

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRIANNA RENEE MALONE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NICOLE ANNE MALONE,

Respondent-Appellant,

and

NORMAN ALLEN SCHULTZ,

Respondent.

UNPUBLISHED

March 10, 2009

No. 287065

Kent Circuit Court

Family Division

LC No. 07-052379-NA

Before: Jansen, P.J., and Borrello and Stephens, JJ

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor child under MCL 712A.19b(3)(c)(i), (g), (l), and (m). We affirm.

Respondent does not argue on appeal that petitioner failed to provide clear and convincing evidence of a statutory ground to terminate her parental rights. Rather, she argues that termination was clearly against the child's best interests. We disagree and affirm. This Court reviews for clear error the trial court's decision regarding the child's best interests. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 365; 612 NW2d 407 (2000).

Under the version of the statute in effect at the time when the termination order in this case was entered, the trial court was required to find that termination was in the child's best interests before terminating respondent's parental rights. MCL 712A.19b(5). In making its best interests determination, the court should weigh all evidence available. See *Trejo*, supra at 354.

Brianna was removed from parental custody within days of her birth. Respondent's rights were terminated a year after the child was removed from parental custody. Respondent

participated in a Parental Agency agreement relative to her older child, Sonia Jayde Schultz from May 2006 until voluntary termination of the rights of both parents to that child on November 2006. A new agreement was entered into relative to Brianna after the entry of an Order of Adjudication/Disposition was entered on November 8, 2007. The Kent County Prosecutor's Office filed a Supplemental Petition on May 14, 2008. That petition cited the removal of Sonia as its statutory reason for termination and also cited several reasons for the termination of respondent's parental rights including; her inability to parent as a sole custodial parent, need for 90 more days of therapy, lack of a "stable period of employment," her residential environment, failure to establish independence in her life and parenting skill.

There was no contest as to the statutory basis for the termination in the three-day termination hearing. Once the court made the finding that at least one statutory basis for termination was established by clear and convincing evidence, it was compelled to terminate the parental rights unless there was evidence that the termination was clearly not in the best interests of the child. The court was not required to make best interests findings in accordance with the factors in the Child Custody Act. *In Re JS and SM*, 231 Mich App 92, 102; 585 NW2d 326 (1998), rejected in part on other grounds by *Trejo, supra* at 353 n 10.

The court's factual findings were supported by the record and established that termination was in Brianna's best interests. The court heard testimony from the full treatment team, including respondent's therapist and the Bethany Christian workers. The opinion noted that, "This is not about Nicole Malone it is about Brianna Malone." In its oral opinion, the court relied heavily on the circumstances regarding the older removed child, Sonia. In particular, the judge was concerned that respondent's established pattern of choosing her relationship with the adult male over the interests and safety of the child would continue. In explaining this concern, the court cited to the manner in which Sonia had been treated. Specifically, the court noted that despite acknowledging that Norman Schultz was responsible for abusing Sonia, respondent was pregnant with his third child at the time of the hearing. Respondent had denied contact with Schultz during the period that Brianna was in care. However, jail records revealed numerous visits with him during that time. The court also cited respondent's slow progress in counseling, her lack of veracity and her failure to seek any independent housing as significant factors in the termination decision. While the physical environment of respondent was acceptable and respondent was making efforts to find employment, the court was concerned for the need for permanent placement of the child. Each of these concerns is an appropriate consideration in examining the best interests of the child. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

The trial court did not clearly err when it held that termination of respondent's rights was in the child's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens