

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYLER JAMES SCHEFFLER
and DARIUS DWAYNE THOMPSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LORETTA MAY THOMPSON,

Respondent-Appellant,

and

KEVIN DWAYNE THOMPSON,

Respondent.

In the Matter of DARIUS DWAYNE
THOMPSON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KEVIN DWAYNE THOMPSON,

Respondent-Appellant,

and

LORETTA MAY THOMPSON,

Respondent.

UNPUBLISHED

April 22, 2010

No. 294203

Kent Circuit Court

Family Division

LC No. 08-053127-NA

08-053128-NA

No. 294238

Kent Circuit Court

Family Division

LC No. 08-053128-NA

Before: SERVITTO, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

In these consolidated cases, respondents Kevin and Loretta Thompson, husband and wife, as parents of minor DDT, and respondent Loretta Thompson, as mother of TJS¹, appeal as of right the order of the family division of the trial court terminating their parental rights to the children under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) (Kevin Thompson only) and (g) (failure to provide proper care and custody) (both respondents). We affirm.

The August 8, 2008, initial petition reported that Loretta Thompson was then incarcerated on charges of uttering and publishing, and was expected to be released the following month. The petition further reported that Kevin Thompson was caring for the children in Loretta Thompson's absence, but could not do so properly because he was "maintaining a drug home and presenting with untreated crack/cocaine abuse"

At the adjudication/disposition hearing, Loretta Thompson admitted to the allegations in the petition, and Kevin Thompson admitted to the more benign allegations while pleading no-contest to the assertion that he was maintaining a drug house and presenting with untreated crack-cocaine abuse. The foster care worker testified that DDT had significant speech and language delays but was otherwise doing well, but that TJS was cognitively impaired, struggling behaviorally and emotionally, and suffering from attention deficit hyperactive disorder, oppositional defiant disorder, and autism. The foster care worker identified the barriers to reunification as including parenting skills, housing, employment, and resources.

At a subsequent dispositional review hearing, the foster care worker reported that Kevin Thompson had been incarcerated since August 2008, with a prison sentence for uttering and publishing and maintaining a drug house, and further reported that Loretta Thompson, other than visiting the children, failed to follow through on her treatment plan.

A supplemental petition requesting termination was then authorized. Allegations against Loretta Thompson included that, although she visited the children, she was unable to identify their special needs. The petition further reported that this respondent had failed to comply with the counseling to which she was referred, had made little effort to obtain stable employment or suitable housing, and noted that she had served several periods of incarceration through the course of the proceedings. Allegations against Kevin Thompson included that he was currently incarcerated on charges relating to controlled substances, that he had not complied with his parent-agency agreement or otherwise rectified the conditions giving rise to this case, and that he had taught TJS to fight other children.

¹ The biological father of TJS remains unknown.

Admitted into evidence at the termination hearing were three certificates of conviction relating to Kevin Thompson, dating from 1999 (insufficient funds), 2007 (controlled substance and driving on a suspended license), and 2008 (uttering and publishing), and five certificates of conviction relating to Loretta Thompson, dating from 1999 (retail fraud), 1999 (retail fraud), 2007 (false information), 2008 (attempted uttering and publishing) 2009 (uttering and publishing). Also admitted were reports of positive drug tests for both respondents dating from June 2009.

The trial court concluded that statutory criteria for termination were satisfied, and that termination was in the best interests of the children.

An appellate court “review[s] for clear error both the court’s decision that a ground for termination has been proven by clear and convincing evidence and . . . the court’s decision regarding the child’s best interest.” *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 3.977(J). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*, citing MCR 2.613(C).

“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 and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5).

The trial court terminated respondents’ parental rights under MCL 712A.19b(3)(c)(i) (Kevin Thompson only) and (g) (both respondents), which provide as follows:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

On appeal, neither party argues that they have rectified the conditions that led to the adjudication, fully complied with their treatment plans, or otherwise obtained suitable employment or housing such as to be able to provide proper care and custody for the children, but instead suggest that they are progressing toward such goals, and imply that with more time they should be expected to reach them. However, “the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time.” *In re Dahms Minors*, 187 Mich App 644, 647; 468 NW2d 315 (1991), citing MCL 712A.19b(3)(c)(i).

Kevin Thompson similarly concedes that he has not conquered his substance-abuse problem, and the trial court exercised its prerogative to discount Loretta Thompson’s ostensibly innocent explanation for her recent positive drug test. A parent’s persistent failure to gain control over a substance-abuse problem is a ground for termination of parental rights under MCL 712A.19b(3)(c)(i) and (g). See *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996).

Since neither respondent has obtained stable employment or suitable housing, nor shown the willingness or ability to live a drug-free life from the time this case began in August 2008 through the termination a year later, we conclude that the trial court did not clearly err in concluding that statutory bases for termination existed and that termination was in the children’s best interests.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering