

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 13, 2011

In the Matter of E. L. RENNO and T. M.
BADGETT, JR., Minors.

No. 298029
St. Clair Circuit Court
Family Division
LC No. 08-000065-NA

Before: FORT HOOD, P.J., and MURRAY and SERVITTO, JJ.

PER CURIAM.

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

I. FACTS AND PROCEEDINGS

This case involves the termination of respondent's parental rights to two children, a son age 4 and a son age 2, at the time of termination. The mother of these and several other children had her parental rights terminated, but to the extent she has challenged those termination decisions, it has not been through this appeal.¹ An amended petition was filed in April 2008 alleging that respondent was the father of the younger son, and alleged that the mother had previously had rights terminated, that the older son tested positive for cocaine at birth, and that the mother and father had no stable housing and had substance abuse problems. The amended petition also stated that respondent had custody of the older son, and was seeking full custody through the Friend of the Court. Services were ordered for respondent, who was apparently incarcerated at the time.

In October 2009, the DHS filed supplemental petitions for termination of respondent's parental rights to each child. Both petitions basically alleged that respondent had complied with certain services but failed to benefit. In particular, he often missed family visits and when he did attend, he was often late. He had no source of income. He had recently signed a lease for a three-bedroom home but had no furnishings. Finally, there was concern that he was still

¹ But see *In re Badgett*, unpublished memorandum opinion of the Court of Appeals, issued January 5, 2010 (Docket No. 293154).

involved with the mother and would allow her to take care of the children. Following a hearing, the court declined to terminate respondent's parental rights² and instead ordered the following:

That father participate in counseling and address what it means to place the children in a position of harm by placing them or leaving them with mother.

That father obtain and maintain safe, suitable housing subject to prior approval of foster care worker. That father is to provide copies of all monthly rent receipts and/or mortgage payments on a monthly basis to the worker.

That father obtain and maintain employment or provide doctor's note to the worker stating he is physically unable to work at any job.

That this Court expects to see progress when [the older son's] permanency planning hearing comes up in January which is the one year period.

After receiving information that respondent had tested positive for cocaine in January and February 2010, the court authorized the filing of another supplemental petition for termination. The petition was filed in March 2010, and alleged, among other things, problems with parenting time, lack of housing, lack of income, failure to participate in counseling, and positive drug screens. The court held a hearing on April 20, 2010, and heard from numerous witnesses, including respondent.

The trial court found that respondent's testimony was not credible in general, that he lied about using cocaine only one time, and found that termination of his parental rights to both minor children was required:

The question here, now [younger son] has been in care for twenty-four months – well, actually he's been a ward for twenty-four months, which means he's been in care for longer then [sic] that. And [older son], now, for twelve months.

Having heard the testimony I did back in November, which provided, of course, that Mr. Badgett had no housing; no income; that he had no way to provide for these children. He was given an opportunity to establish housing; to establish a method of income; to establish that he could care for the children. It wasn't until after . . . a visit in which Mr. Badgett had to be redirected significantly, according to Ms. Wojnarowicz, by his mother, that she suspected something and requested him to take a test for drugs, which turned out to be positive.

² The court found that the statutory grounds for termination had been proven but that termination was not in the children's best interests.

At that point, then, he was directed to submit to random drug screens, and rather than [sic] do that he went to Vantage Point, which allowed him to choose when he would be screens [sic], by allowing him to cancel schedule [sic] visits anytime he wanted too [sic]; knowing full well that the screens would be taken at a visit. So, that's not evidence that he's not using, . . . that's just evidence that he's manipulating.

When he was directed to go to Huron House, which would establish a truly random screen, he didn't go. The Court is left with the impression, that based on his use of cocaine, his continued connection with Ms. Renno, interestingly enough, that child born with cocaine in his body. Now that's not attributable, of course, to Mr. Badgett, but it is indicative that both mother and father are both using the same controlled substance and seem to continue to have contact with one another.

* * *

As indicated, Mr. Badgett really began involvement with this after he got out of jail. At that time he had no job; he had no place to live; and, therefore, could not provide for the child. Those are conditions that would cause the child to come within jurisdiction of the Court. He was given the opportunity. He was given notice that he needed to rectify those conditions. He was given several opportunities up to November of last year to do so, and didn't do it at that time. Was given another opportunity by this Court, because at that time I felt that he maybe hadn't had enough time to work on this and establish a home for these children; establish a method to pay for their needs; and also to provide for them. And, in the meantime, he tests positive for cocaine. That issue, again, was brought to his attention. He was given an opportunity to address that and as I indicated his method of addressing it was essentially avoiding a way in which this Court, and the worker involved, could be sure that he was remaining drug free.

[T]hose other conditions do continue to exist. He has no method to provide for these children by way of income. He has no place to live that I can be confident of. He has leases in two different places, but one's with his father and it's pretty convenient. There's no indication here that he's actually living there. And he tells the people in Wayne County, in this other case, that he's living in St. Clair County, when we know he's not living there.

Therefore, the Court finds by clear and convincing evidence that those conditions continue to exist. That he's been given a reasonable opportunity to address those and has failed to do so. That is a basis for termination of his parental rights.

* * *

For the reasons already stated on the record, the Court finds that those conditions – that that continues to exist. That he has failed to provide proper care

or show that he is able to for these children. And given that they have been in care now for two years, in relation to [younger son], and one year with relation to [older son], the Court finds that given the children's age, and the effort that's been put into this case, there no reasonable expectation that he will be able to do within a reasonable time considering these children's age and those circumstances.

I find [§ 19b(3)(g)] is clear and convincing evidence that that is a basis for termination of his parental rights.

* * *

The issue with regard to the controlled substances is an issue with relation to the harm to the children. It appears that Mr. Badgett is interested in his own issues. He is consistently late for parenting time. He was before the November case, he was after the November case. He had an excuse every time that he was late. When he asked that the time be changed because he had another pressing appointment, and it wouldn't be changed, he made it. So, it appears that he wanted things to be at his convenience here, and isn't really looking out for the relationship between him and his children.

The Court finds that [§ 19b(3)(j)] is also a basis for termination of parental rights.

And given all the circumstances, and the opportunities Mr. Badgett has had . . . given time to correct these matters and his utter failure to do so, together with the fact that he had introduced, apparently, controlled substances into this issue, which prior to the November trial didn't appear to be a problem. The Court finds given the number of months these children have been in care, that it is in their best interest to terminate his parental rights.

II. ANALYSIS

The trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); MCR 3.977(H) and (K). Respondent was consistently unable to demonstrate a source of income or stable housing. After being given another opportunity for reunification, he failed to obtain a source of income sufficient to meet the children's needs or housing. He also failed to gain insight into the risk of harm posed by the children's mother, whose parental rights had already been terminated, and he began using cocaine. Contrary to what respondent argues, petitioner was not required to prove that he would neglect his children for the long-term future as held in *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). The *Fritts* decision predates the enactment of § 19b(3), which now sets forth the criteria for termination.

Further, because respondent was not willing to make the changes necessary to become a custodial parent to two young children who had been waiting more than a year for respondent to reclaim them, the trial court did not clearly err in finding that termination of respondent's

parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Deborah A. Servitto