

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RUSSELL JAMES MOORE, JR.,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SARAH BETH CALHOUN,

Respondent-Appellant.

UNPUBLISHED

April 15, 2010

No. 292976

Wayne Circuit Court

Family Division

LC No. 08-476721-NA

In the Matter of SALENA ELIZABETH
CALHOUN and JOHN CESIL CALHOUN,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SARAH BETH CALHOUN,

Respondent-Appellant,

and

WILLIAM TRAVIS SAVAGE,

Respondent.

No. 292977

Wayne Circuit Court

Family Division

LC No. 08-476721-NA

In the Matter of RUSSELL JAMES MOORE, JR.,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RUSSELL JAMES MOORE,

Respondent-Appellant.

No. 294050

Wayne Circuit Court

Family Division

LC No. 08-476721-NA

Before: MARKEY, P.J., and ZAHRA, and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, respondents Sarah Beth Calhoun and Russell James Moore appeal as of right from the trial court orders terminating their parental rights to the minor children. The parental rights of respondent Sarah Beth Calhoun were terminated pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (children will be harmed if returned to the parent). The parental rights of Russell James Moore, the biological father of Russell, Jr., were terminated pursuant to MCL 712A.19b(3)(g), (j), and (n)(ii) (conviction of a serious offense). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. MCR 3.977; *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The children came into care in 2008 shortly after the Ypsilanti police executed a drug raid on respondent-mother's home. At the time of the raid, respondent-father was incarcerated serving a sentence related to a criminal sexual conduct conviction. When protective services began their investigation of the situation, it found that respondent-mother was to be arrested for operating a drug house; she had been evicted from her apartment and was now living with the children in a home in Westland that lacked a refrigerator, stove, and adequate food. Respondent-mother was unemployed after having lost her job following the raid. The children were removed from respondent-mother's care, and she was provided with a treatment plan designed to assist her in addressing substance abuse issues and parenting skills. No plan was offered to respondent-father because of his incarceration.

Respondent-mother was offered a multitude of services to address the many issues that brought the children into care. However, she failed to attend counseling, a substance abuse assessment and treatment, and a court ordered psychological evaluation. She refused to comply with requested drug screens and, on several occasions when she did comply, respondent-mother tested positive for marijuana. In addition, she failed to secure employment and maintain stable housing. Although respondent-mother initially consistently attended parenting time, in 2009, she

was offered 22 visits yet she attended only 12. At the time of the termination hearing, respondent-mother was in no better position to parent her children than when they were removed in February of 2008. Her conduct evidenced a wholesale failure to comply with and/or benefit from the services offered. Thus, there was ample evidence for the court to conclude that the conditions that led to adjudication continued to exist, that respondent-mother failed to provide proper care and custody and that the children would be harmed if returned to her care.

Further, there was no indication that the conditions would be rectified within a reasonable time. The children had been out of the home for 18 months. During this time, respondent-mother made absolutely no progress toward reunification. In particular, she had not addressed in any meaningful way her substance abuse issues. Clearly, respondent-mother was not motivated to change her behavior for the benefit of her children. Consequently, there was no evidence from which the court could conclude that the circumstances that brought the children into care would be improved any time soon. Based upon the forgoing, we conclude that the trial court did not err when it terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

Respondent-mother suggests that petitioner failed to assist her in complying with the treatment plan. Respondent-mother's frequent excuse for failing to participate in services was a lack of transportation. The agency made several accommodations to assist her in participating in services. Respondent-mother's failure to comply with and benefit from the treatment plan was not the product of petitioner's failure to meet her needs but was, rather, a direct result of her choice to maintain an unstable lifestyle.

In a very cursory fashion, respondent-mother further argues that the termination of her parental rights was not in the children's best interests. She submits that a strong bond existed between her and her children that should not have been severed. The legislature amended MCL 712A.19b(5), effective July 11, 2008, to provide: "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights . . ." The trial court's decision regarding a child's best interests is reviewed for clear error. *In re Trejo Minors*, 462 Mich at 353. In this case, the court found that termination of respondent-mother's parental rights was in the children's best interests because they required permanency and stability. One of the children had significant special needs, including a serious medical condition. The other two had severe behavioral issues that needed to be addressed. The evidence overwhelmingly established that respondent-mother would not or could not provide the stability that the children's needs required. Permanency and consistency were an absolute imperative in order to facilitate further growth and development.

Turning to the claims of error raised by respondent-father, we similarly find that the trial court did not err when it terminated his parental rights. Although the court relied on three statutory grounds, MCL 712A.19b(3)(g), (j), and (n), respondent-father argues simply that the trial court erred because there was evidence to support a finding that he would be in a position to provide proper care and custody of his son within a reasonable time. Despite respondent-father's arguments, there was insufficient evidence to support this conclusion.

Respondent-father was sentenced on May 23, 2006, to serve 42 months to ten years in prison for his criminal sexual conduct conviction of assault with intent to commit sexual

penetration. His minimum outdate was July 26, 2009; his maximum out date was January 23, 2016. On July 29, 2009, that last day of the termination hearing, respondent was still incarcerated. He testified that he thought he would be released in October of 2009, however, there was no credible evidence to support this assertion.

Even if respondent-father's release from prison were imminent, he still would not be in a position to parent his child immediately thereafter. Respondent-father's son was 13 months old at the time of his incarceration. Respondent-father had not seen his son for three and a half years because of his imprisonment. Upon his release, respondent-father would be required to participate in a treatment plan designed to establish his ability to parent and to facilitate the reintroduction of respondent-father into his son's life. It is axiomatic that these efforts would take a significant period of time. Respondent-father's son had already been in care for 18 months at the time of the termination hearing. It would be unreasonable, considering the child's age, to require that he wait any longer for permanence and stability in his life. Thus, there was not clear and convincing evidence that respondent-father would be able to provide proper care and custody of his son within a reasonable time. Therefore, we conclude that the trial court did not err when it terminated respondent-father's parental rights.

Respondent-father additionally argues that he planned for his son during his incarceration by offering his adult daughter as an alternative caregiver, but petitioner failed to consider this placement plan. The record, however, establishes that, contrary to respondent-father's assertions, petitioner did not refuse to consider his placement plan; instead, petitioner concluded that placement with the adult daughter was inappropriate in light of the child's medical needs.

Affirmed.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher