STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DATANTE CLAXTON, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PATRICK CLAXTON,

Respondent-Appellant,

and

DEBORAH JOHNSON-CLAXTON,

Respondent.

UNPUBLISHED
November 17, 2005

No. 262006
Oakland Circuit Court
Family Division
LC No. 04-697390-NA

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

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Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Respondents appeal as of right from a circuit court order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), (j), and (l). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2002). This Court reviews for clear error a trial court's decision that clear and convincing evidence supported a statutory ground for termination. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's factual findings are clearly erroneous if, although some evidence exists to support the findings, a reviewing court is left with a definite and firm conviction that a mistake has been made, giving due regard to a trial court's special opportunity to observe witnesses. *In re BZ, supra* at 296; *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

Respondent Patrick Claxton argues that the trial court erroneously terminated his parental rights under § 19b(3)(i) because that subsection applies only if there have been prior terminations. He contends that because he does not have any prior terminations, the statute does not apply to him. It is unclear whether the trial court terminated Patrick's parental rights under §§ 19b(3)(i) and (l). The referee stated in her findings at the adjudicative phase that the prosecutor had met its burden under those subsections "in regards to father." It appears, however, that the referee misspoke by referencing Patrick rather than respondent Deborah Johnson-Claxton, who previously had her parental rights terminated to four other children. The referee discussed Deborah's prior terminations and did not mention any prior terminations involving Patrick. Likewise, the trial court's opinion issued after the best interests hearing stated that petitioner had met its burden under § 19b(3)(l) "as to mother only."[1] Thus, it does not appear that the trial court intended to apply §§ 19b(3)(i) and (l) to Patrick. In any event, to the extent that the trial court erroneously terminated Patrick's parental rights under those subsections, any error was harmless because petitioner presented clear and convincing evidence for termination of his parental rights under §§ 19b(3)(g) and (j), and only one statutory basis is necessary to support termination. *In re BZ, supra* at 296; *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Deborah contends that the trial court erred by terminating her parental rights under § 19b(3)(i) because a previous attempt to terminate her parental rights to Datante existed, but he was eventually returned to her and court jurisdiction was terminated. Section 19b(3)(i) requires that the parental rights to one or more siblings have been terminated because of serious and chronic neglect or physical or sexual abuse. The details regarding the termination of Deborah's parental rights to her other children are unclear from the record. There was some indication

[1] The opinion made no mention of § 19b(3)(i).

through questioning at the best interests hearing that Deborah may have left the children unattended. She maintained, however, that her parental rights were terminated because she did not have a place for the children to stay. Because the circumstances involving the prior terminations are unclear, we cannot conclude that the previous terminations were because of serious and chronic neglect or physical or sexual abuse as required under § 19b(3)(i). Any error is harmless, however, because a statutory basis existed to terminate Deborah's parental rights under § 19b(3)(l). *In re BZ, supra* at 296; *In re Powers, supra* at 118. Section 19b(3)(l) only requires that Deborah's parental rights to another child were terminated as a result of proceedings under MCL 712A.2(b) or a similar law in another state. It was undisputed that Deborah's parental rights to four of her children had been previously terminated. Accordingly, clear and convincing evidence was presented to support termination of Deborah's parental rights under § 19b(3)(l).

Both respondents contest termination of their parental rights under §§ 19b(3)(g) and (j). Clear and convincing evidence supported termination under those subsections, however, because both respondents failed to provide proper care and custody of Datante, the minor child. Datante was twice able to leave his home very early in the morning and travel between eight and ten miles away on his bicycle. He is a special needs child and was unable to communicate with the police when they found him. He would not have been able to make his way back home given the distance that he had traveled. When respondents attempted to pick up Datante, they were intoxicated. There was also no reasonable expectation that respondents would be able to provide proper care and custody of Datante within a reasonable time given his age, and a reasonable likelihood of harm existed if he was returned to respondents' care. Despite respondents' testimony to the contrary, there was some question throughout the duration of the proceedings whether respondents were under the influence of drugs or alcohol while they were testifying. Respondents allowed Datante to roam the neighborhood and were not troubled by Datante's wanderings. Neighbors often called respondents to inform them of Datante's whereabouts. Thus, despite the fact that respondents had apparently had an alarm system installed since Datante was removed from their custody, their substance abuse problems combined with their lack of concern regarding Datante's wanderings and his special needs pose a serious threat of harm to Datante if he were returned to respondents' care. The fact that respondents do not believe that Datante's wanderings are a cause of concern illustrates that they are unlikely to rectify the situation within a reasonable time considering that Datante is now fifteen years of age. Accordingly, clear and convincing evidence supported termination under §§ 19b(3)(g) and (j).

Once petitioner presented clear and convincing evidence in support of at least one statutory basis for termination with respect to each respondent, the trial court was required to terminate respondents' parental rights unless there existed clear evidence that termination was not in Datante's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 354; *In re CR, supra* at 195. Termination of respondents' parental rights was in Datante's best interests given the likelihood of harm to Datante if returned to respondents' care. The fact that respondents were unconcerned with Datante's wanderings evidences that they are not able to properly care for Datante. Deborah argues that Datante is not better off outside of respondents' care and that his placement at the time of the best interests hearing was not equipped to handle a child with his special needs. In addition, she notes that Datante escaped his placement just as he had escaped from respondents' home. Our Supreme Court has held that it is inappropriate to compare a potential placement with the home of the natural parents. *Fritts v Krugh*, 354 Mich 97, 115; 92

NW2d 604 (1963), overruled on other grounds in *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993). In any event, testimony indicated that Datante would soon be placed at a facility equipped to deal with his special needs. Moreover, both respondents testified that they intended to place Datante at a group home or independent living facility when Datante was between the ages of eighteen and twenty-one. Because Datante was already fifteen years old and a risk of harm existed if he was returned to respondents' care, the trial court did not err by concluding that termination of respondents' parental rights was in Datante's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood