

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM MICHAEL MOORE,
a/k/a WILLIAM MICHAEL BREWER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GENNA MARIE BREWER,

Respondent-Appellant,

and

JOHN STAVER,

Respondent.

UNPUBLISHED

October 23, 2007

No. 276466

Wayne Circuit Court

Family Division

LC No. 06-461120-NA

Before: Zahra, P.J, and White and O'Connell, JJ.

PER CURIAM.

Respondent mother appeals from the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (g), (i), (j), and (l). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On October 28, 2006, respondent gave birth to the minor child, William. William tested positive for opiates (heroin) at birth, and for 12 days thereafter he suffered withdrawal symptoms that included projectile vomiting, tremors, “balling up and stretching out,” and unabated screaming. On November 2, 2006, petitioner Department of Human Services (DHS) obtained an order removing William from respondent’s care pending a preliminary hearing, and William was placed with his maternal uncle. DHS then filed a petition for permanent custody, seeking termination of parental rights with respect to respondent and her estranged husband, John Staver.¹

¹ Staver did not participate in the termination proceedings and is not a party to this appeal.

At respondent's bench trial, DHS presented evidence that respondent used heroin for several months after discovering her pregnancy. Respondent, who was required to submit to random drug screening as a condition of bond on pending federal criminal drug charges, tested positive for heroin in August 2006 and was treated at an inpatient drug treatment facility. Following several negative drug tests, in December 2006 respondent again tested positive for heroin.² The trial court in this case ordered random drug screens as a condition of visitation with William. Respondent failed to call her DHS case manager daily as required, she missed several required drug screens, and on one occasion she was observed to have large, raised needle marks on her arm when she appeared for visitation. Respondent admitted that she was a heroin addict and that she continued to use heroin during her pregnancy, maintaining that doing so was necessary to prevent a possible miscarriage or preterm labor.

It was also established at trial that in February 2006, a Texas court had terminated the parental rights of respondent and Staver to William's older brother, four-year-old Scott. Respondent admitted to her DHS caseworker that the Texas termination proceeding had resulted in part from her drug use and that she had received services including drug treatment, parenting classes, and counseling prior to the termination. The termination order in that case reflects that the Texas Department of Family and Protective Services had, for a period of at least six months, made reasonable efforts to return Scott to respondent's care, and that respondent had not regularly visited him or maintained significant contact with him.

On appeal, respondent contends that termination was against William's best interests because the trial court failed to first implement reunification efforts. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo*, *supra* at 355-357; *Sours*, *supra* at 632-633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller*, *supra* at 337.

Contrary to respondent's assertion, DHS was not required to provide her with further opportunities to rehabilitate and to prove herself worthy of reunification prior to the termination

² Respondent's bond supervisor in the federal case testified that respondent admitted she had relapsed and used heroin in December 2006; however, at trial in this case respondent denied having relapsed and speculated that the positive test could have resulted from medication she received for a kidney infection or from eating poppy seeds.

of her parental rights. DHS is permitted to seek permanent custody at the initial disposition hearing, as it did in this case, without offering reunification services when its goal is termination and no service plan is anticipated or required. MCL 712A.19b(4) and (5). Because DHS sought termination at the initial dispositional hearing, services were to be provided to facilitate permanent placement, and services for respondent were not required because William was not to be returned to her care. See MCL 712A.18f(3)(d). In any event, the evidence demonstrated that reunification services would have been futile. Respondent made little effort to comply with visitation requirements, and she was unable to remain drug-free despite treatment, the threat of bond revocation, and the prospect of losing her child. Moreover, respondent received extensive reunification services in connection with the Texas termination proceedings, and these services proved unsuccessful. Accordingly, the trial court did not clearly err in its best interests determination. MCL 712A.19b(5); *Trejo, supra* at 352-353.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Peter D. O'Connell