

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ELIJAH ALVEY and STELLA
JADE ALVEY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DEIRDRE HELEN FRALEY,

Respondent-Appellant.

UNPUBLISHED

June 25, 2009

No. 289548

Oakland Circuit Court

Family Division

LC No. 07-729733-NA

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

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

Respondent first argues that the trial court abused its discretion when it failed to grant her request to adjourn the termination hearing. We disagree. We review a trial court's decision to deny an adjournment for an abuse of discretion. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). MCR 3.923(G) applies to adjournments and continuances in child protective proceedings and provides that an adjournment should only be granted for good cause, after taking into consideration the best interests of the children. This Court has held that "good cause" means a "legally sufficient or substantial reason." *In re Utrera, supra* at 10-11. At the time of the termination hearing, the children had been in care for over 15 months. Any adjournment would have been contrary to their best interests. They were entitled to a final disposition of the case in order to provide them with permanence and stability. While respondent's failure to attend was based on her voluntary hospitalization, this was not a legally sufficient reason to adjourn the matter. Respondent had notice of the hearing and also had sporadic attendance at the last few hearings. Had she consistently attended hearings, perhaps the court would have considered a short adjournment a reasonable request. But respondent had lost contact with her attorney and did not appear vested in her case. As the prosecutor indicated, respondent's hospitalization was, if anything, further evidence that she was unable to parent her children. In addition, it does not appear that the results of the trial would have been any different had respondent attended and testified. Respondent had not been exercising her visitation rights, and she remained homeless and unemployed. She continued to berate and verbally abuse those with whom she had contact. These factors are what the court relied on in rendering its decision. Even

if respondent had testified that she had secured housing and income, these would have been relatively new developments and would not have changed the fact that respondent failed to visit her children and failed to benefit from services such as anger management therapy. Further, the trial court indicated that it would continue the matter to another day so that respondent could present proofs, if respondent wanted that opportunity, but respondent's council did not request any continuance at the conclusion of petitioner's proofs. For these reasons, the trial court did not abuse its discretion when it denied respondent's motion to adjourn the termination hearing.

Respondent next argues that the trial court erred in terminating her parental rights. We disagree and find that the statutory grounds for termination were proven by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The initial petition filed in January 2007 alleged that respondent was homeless, mentally unstable, and had a history of drug use. In May 2007, respondent was ordered to comply with the parent-agency agreement (PAA) and made great progress, although she failed to secure daycare and continued to have problems interacting with others. Still, it appeared as though reunification would take place. Unfortunately, by the March 27, 2008, review hearing, it was reported that respondent had lost her apartment in a fire in February 2008 and was once again without housing. Because she had been working for the landlord, she was also unemployed, and she had dropped out of school.

Respondent continued to be unemployed and without housing by the October 2008 termination hearing. She also continued to have problems with anger management, as evidenced by her behavior at the December 2007 team decision-making meeting (TDM). Respondent used profanity and used her arm to throw a cup and papers off of the table. Respondent left the room and then returned. However, she continued to use profanity even when the facilitator asked her to refrain from doing so. Respondent had to be asked to leave the meeting. Respondent's anger was a concern for the worker and was also referenced in respondent's April 2007 psychological evaluation. While she completed anger management therapy before the December 2007 TDM, it did not appear as though she benefited from the service. Elijah's foster care mother reported problems with respondent. Respondent once left a nasty note for the foster care mother in Elijah's diaper bag. She was also verbally abusive to Stella's grandmother and Elijah's foster care mother in front of the children. At one point in the case, respondent had to change where she was drug-tested because she had become so abusive with the staff.

Also of great concern was respondent's failure to visit the children. Although respondent was granted unsupervised visits, she never utilized them. When she did see the children, she did not do so for the amount of time she was allowed, and the children were often returned hungry. Respondent had visited with Stella for a total of six hours since January 2008. There were times when respondent would not appear at the designated meeting place and Stella would be disappointed. Respondent had visited Elijah only three times since January 2008, the last visit just before court in May 2008. Respondent had many opportunities to visit, but did not.

Respondent admitted to the worker that she did not believe she could care for all three of her children.¹ The worker offered to re-refer respondent for counseling, but respondent indicated

¹ Respondent also has an older son who is not at issue in this appeal.

that, with unstable housing and transportation, she would be unable to commit to keeping appointments. The initial investigative report that was prepared by DHS noted that respondent lacked housing, had suicidal tendencies, and had anger management issues. These problems all remained. Between the filing of the petition in January 2007 and the termination hearing in October 2008, respondent was in no better position to care for the children. Therefore, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Having found that the statutory grounds for termination were established by clear and convincing evidence, the trial court was obligated to terminate respondent's parental rights if it was in the children's best interests to do so. MCL 712A.19b(5). Elijah was an infant and did not recognize respondent as his mother, having spent his entire life in foster care. Stella was older, and her grandmother reported that Stella would be disappointed when respondent would miss visits. Still, Stella had lived with her paternal grandparents for over two years. The children had been out of respondent's care for 15 months. She was no closer to being able to care for them. They were entitled to permanence and stability.

We affirm.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio