

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 27, 2011

In the Matter of G. N. STARK, Minor.

No. 303565
St. Clair Circuit Court
Family Division
LC No. 10-000214-NA

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Before: M.J. KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondents B. Stark and J. Caicedo each appeal as of right from the circuit court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm.

Prior to a court terminating parental rights pursuant to a supplemental petition, it must first find by clear and convincing evidence that one or more facts alleged in the petition are true and establish at least one statutory ground for termination under MCL 712A.19b(3). *In re Trejo*, 462 Mich at 350, 360; MCR 3.977(H)(3)(a). As applicable to this case, a court may terminate the rights of a parent to a child if the court finds, by clear and convincing evidence, that:

1. 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 that 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. [MCL 712A.19b(3)(c)(i).]

2. 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. [MCL 712A.19b(3)(g).]

3. There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(j).]

The evidence proved that the minor was removed from respondent mother's care because of her problems with substance abuse, homelessness, and a violent boyfriend. The initial dispositional order was entered on July 14, 2010, and the supplemental petition was filed approximately 200 days later on January 31, 2011. Respondent mother disappeared two weeks after the initial dispositional order was entered, causing the foster care worker assigned to the case to be unable to locate her, thus making respondent mother unavailable to participate in services. Respondent mother admitted that she disappeared but stated she did so because she was ashamed of her addictions. The evidence adduced at the hearing further proved that respondent mother was still homeless and had yet to resolve her substance abuse issues. She had started two substance abuse treatment programs but did not complete them, had started a third program only a week earlier, and was abstinent only because she was incarcerated. Given that respondent mother had more than six months to resolve these issues and had not made significant progress toward resolving them after eight months, the trial court properly concluded that she was not likely to rectify her problems within a reasonable time given the child's age.

The facts adduced during the proceeding also made clear that respondent father was missing for significant periods of his child's life and failed to follow through with any court ordered drug screens. He did complete a parenting class, then failed to contact the foster care worker for a significant period of time or even visit the minor child despite the fact the minor was residing with his parents. However, the trial court may have erred in finding that § 19b(3)(c)(i) had been proven by clear and convincing evidence with respect to respondent father. According to the record, only respondent mother entered a plea to the petition and, absent a record of that plea, it cannot be determined if the factual basis for the plea included any of the allegations regarding respondent father. If the court did not exercise jurisdiction based on any acts or omissions by respondent father, then there could not be any conditions that led to the adjudication with respect to respondent father. However, any error in relying on § 19b(3)(c)(i) with respect to respondent father was harmless because the trial court properly found that termination of respondent father's parental rights was justified under §§ 19b(3)(g) and (j). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Considering all the evidence presented in this matter, we hold that the trial court did not clearly err in finding that § 19b(3)(g) was proven by clear and convincing evidence with respect to each respondent. Respondent mother failed to provide proper care for the child because she used drugs during her pregnancy, thus exposing him to a risk of harm. Respondent father contributed to that risk of harm by supplying the mother with opiates. "[A] child has a legal right to begin life with a sound mind and body" and prenatal drug use is evidence of neglect. *In re Baby X*, 97 Mich App 111, 115-116; 293 NW2d 736 (1980). Further, when respondents broke up, respondent father left the child in respondent mother's care even though she presented a risk of harm to the child due to her substance abuse. Reunification services were made available to both parents. Respondent mother promptly disappeared after the adjudication and disposition and was not heard from until the termination hearing eight months later. As previously noted, respondent father made an effort to participate in some services, but then he too disappeared and was not heard from until the termination hearing five months later. At the time of the hearing,

respondent mother was incarcerated, did not have a home to go to upon her release, and was only one week into her third attempt at substance abuse treatment. Respondent father also lacked stable housing and had yet to address his substance abuse issues. Because both respondents had failed to make significant progress in resolving these issues after eight months, the trial court properly concluded that respondents were not likely to be able to provide proper care and custody within a reasonable time given the child's age. Contrary to what respondents argue, petitioner was not required to prove long-term neglect as held in *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds in *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.

Additionally, although respondent father correctly asserts that his parental rights are constitutionally protected, see *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993), because petitioner presented clear and convincing evidence establishing a basis for termination under MCL 712A.19b(3), respondent's liberty interest in the custody and control of his child was eliminated. *In re Trejo*, 462 Mich at 355-356.

Finally, considering the child's young age, that neither respondent made a good-faith effort to work toward reunification, that both respondents essentially abandoned the child when they opted not to participate in services, and that neither respondent had seen the child for several months at the time of the termination hearing, the trial court did not clearly err in finding that termination of respondents' parental rights was in the child's best interests. MCR 3.977(E)(4); MCL 712A.19b(5).¹

Affirmed.

/s/ Michael J. Kelly
/s/ Donald S. Owens
/s/ Stephen L. Borrello

¹ Respondents incorrectly rely on standards governing former MCL 712A.19b(5), before it was amended by 2008 PA 199, effective July 11, 2008. As amended, the statute now requires that the trial court affirmatively find that termination is in the child's best interests before it can terminate parental rights. The trial court's decision is consistent with the current version of the statute.