STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DOMINICK DUPREE SMITH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TEMPRA JEAN FANGUY,

Respondent-Appellant.

UNPUBLISHED
February 26, 2008

No. 280908
Isabella Circuit Court
Family Division
LC No. 07-000044-NA

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first argues that petitioner and the trial court were under an obligation to investigate whether the child was of Native American heritage, especially in light of respondent's statement at the preliminary hearing that the child's grandfather was "full-blooded Indian." This Court reviews de novo the legal question whether the court satisfied the requirements of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* *In re IEM*, 233 Mich App 438, 443; 592 NW2d 751 (1999).

During the preliminary examination, the following exchange took place:

> THE COURT: All right. I need to ask both you and Ms. Fanguy, first of all, are you a registered member of any American Indian Tribe or Band?
>
> * * *
>
> MS. FANGUY: My father is a full blooded Indian but he's from Louisiana. But no, sir, I'm not.
>
> THE COURT: You're not a registered member of any American Indian . . .

MS. FANGUY: No, sir.

THE COURT: . . . tribe or band?

MS. FANGUY: No, sir.

THE COURT: All right. Is the child eligible for membership in any American Indian Tribe or band?

MS. FANGUY: I wouldn't think so.

THE COURT: Okay. You don't think so?

MS. FANGUY: I don't think so.

MCR 3.965(B)(9) provides that, at a preliminary hearing, "[t]he court must inquire if the child or either parent is a member of any American Indian tribe or band. If the child is a member, or if a parent is a tribal member and the child is eligible for membership in the tribe, the court must determine the identity of the child's tribe, notify the tribe or band, and follow the procedures set forth in MCR 3.980." The trial court asked respondent whether she or the child were eligible for membership in a tribe, and respondent answered in the negative. Therefore, the trial court satisfied its obligation under MCR 3.965(B)(9).

Next, the trial court did not err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).[1] Respondent was ordered to attend drug abuse counseling, submit to random drug screens, undergo a psychological evaluation, attend parenting classes, and attend individual counseling. Respondent attended two drug counseling sessions, and that was the extent of her compliance with services. Respondent had numerous positive drug screens after the child's removal and before a drug overdose, which required respondent to be hospitalized for two weeks. Respondent had a positive screen for cocaine after she was released from the hospital. She even admitted that she had used cocaine the night before the trial. By respondent's own admission, she did nothing in the way of complying with her parent-agency agreement. The argument on appeal that an initial services plan was not timely drawn up is of no consequence. Respondent knew what was expected of her. She just could not or would not participate in the services.

The trial court properly considered the fact that respondent had an older daughter who was living under a guardianship in Louisiana. The daughter tested positive for cocaine and opiates at her premature birth. She was made a temporary ward and respondent was ordered to comply with a parent-agency agreement. Just as in this case, respondent simply could not or would not do so. Respondent had positive drug screens and a violation of her probation resulted

[1] Respondent argues that the trial court failed to make findings under MCL 712A.19b(3)(j), which was also cited in the petition. However, the trial court did not rely on this ground for termination and therefore was not required to make findings.

in her incarceration. Respondent admitted that she was unable to care for the child and a guardianship with the maternal grandmother was established. Absolutely nothing in respondent's life has changed to indicate that she is now in a position to parent a child. The trial court did not err in finding that, without regard to intent, there was no reasonable likelihood that respondent would be able to care for the child within a reasonable time.

Having found the foregoing subsection proven by clear and convincing evidence, the trial court was obligated to terminate respondent's parental rights unless it appeared, on the whole record, that termination was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent visited with the child only four times in six months. In fact, she left Michigan thinking that she might improve her circumstances by going to Louisiana. She distanced herself from the child, yet failed to make any progress at all. Given respondent's persistent drug use, the trial court properly determined that the child was entitled to permanence and stability.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Alton T. Davis