

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DOUGLAS RICHARD BARNES,
Minor.

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

UNPUBLISHED
December 20, 2005

Petitioner-Appellee,

v

LAURA ANN BARNES,

Respondent-Appellant.

No. 263793
Saginaw Circuit Court
Family Division
LC No. 03-028513-NA

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

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

In order to terminate parental rights, a 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). This Court reviews for clear error a trial court's determination that clear and convincing evidence supports a statutory ground for termination. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Contrary to respondent's assertion, the trial court did not clearly err in finding that such grounds were established by clear and convincing evidence.

To warrant termination under MCL 712A.19b(3)(c)(i), the conditions leading to adjudication must still exist 182 days after the initial disposition and the respondent must not be reasonably likely to rectify those conditions within a reasonable time considering the child's age. In the present case, the evidence showed that respondent's use of cocaine and associated reckless behavior with respect to her infant child were the conditions leading to adjudication. The termination hearing was held more than 182 days after initial disposition, and respondent had not yet shown that she could remain substance-free outside residential treatment.¹ To the contrary,

¹ Respondent argues that she should have received additional time in which to work toward
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the evidence showed that respondent voluntarily left a residential treatment program despite knowing how greatly her doing so would hurt her chances of reunification with her child. Moreover, the reasons offered by respondent for having left the program showed that she was not placing her child's best interests first. Respondent also admitted using crack cocaine after leaving the program, although she blamed prescription painkillers and depression for the relapse. When respondent finally returned to the residential program she made slow progress despite her statement that her participation in the program this second time was different. Respondent's conduct since the initial disposition constituted clear and convincing evidence that she was not likely to rectify her substance abuse within a reasonable time, considering the child's age. Consequently, the trial court did not clearly err in finding statutory ground for termination of respondent's parental rights under MCL 712A.19b(3)(c)(i).²

The trial court also did not err in finding clear and convincing evidence that respondent failed to provide proper care and custody when she was using crack cocaine, was not reasonably likely to rectify her substance abuse and provide proper care and custody within a reasonable time, and that the child was likely to be harmed if returned to respondent. MCL 712A.19b(3)(g) and (j). Indeed, the evidence showed that respondent placed her child in dangerous situations because of her drug use, and her decision to leave the residential treatment and subsequent relapse demonstrated that she was likely to place her child in danger again.

The trial court similarly did not err in finding that termination was not against the child's best interests. *In re BZ, supra*. When a trial court finds a statutory ground for termination, it must terminate parental rights unless termination was clearly against the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 352-353. There is no specific burden on either party to present evidence of the child's best interests; rather, the trial court should weigh all evidence available. *In re Trejo, supra* at 354.

The primary evidence that termination was against the child's best interests was the bond, acknowledged by petitioner's witness, between respondent and her young child. However, respondent's failure to rectify her substance abuse and the dangers she placed her child in while using cocaine outweighed the bond they shared. Moreover, although respondent indicated her

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reunification because certain statutory grounds for termination under prior law applied only after a parent failed to provide proper care for two years. See former MCL 712A.19(c) and (f). However, there is no two-year requirement for the statutory grounds currently in place, see MCL 712A.19b(3), which replaced the statutory grounds cited by respondent on appeal. See 1988 PA 224, effective April 1, 1989.

² The unpublished decision respondent cites on appeal, *In re Rogers*, unpublished opinion per curiam of the Court of Appeals, issued July 29, 2003 (Docket No. 246085), is clearly distinguishable because, unlike the respondent-mother in *Rogers*, respondent in the present case voluntarily left the residential treatment program and never claimed she needed additional services. In any event, we are not bound by that decision, MCR 7.215(C)(1), and note that the trial court's second termination order in that case was affirmed by this Court on the ground that the respondent-mother ultimately received residential treatment but left the program voluntarily. See *In re Rogers*, unpublished memorandum opinion of the Court of Appeals, issued November 23, 2004 (Docket No. 254982).

intent that she and the child live with her mother following completion of residential treatment, respondent's treatment history shows that there is a danger she would abandon that plan. Further, it was unclear at the time of the hearing how long respondent would take to complete treatment. Consequently, given the child's need for permanency and stability, we do not conclude that the trial court clearly erred in finding that termination was not clearly against the child's best interests.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Alton T. Davis