

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LATRICIA PAULETTE
JOHNSON, Minor.

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

UNPUBLISHED
December 6, 2005

Petitioner-Appellee,

v

LECIA JOHNSON,

Respondent-Appellant.

No. 261270
Oakland Circuit Court
Family Division
LC No. 03-683993-NA

Before: Cooper, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Respondent Lecia Johnson appeals as of right from the trial court order terminating her parental rights to her minor child, Latricia, pursuant to MCL 712A.19b(3)(c)(i),¹ (g),² and (j).³ We affirm.

I. Factual Background

Respondent's parental rights were terminated based on her conduct following the sexual assault of her young daughter. In the spring of 2003, respondent found bloody underwear which Latricia had hidden. Latricia, who was then only nine years old, told respondent that she hid the underwear because she was afraid to tell her that respondent's boyfriend, Lamarr, had forcibly

¹ Termination is proper if, after 182 days, "[t]he 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." MCL 712A.19b(3)(c)(i).

² MCL 712A.19b(3)(g) provides for termination if "[t]he parent, without regard to intent, fails to provide proper care and custody"

³ MCL 712A.19b(3)(j) provides for termination if "[t]here 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."

raped her.⁴ Respondent initially reported the incident to the police. However, Latricia later told her counselor that respondent forced her to talk to Lamarr on the telephone two days after reporting the rape.⁵ Latricia subsequently recanted the allegations against Lamarr during a court proceeding in June, and the charges against him were dropped. In August of 2003, Latricia told her counselor that she only recanted the allegations because respondent threatened to send her away if she told the truth in court. Respondent admitted that she continued her friendship with Lamarr long after Latricia told her about the rape and continued to occasionally watch his children.

At the time of the allegations of sexual abuse, respondent and Latricia's father were going through a divorce. In July of 2003, Latricia went to live with her father, where she remained after she was initially removed from respondent's care that September. Throughout the termination proceedings, respondent failed to attend court-ordered family counseling with Latricia. Respondent continually asserted that Latricia was lying and Latricia became more emotionally distant from respondent during supervised visitation periods. Respondent even brought Lamarr's sister to a visit with Latricia and forced her daughter to apologize.⁶ Respondent repeatedly told counselors during individual sessions that she had no issues to resolve with Latricia and that she only attended because ordered by the court. Respondent did not receive positive reports from any counselor until the eve of the final termination trial in the fall of 2004.

II. Failure to Provide Proper Service

Respondent contends that the trial court committed reversible error by holding a pretrial and trial on the supplemental petition when the petitioner had not properly served her notice of the proceedings. Pursuant to MCL 712A.13, the petitioner is required to provide personal service of a summons unless the court finds that such service is impracticable.⁷ MCL 712A.20 further provides that, once a child is taken into temporary custody, further orders may only be issued after a hearing of which the respondent has been properly notified.

The petitioner attempted to serve notice of the December 10, 2004 hearing to the address given by respondent on the record. The person who answered the door indicated that respondent did not live at that address. However, the record reveals that respondent received service at that address for previous hearings. Moreover, respondent had actual notice of the proceeding. She

⁴ The underwear was not found until two months after the alleged rape occurred. Accordingly, there was no physical evidence that Lamarr had penetrated Latricia.

⁵ Lamarr allegedly told Latricia that he did not want to go to jail.

⁶ Respondent challenges the trial court's reliance on this evidence on appeal. She asserts that this allegation was based on hearsay. However, respondent did not object to this evidence below and actually admitted to its truth.

⁷ See also MCR 3.920(B)(4).

voluntarily appeared at the hearing and signed a waiver of service.⁸ Accordingly, respondent has waived the right to challenge the adequacy of service on appeal.⁹

III. Sufficiency of Record and Order of Termination

Respondent contends that the trial court failed to make “definite” findings on the record, as required by MCR 3.977(H)(1).¹⁰ Respondent further contends that the final order terminating her parental rights did not include finding of facts, conclusions of law, and the statutory basis for termination as required by MCR 3.977(H)(3).¹¹ Respondent’s claims are without merit. It is clear from the record that the trial court made definite findings of fact, stated its conclusions of law, and included the statutory basis for the termination order on the record at the hearing. These findings and conclusions were stated on the record and the trial court was not required to restate its findings in the final order.

IV. Termination of Parental Rights

Finally, respondent argues that the petitioner presented insufficient evidence to support the statutory grounds for termination. Respondent also contends that termination was not in Latricia’s best interests. We disagree. We review a trial court’s decision to terminate parental rights for clear error.¹² If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate the respondent’s parental rights unless it finds from the record evidence that termination is clearly not in the child’s best interests.¹³ We review the trial court’s determination regarding the child’s best interests for clear error.¹⁴

The trial court properly determined that the petitioner established statutory grounds to terminate respondent’s parental rights by clear and convincing evidence. Although respondent initially reported the sexual abuse to the police, respondent later forced her child to speak to her alleged rapist and apologize to his sister. Respondent maintained her friendship with Lamarr, continued to watch his children, and drive a car that he had lent to her. Respondent coerced her

⁸ MCL 712A.12; MCR 3.920(E).

⁹ *In re Gordon Estate*, 222 Mich App 148, 158; 564 NW2d 497 (1997) (“[A] party who enters a general appearance and contests a cause of action on the merits submits to the court’s jurisdiction and waives service of process objections.”).

¹⁰ The court rule provides, in pertinent part, that “The court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient.”

¹¹ MCR 3.977(H)(3) provides that “An order terminating parental rights under the Juvenile Code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order.”

¹² MCR 3.997(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

¹³ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

¹⁴ *Trejo*, *supra* at 356-357.

daughter to lie in court, which resulted in the charges against Lamarr being dropped. Respondent's lack of understanding of her child's needs continued throughout the proceedings. Respondent did not understand the need for counseling and repeatedly failed to comply with the parent-agency agreement. Given respondent's conduct, there is a reasonable likelihood that Latricia would be harmed if returned to respondent's care.

Respondent also has not established that termination was contrary to her child's best interests. Latricia became emotionally distant from respondent and refused to speak to her during supervised visits. However, respondent never attended court-ordered family counseling to fix this relationship. Latricia's grades and behavior have improved while in her father's care, and the child has indicated her preference to remain with him.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello