

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LAJOYIA LACELIA DYE,
J'ONIE AREMONEY LAMAR, and JOSE
LAQUINN MCCOMBS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

YOLANDA LAMAR,

Respondent-Appellant.

UNPUBLISHED

January 29, 2009

No. 287593

Genesee Circuit Court

Family Division

LC No. 01-114464-NA

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

Respondent's parental rights to the three children were initially terminated after her infant son died of malnourishment and pneumonia in her home. This Court reversed the termination order, finding that respondent should have been given a treatment plan and petitioner should have investigated a guardianship with respondent's family members. *In re Dye/Lamar/McCombs, Minors*, unpublished opinion per curiam of the Court of Appeals, issued May 10, 2007 (Docket No. 273314). Respondent was later convicted of involuntary manslaughter of her infant son and sentenced to a prison term of two years to 15 years. After developing a treatment plan for respondent and investigating several of her family members for a guardianship, petitioner again sought termination of her parental rights, and the trial court again terminated respondent's parental rights.

We review the trial court's order terminating respondent's parental rights for clear error. MCR 3.977(J). Clear error has been defined as a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000).

The trial court did not clearly err in finding that the conditions of adjudication continued to exist and could not be rectified within a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(i). The conditions leading to adjudication were that respondent's infant son died of severe malnutrition and pneumonia at home due to respondent's neglect, that

respondent lied to authorities regarding the circumstances of her son's death, and that Lajoyia and J'onie both tested positive for THC at birth. These conditions continued to exist where respondent had not completed a parenting class or substance abuse treatment. Moreover, respondent would not be able to rectify the conditions of adjudication within a reasonable time even if she was released at her earliest parole date. Testimony established that respondent would need to complete many services before returning the children to her could even be considered. Although Jose's older age would normally afford respondent additional time in this Court's consideration of what would be "reasonable," Jose's severe medical condition, considered with respondent's medical neglect of her infant son, does not allow additional time for respondent to rectify the conditions of adjudication. Therefore, the trial court did not clearly err in finding that section (c)(i) was established.

The trial court also did not clearly err in finding that respondent failed to provide proper care and custody for her children and would not be able to do so within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). Respondent was incarcerated and, therefore, did not have a home or income and was not available to provide proper care and custody for her children. She could not provide proper care and custody for her children within a reasonable time, even if released at her earliest parole date in 2009, because she would have to complete numerous services before the children could be returned to her. Therefore, the trial court did not clearly err in finding that section (g) was established by clear and convincing evidence.

Finally, the trial court did not clearly err in finding that petitioner established that there was a reasonable likelihood that the children would be harmed if returned to respondent's home. Because of her incarceration, respondent did not have a home to which the children could return, did not have income to financially support them, and did not have the ability to transport Jose to his regular doctor's appointments and surgeries. The death of respondent's infant son, which was attributed to her failure to nourish him and seek appropriate medical attention, raises issues that would have to be resolved with substance abuse treatment and parenting classes. The trial court did not clearly err in finding that section (j) was established by clear and convincing evidence.¹

Regarding the children's best interests, although the trial court improperly used the pre-July 11, 2008 version of MCL 712A.19b(5), the error was harmless where the evidence overwhelmingly established that termination was in the children's best interests. The trial court ruled that a guardianship with respondent's mother was not in the children's best interests, finding that the responsibility of caring for the three special needs children was far more than the

¹ The trial court clearly erred in finding that MCL 712A.19b(3)(a)(ii) was established by clear and convincing evidence where petitioner did not present evidence regarding this section, except the testimony of its foster care worker stating that respondent did not complete any requirements of the parent-agency agreement due to her incarceration. There was no evidence presented regarding respondent's contact, or lack thereof, with the foster care worker regarding her children or respondent's attempts to facilitate a guardianship. However, this error is harmless where the trial court properly found that other sections were established by clear and convincing evidence.

children's grandmother was capable of handling. The testimony supported the trial court's findings and supports a determination that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra