

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVID ALAN ROCHA III,
Minor.

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

Petitioner-Appellee,

v

DAVID ROCHA,

Respondent-Appellant,

and

NATALIE MARIE GONZALES,

Respondent.

In the Matter of DAVID ALAN ROCHA III,
Minor.

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

Petitioner-Appellee,

v

NATALIE MARIE GONZALES,

Respondent-Appellant,

and

DAVID ROCHA,

Respondent.

UNPUBLISHED
December 14, 2006

No. 269830
Wayne Circuit Court
Family Division
LC No. 00-387096-NA

No. 269831
Wayne Circuit Court
Family Division
LC No. 00-387096-NA

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

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

The trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondents' parental rights to two other children had been terminated by the trial court pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (k)(iii) on April 15, 2002. Respondent mother appealed that termination order, but it was affirmed by this Court.¹

The two children who were the subject of the prior termination proceeding tested positive for cocaine at birth, and both suffered serious, permanent damage as a result of respondent mother's neglect and substance abuse. Although substance abuse was a primary issue to be rectified during the prior proceeding, respondent mother failed to submit random drug and alcohol screens on the correct dates, and untruthfully asserted that she was substance-free and no longer in a relationship with respondent father. Respondent father did not make efforts toward reunification. In terminating respondents' parental right to those children, the trial court noted respondent mother's lack of credibility during the proceeding, as did this Court in affirming that termination order.

David, the minor child who is the subject of this proceeding, was born two years after the prior termination, and petitioner requested termination of respondents' parental rights at the initial disposition. Respondents insisted that they had matured, turned their lives around and no longer abused substances, and provided several negative screens by the time of the November 2004 initial disposition, thus convincing the trial court to take temporary custody of David and order reunification services instead of immediately terminating their parental rights. A month later, David was diagnosed with a Fetal Alcohol Spectrum disorder, static encephalopathy alcohol exposed, and respondent mother eventually admitted that she had consumed alcohol four months into her pregnancy, claiming that she didn't realize that she was pregnant.

More than 182 days elapsed between the November 17, 2004 initial disposition and the March 22, 2006 termination hearing. Respondents had not been rehabilitated during the prior proceeding, and the primary condition leading to adjudication in David's case was anticipated future neglect due to the unrectified substance abuse and lack of proper care and supervision that lead to the prior termination of respondents' parental rights.

¹ *In re Rocha*, unpublished opinion per curiam of the Court of Appeals, issued September 18, 2003 (Docket No. 241747).

Although respondents provided consistently negative screens and complied with many services during the entire year 2005, respondent mother submitted only 19 of 49 screens on the correct dates, and respondent father submitted only 16 of 52 screens on the correct dates. Despite this, the foster care caseworker recommended reunification, but the trial court limited contact to overnight visits. A few short months later, the caseworker recommended termination because respondents provided David with less than adequate care during overnight visits, and re-evaluation of his medical condition showed that David would be mentally retarded, exhibit bizarre and unpredictable behaviors, suffer motor deficits and sensory problems, and require numerous services. He would never live independently and required strong and consistent parenting and intrinsically motivated, competent caretakers who would advocate for services on his behalf.

The evidence showed that respondents genuinely desired to care for David, but did not demonstrate that they were able to do so, or rectify the condition of substance abuse by demonstrating that they were substance-free. Just five months before David's birth, respondent mother was using alcohol heavily enough to create David's serious disability, although she denied doing so for the first several months of this proceeding. The evidence was clear that she had failed to provide David with proper care in utero. Given her deceit in the prior termination proceeding, and her untruthfulness about drinking while pregnant with David for the first several months of this proceeding, the trial court was correct in questioning respondents' claims of a complete change in lifestyle. During the entire proceeding, neither respondent submitted a significant number of random screens on correct dates.

In addition, the evidence showed that respondents lacked the capacity to provide David with the extraordinary care his special needs required, and that there was no reasonable expectation that they would be able to do so within a reasonable time. Despite completion of two sets of parenting classes, they provided him with less than adequate care during overnight visits. They were unable to attend their own random screens on the scheduled dates, and would be unable to adequately advocate for David and attend his numerous appointments on the proper dates. David was likely to be harmed in respondents' care by their failure to effectively address his special needs.

Further, the evidence did not show that termination of respondent's parental rights was clearly contrary to David's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondents had not demonstrated that they were substance-free or able to meet David's needs. David was removed at two months of age, and no evidence was presented that severing the parent-child relationship would cause him harm.

Lastly, the trial court did not err in finding that the agency made reasonable efforts toward reunification. The agency provided referrals for drug screens and parenting classes, inspected respondents' apartments, and supervised visits with David. Termination was the result of respondents' failure to provide screens on the proper dates and demonstrate significant improvement since the prior termination and not due to the extent of the agency's services.

Affirmed.

/s/ Donald S. Owens

/s/ Joel P. Hoekstra

I concur in result only.

/s/ Helene N. White