

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SARA TUCK and SHAUN
MICHAEL TORREY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GREGORY TUCK,

Respondent-Appellant.

UNPUBLISHED
September 28, 2006

No. 268575
Clinton Circuit Court
Family Division
LC No. 05-017677-NA

In the Matter of SARA TUCK and SHAUN
MICHAEL TORREY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

EMILY TORREY,

Respondent-Appellant.

No. 268576
Clinton Circuit Court
Family Division
LC No. 05-017677-NA

Before: Fort Hood, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i) and (ii), (c)(i), (g), and (j). We affirm.

These proceedings began in January 2005 when respondents' eldest child, Sara, then almost two years old, was severely burned after touching a hot oven door that they had left open to heat their home. This incident caused petitioner to remove the child from the home. At the

time, respondents were unemployed, were residing in condemned housing and behind in their rent, and their heat had been shut off. The court assumed formal jurisdiction over Sara based on respondent-father's admissions concerning her injury and that respondents were unemployed and continuously struggling financially. The court ordered respondents to comply with the parent-agency agreement, the terms of which included obtaining and maintaining suitable housing and employment, attending counseling and parenting classes, undergoing psychological evaluations, complying with parenting time, and maintaining contact with the caseworker. During the court's temporary jurisdiction over Sara, respondent-mother gave birth to Shaun, who was immediately removed from respondents' care. At the time of the court's assumption of jurisdiction over Shaun, respondent-father was incarcerated for child abuse stemming from the injury suffered by Sara, and respondent-mother remained unemployed and without housing.

During most of the proceedings, respondent-mother lacked employment and independent housing. Rather, she resided on and off with family or friends and did not find residence in a home suitable for children. Respondent-mother complied with counseling services throughout the proceedings and visited her children, but she did not complete parenting classes. During the visits with her children, respondent-mother was generally appropriate, interacted with them, and was affectionate and nurturing towards them. Unfortunately, she had difficulty disciplining Sara, balancing her time between the children, and soothing Shaun when he cried. Respondent-father, who was incarcerated for six months during the proceedings, was unable to obtain employment or independent housing and failed to complete parenting classes or comply with counseling services after his release from jail. Respondents also failed to comply with services to assist them with housing and employment. In September 2005, the court suspended respondents' parenting time because of their lack of compliance and/or progress with services.

By the time of the termination trial in February 2006, respondent-mother had obtained and maintained part-time employment at Wendy's and obtained independent housing, which she paid for, although suitability remained an issue. Respondent-father was residing with respondent-mother and had not obtained employment. Testimony by both the caseworker and respondent-mother's therapist indicated that respondent-mother had not yet attained the physical stability or parenting ability necessary to provide a suitable environment for the children and that respondents' relationship was unstable. Her therapist, however, believed that some day respondent-mother would possess the capacity to provide a proper environment for a child, but could not provide a time frame when she would be able to do so.

On this record, we find no clear error in the trial court's determination that the evidence clearly and convincingly supported termination of respondents' parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). Respondents were clearly unable to rectify their housing or employment instability that led to the adjudication of the children. MCL 712A.19b(3)(c)(i). Further, given their lengthy history of continued instability in housing and employment, the evidence clearly showed that they would likely not be able to rectify those conditions or provide the children with proper care and custody within a reasonable time, especially considering the tender ages of the children and the length of time they had already been in foster care, which amounted to a substantial part of their lives. MCL 712A.19b(3)(c)(i) and (g). Respondent-father's failure to even minimally comply with the terms of his parent-agency agreement, despite that petitioner offered him services and assistance, provided evidence

of a continued inability to provide proper care and custody for the children, *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003), and was also indicative of neglect, *Trejo, supra* at 361 n 16.

We recognize that respondent-mother's recent progress towards rectifying her physical instability by maintaining part-time employment and obtaining independent housing, and her therapist's opinion that she would eventually be able to provide a proper environment for a child, weighed against termination. However, in light of her past inability to maintain physical stability to care for the children and the testimony that she had not yet attained the necessary stability or parenting ability to provide a suitable environment for her children and the uncertainty about when she would be able to do so, we find no clear error in the trial court's determination that termination of her parental rights was justified under subsections (c)(i) and (g). *Trejo, supra* at 356-357. Her favorable progress in some aspects of the parent-agency agreement occurred just prior to trial, and it was unclear whether she could maintain that progress. At the time of the termination proceedings, respondent-mother was pregnant again and respondent-father remained unemployed, factors that would likely compromise her future ability to maintain any stability that she might have attained in gaining employment and independent housing during the proceedings.

We also find no clear error in the trial court's determination that termination of respondents' parental rights was warranted under MCL 712A.19b(3)(j) given their continued instability, testimony by both the caseworker and the therapist indicating that the children would be "at risk" if returned to their home, and the therapist's concern about respondent-mother's ability to maintain a safe environment for the children given that she needed to "work on" establishing appropriate boundaries and limits with people that she had depended on in her past. *Trejo, supra* at 356-357. Such evidence clearly showed a reasonable likelihood that the children would be harmed if returned to respondents' home. MCL 712A.19b(3)(j).

We conclude, however, that the trial court clearly erred in finding grounds for termination under MCL 712A.19b(3)(b)(i) and (ii). *Trejo, supra* at 356-357. The court's error, however, was harmless because the trial court properly found grounds for termination under subsections (c)(i), (g) and (j). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

We also reject respondent-father's argument that termination was premature because petitioner failed to make reasonable efforts towards reunification, and the court erroneously suspended his parenting time for failing to comply with his treatment plan. We conclude that petitioner made reasonable efforts towards reunification by preparing a case service plan, referring him for services, and accommodating his limitations. Our review of the record reveals that respondent-father failed to take advantage of the services or assistance offered by the caseworker by not following through with repeated referrals, not apprising her of his whereabouts and missing scheduled meetings with her, despite her repeated discussions with him concerning the need to comply with services. In addition, after his diagnosis of "borderline mental retardation," the caseworker made additional efforts by working with him to ensure that he understood what was being asked of him. On this record, respondent-father's lack of follow

through with his treatment plan could not be attributed to a lack of effort on the part of petitioner.¹

Further, while we agree that the court failed to comply with the statute mandating regular and frequent parenting time, unless harmful to the child, MCL 712A.18f(3)(e) and MCL 712A.13a(11), before suspending respondent-father's parenting time, we conclude that any error was harmless because the subsequent order terminating his parental rights was based primarily on his clear failure to comply with the terms of his parent-agency agreement, including obtaining employment and housing stability, rather than on his lack of parenting time during the period in question. Accordingly, reversal of the termination order was not warranted on the basis that court erroneously suspended his parenting time.

Finally, considering respondents' longstanding pattern of instability in housing and employment, we find no clear error in the trial court's determination that termination of respondents' parental rights was not contrary to the children's best interests. *Trejo, supra* at 354, 356-357. The children, who were very young, had already been outside of respondents' care for over one year. During that time respondents had not progressed to a point where reunification was possible, and the children had "thrived" in their foster homes. Therefore, we find no clear error in the trial court's decision to terminate respondents' parental rights, instead of further delaying permanency and stability for the children.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio

¹ We reject respondent-father's contention that petitioner failed to accommodate his lack of transportation by referring him to counseling and parenting services 20 miles from his home. There were no referral sources for counseling where he was residing and the caseworker offered to provide him with a gas card to assist him with transportation. Moreover, the referral for parenting classes did not prevent him from receiving those services as he was able to attend alternate parenting classes located near him, yet he still failed to complete the class.