

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KYLAH WINFREY, Minor.

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

Petitioner-Appellee,

v

WALTER ALLEN,

Respondent-Appellant,

and

KELLEY MARIE WINFREY, LONNIE
JOHNSON, and MICHAEL ARTIST,

Respondents.

In the Matter of CIERRA CHERELLE WINFREY,
MICHELA RENAE MARIE WINFREY,
MICHAEL RENEE WINFREY, and KYLAH
WINFREY, Minors.

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

Petitioner-Appellee,

v

KELLEY MARIE WINFREY,

Respondent-Appellant,

and

UNPUBLISHED
January 10, 2006

No. 263380
Wayne Circuit Court
Family Division
LC No. 01-399002-NA

No. 263381
Wayne Circuit Court
Family Division
LC No. 01-399002-NA

LONNIE JOHNSON, WALTER ALLEN, and
MICHAEL ARTIST,

Respondents.

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father Allen and respondent-mother Winfrey appeal as of right from the order terminating their parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g).¹ We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one statutory ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the trial court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Id.* at 352-353. This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Respondent-father argues that the trial court erred in finding that he did not attend the trial and that he failed to substantially and consistently comply with the case plan. We agree that the trial court erred in finding that respondent-father was not present at the trial. However, this error did not affect the trial court's decision to terminate respondent-father's parental rights. The trial court did not err in finding that respondent-father failed to substantially comply with the case plan. Testimony revealed that respondent-father did not attend family therapy, as ordered by the court, and had not attended parenting classes by the first trial date because of his work schedule. At the continued trial date, respondent-father testified that he had been informed that he could take the parenting classes online, but he was not able to provide any proof that he was enrolled in the online course. Respondent-father admitted at the first trial date that he had not had a drug assessment, which was court ordered. At the time of the continued trial date, he had had an appointment with his family doctor the previous day. Although respondent-father took a few steps to comply with the treatment plan at the last moment, the fact remains that he still had not substantially complied with the plan.

Respondent-father next contends that the trial court erred in terminating his parental rights under MCL 712A.19b(3)(c)(i) and (g). One of the conditions that led to adjudication was respondent-father's failure to seek custody of the child. As noted above, at the time of trial, respondent-father had not complied with the treatment plan in order to obtain custody of his

¹ Respondent-mother Winfrey's parental rights were terminated to Michela, Michael, and Kylah only. The minor child Cierra was 16 years old and did not wish to be adopted; the trial court, therefore, did not terminate respondent-mother's parental rights with respect to Cierra.

child. Respondent-father was employed and worked rigorous hours. He should be commended for having a job and being able to provide financially for his daughter. However, because of his work schedule, respondent-father did not have the time to complete a parenting class or attend family therapy. Respondent-father testified that he was working 14 to 16 hours a day, seven days a week and had not made adequate plans to care for the child while he was working. Based on this evidence, we find that the trial court did not clearly err in finding that the conditions that led to adjudication continued to exist. Respondent-father had eight months to comply with the treatment plan but failed to do so. Such testimony supports the trial court's finding that there was no reasonable likelihood that the condition would be rectified within a reasonable time. Respondent-father's failure to attend parenting classes and family therapy, along with his rigorous work schedule, also support the trial court's finding that termination was appropriate under MCL 712A.19b(3)(g).

Regarding respondent-mother, the primary condition that led to adjudication was her problem with substance abuse. The trial court made findings that respondent-mother failed to provide weekly random urine screens, failed to complete substance abuse treatment, failed to attend individual counseling, and failed to maintain housing and employment. Respondent-mother was diagnosed with Guillain-Barre disease in June 2004, and she argues that her illness was the biggest factor in delaying her completion of her treatment plan. However, before being diagnosed with this illness, respondent-mother had approximately three years to address her substance abuse problem but failed to do so. Respondent-mother gave birth to Kyla in January 2004, during the pendency of this case, and the baby tested positive for cocaine at birth. Respondent-mother was living in a nursing home at the time of trial because she could not take care of herself. Although she argues that her doctors were hopeful that she was on her way to recovery, there was no medical testimony regarding her prognosis at trial.

Respondent-mother's past substance abuse, which was unresolved at the time of trial, considered with her serious physical illness, support the trial court's finding that, without regard to intent, she had failed to provide proper care and custody for her children. Given the length of time she had been given to comply with her treatment plan, the trial court's finding that she would not be able to provide proper care within a reasonable time was justified.

Respondent-mother also contends that the trial court clearly erred in terminating her parental rights under MCL 712A.19b(3)(a)(ii). However, it does not appear to us that the trial court relied on this statutory ground to terminate her parental rights. The court found that she failed to provide weekly random urine screens, failed to complete substance abuse treatment, failed to attend individual counseling, and failed to maintain housing and employment. The court did not make any findings regarding respondent-mother abandoning her children for ninety-one days. Therefore, no error occurred.

Finally, respondent-mother contends that testimony revealed that it was contrary to the children's best interests to terminate her parental rights. It is apparent that respondent-mother loves her children. However, these children became temporary wards of the court in 2001. They needed some permanence, which respondent-mother was not able to provide. Therefore, we find

that the evidence did not show that termination of respondent-mother's parental rights was clearly not in the children's best interests.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot