

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 11, 2011

In the Matter of SPENCER/JAMES, Minors.

No. 302141
Kent Circuit Court
Family Division
LC Nos. 09-052947-NA
09-052948-NA
09-054588-NA

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM .

Respondent mother appeals as of right from an order that terminated her parental rights to the three minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). The parental rights of the children's fathers were also terminated, but they are not participating in this appeal. We affirm.

Clear and convincing evidence supported the termination of respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g). MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

Respondent admitted many of the allegations in the original petition seeking temporary custody of the two older children. Respondent had a substance abuse problem and was also bipolar. Respondent admitted that she could no longer afford to live in the hotel where the family was staying. The children had been removed from respondent's care on two prior occasions — in 2006 while the family was living in Minnesota and in 2009 when the family was living in Illinois. At the time the most recent petition was filed, respondent was living with Charles James, the father of her unborn child. Like respondent, James struggled with mental health and substance abuse issues.

A psychological evaluation revealed that respondent's substance abuse was the likely result of untreated mental health issues, including depression. Respondent had a hard life and had experienced the death of a child while that child was in foster care. Respondent's therapist believed that respondent had the potential to succeed if she participated in a dual diagnosis program. When respondent's third child was born, both the child and respondent tested positive for cocaine. Additionally, the oldest child had made allegations of sexual abuse against James. Respondent pleaded to an amended petition, allowing the trial court to assert jurisdiction over respondent's newborn daughter in exchange for petitioner withdrawing its request to immediately terminate respondent's parental rights to all three children. Respondent was given

additional time to participate in counseling services to address her mental health and substance abuse problems.

The foster care worker, Allyse Watters, had many positive things to say about respondent. Following the oldest child's sexual abuse allegations, respondent made the decision to separate herself from James and appeared committed to making the children feel comfortable. Watters noticed an immediate change in respondent once James was out of her life. For example, respondent had her first negative drug screen and demonstrated adequate parenting skills during visits with the children. She interacted with them effectively and was able to meet the infant's needs. The children reacted positively to her and there was a clear bond.

However, in the year between when the children were made temporary wards and the termination hearing, respondent failed to address the basic requirements of her parent-agency agreement and had not shown any demonstrable improvement. She tested positive for cocaine and admitted that she used cocaine while she was pregnant. After her first negative screen, respondent missed two screens and then tested positive for methamphetamines; after she missed more screens, respondent again tested positive for cocaine. Although ordered to attend intensive outpatient drug treatment, respondent missed numerous appointments. Respondent's Project Return Home counselor, Mr. Rinker, initially disagreed with Watters's opinion that the matter should proceed to termination. Rinker wanted to give respondent more time, believing that her drug use was directly related to her depression and that respondent could begin to make progress if she would only attend therapy to address her depression. However, respondent missed 16 of 28 sessions with Rinker and then stopped participating altogether.

At a September 23, 2010, meeting, respondent told Watters that she was essentially done with the whole process. Her statement was supported by her failure to attend counseling, her failure to attend a medicine review appointment, and the fact that she had missed 31 of 78 visits with the children. In addition to respondent's continued issues with substance abuse and depression, Watters testified that respondent had lived in seven different homes since the case began. Given that housing, substance abuse, and untreated mental health were what led to adjudication, it was clear from the record at the termination hearing that those conditions continued to exist without an expectation that the conditions would be rectified within a reasonable amount of time. It was also clear that respondent, without regard to intent, was simply unable to provide the children with proper care or custody.

The trial court also did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); MCR 3.977(K). Respondent did not lack parental aptitude, but she suffered from depression and self-medicated with cocaine. Although she and the children loved each other and the children were very loyal to her, respondent caused the children anxiety when she failed to visit. All three children were extremely fortunate to have been placed together in a foster home that the worker believed was truly dedicated to their well-being. The youngest child, who was not yet one, was meeting all of her developmental milestones and did not have any special needs. The older two children were in counseling and had made significant progress. The children had been in care for a year. At no time did respondent show that she was substance-free, fully compliant with her bipolar medication, or fully compliant with her counseling. The children were thriving in a stable environment. They were entitled to permanence and stability.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kurtis T. Wilder

/s/ Donald S. Owens