights to Daisharay and Excell II in his appellate brief, he has only claimed an appeal to the order terminating his parental rights to Tequila. Respondent Thompson's parental rights to Tequila were also terminated, but she has not appealed that order.

issue at the later termination trial because there had been no prior determination on the merits. In fact, such a determination was expressly prohibited at the earlier proceeding because respondent Thompson had not received proper notice.

The trial court also did not err in terminating respondent Thompson's parental rights to the children under the remaining subsections. She was only in partial compliance with her treatment plan. She completed parenting classes and individual therapy and cooperated in a psychological evaluation and the Clinic for Child Study evaluation. However, respondent Thompson did not visit with the children regularly, did not present proof of a legal source of continuous income, and did not obtain suitable housing. There was conflicting testimony regarding the number of visits offered to respondent Thompson and the number of visits she actually attended. However, it was for the trial court to resolve this conflict and to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Although a substance abuse assessment and weekly random drug screens were not originally part of respondent Thompson's treatment plan, they were added following the births of Excell II and Tequila, who both tested positive for marijuana at birth. Respondent Thompson gave multiple excuses for failing to get an assessment and submit to screens, but the record showed that she was given ample instruction on what she needed to do in order to have the children placed with her. Respondent Thompson did not have a legal source of continuous income, did not have suitable housing, and failed to address any substance abuse issues. The fact that respondent Thompson gave birth to two children who tested positive for marijuana and the fact that she associated herself with respondent Moore, who had been convicted of drug felonies, placed the children at risk of harm if they were returned to her care.

The evidence did not establish that termination of respondent Thompson's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The record demonstrated that respondent Thompson did not fully appreciate her children's special needs. She did not consent to an increase in William's medication, necessitating a court order. She also failed to recognize Shakyrah's emotional problems and issues with school transfers. While respondent Thompson had positive interactions with the children during visitation, she failed to regularly visit with the children. Given her failure to appreciate the children's special needs and the trial court's determination that she failed to regularly visit with the children, termination of her parental rights was appropriate.

The trial court also did not clearly err in finding that statutory grounds for terminating respondent Moore's parental rights to Tequila had been established by clear and convincing evidence. There is no dispute that his rights to the two older children, Daisharay and Excell II, were terminated. Respondent Moore was required to attend parenting classes and individual therapy and provide workers with proof of a legal source of income and suitable housing. He did nothing to comply with his treatment plan. At the time of the termination trials, respondent Moore was in prison as an absconder from parole. He admitted to prior drug and weapons convictions. Although respondent Moore testified that he anticipated a release date of June 2005, his maximum release date was in 2015.

Further, the evidence did not establish that termination of his parental rights was contrary to the child's best interests. Respondent Moore did not visit his older children, Daisharay and Excell II, because of his absconder status, and there was no evidence that he had bonded with any of his three children. Tequila, still an infant when her parents' parental rights were terminated, deserved a chance to have a permanent home.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder