

STATE OF MICHIGAN
IN THE COURT OF APPEALS

In the Matter of:

GIOVANI ROBERTS DOB 04/03/2014
FAITH ROBERTS DOB 03/26/2015

LC# 19-000053 NA
COA# 349961

_____/

Thomas N. Hubbert P81122
ASSISTANT PROSECUTING ATTORNEY
60296 M-62
Cassopolis, MI 49031

Elizabeth McCree P76926
GUARDIAN AD LITEM
107 Water St. Suite 203
Benton Harbor, MI 49022

Daniel French P70828
ATTORNEY FOR RESPONDENT FATHER
103 Commercial St.
Dowagiac, MI 49047

Sarah Scoggin P72031
ATTORNEY FOR RESPONDENT MOTHER
105 N. Broadway St. Ste.1
Cassopolis, MI 49031

Norm R. Perry P25847
ATTORNEY FOR APPELLANT
8976 U.S. 31, P.O. Box 241
Berrien Springs, MI 49103

PEOPLE'S RESPONSE TO SHANAE BEITO'S BRIEF ON APPEAL

NO ORAL ARGUMENT REQUESTED

December 16, 2019
Thomas N. Hubbert P81122
ASSISTANT PROSECUTING ATTORNEY
60296 M-62
Cassopolis, MI 49031

INDEX OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Hunter v. Hunter</i> , 484 Mich. 247 (2009).	14
<i>Luna v. Regnier</i> , 326 Mich. App. 173 (2018).	13
<i>Santosky v. Kramer</i> , 455 U.S. 745 (1982).	14
 <u>Statute</u>	
MCLS 712A.13a(13)	12

STANDARD OF REVIEW

Appellant Counsel's standard of review is correct.

STATEMENT OF JURISDICTION

Appellant Counsel's statement of jurisdiction is correct.

STATEMENT OF QUESTIONS PRESENTED

1. Did the Department of Health and Human Services meet the standards for the suspension of parenting time for the mother Shanae Beito.

Petitioner-Appellant answers: NO

Respondent-Appellee answers: YES

STATEMENT OF FACTS

The People agree with Appellant's statement of facts but wish to also include the following pertinent facts:

The Appellant's parenting time was suspended by the Cass County Family Court due to the impact her substance abuse is having on her minor children Giovanni and Faith. During the jurisdictional bench trial, the Appellant, Shanae Beito admitted to having marijuana around her minor children. She also denied having a substance abuse problem despite testifying that she has used methamphetamine since the age of 12.

...(TR 6/13/19, Pg. 58, Lines 1-9)...

Q. Do you also use marijuana?

A. Yes, sit.

Q. Okay. And have you used marijuana in front of your children?

A. I don't think I have. I know that we've probably rolled a joint in front of my kids or something. It's – weed is legal in Michigan.

Q. Okay. Have you – have you ever received any sort of treatment for substance abuse?

A. I don't ha – I don't abuse substances.

During the same direct examination from above, the Appellant admitted to using methamphetamine and also admitted to using the drug while the children were in the home.

...(TR 6/13/19, Pg. 60, Lines 3-22)...

A. No, I didn't – I don't use methamphetamine for that; I never said I did.

Q. Okay. So you haven't – you haven't said that you –

A. No, I use it as a – I use it in fellowship, as fellowship as a peace – a peace offering.

Q. As a peace offering?

A. Yeah, absolutely.

Q. Okay. So it's – so you –

A. It's more – it's more of a friendship thing. Like if I go to somebody's house or something and they do some – they smoke or whatever – as long as we're in good heart, good nature, good spirit, I don't feel there's anything wrong with it. If it's something that is poisonous to somebody, because not everybody can handle or deal with substances the same as others, I don't take it; I don't do it.

Q. Have you –

A. If I – I know what my body can –

Q. – have you used methamphetamine while your children were in the house?

A. Uh, yeah, probably but not anywhere around it, like.

During questions done by the children's GAL Elizabeth McCree, the Appellant admitted to not having stable housing.

...(TR 6/13/19, Pg. 63, Lines 4-18)...

Q. Do you have a lease that has your name on it for either the place you're residing at when Ms. Dvorak came or where you're currently living?

A. I have never has a lease. I don't –

Q. Okay. So where are you living now? What is the address?

A. I'm staying at a friend's house and I don't know his address off – off the top of my head.

Q. Okay. So, you realize that you're co – going to continue to not get mail unless you're able to provide an address?

A. I have a mailing address. I can get mail at my – at their grandparents house. Right now I have no car, vehicle or a phone which makes it hard for me to do things, but I'm – and with this court thing I've been focusing mostly on just getting here and getting to see my kids and doing the things I need to do as a parent for --.

During the same line of questioning by Attorney McCree, the Appellant appears to not realize the devastating effects of using methamphetamine.

...(TR 6/13/19, Pg. 66, Lines 20-24)...

Q. Okay. And so, if they are at the age of 13 or 14 and they decide that they want to use methamphetamine in the same way that you use methamphetamine, are you – would you have an issue with them doing that?

A. I don't know. I would cross that bridge when I came to it.

The Appellant has failed to comply with drug testing on several occasions over the course of this case.

...(TR 6/28/19, Pg. 9, Lines 17-25)...

The Witness: She is scheduled to participate in random drug screens with Forensic Fluids Laboratories/Michiana Drug Testing, but unfortunately, she's failed to participate in any of her drug screens to – to date. She has screened through our department when she's came for visitation. On June 2nd she was positive – I mean – June 12th she a positive for amphetamine—

methamphetamine. On June 7th, positive for amphetamine – methamphetamine, and on May 31st she was positive for THC.

The Appellant has failed to comply with resources recommended by the Department of Health and Human Services to aid her with her substance abuse issues. The Appellant has denied having substance abuse issues, often contributing it to her idea that God allows the use of methamphetamine.

...(TR 6/28/19, Pg. 10, Lines 1-12)...

According to Shanae she does not believe that she has substance abuse addiction issues. She has stated that in the book of – in the Bible in the Corinthians that God states that it is okay to use crystal methamphetamine as it crystalizes your body. She also reports that she does so through unity fellowship with her friends, and therefore there is no substance abuse issues. I had given her a letter and given her information to contact Woodlands, the Community Mental Health Provider, as she was residing in Cass County at the time of removal, and to date she has failed to do that as she does not have addiction issues.

The Appellant was allowed frequent supervised visitation with her minor children but DHHS has noted issues with the Appellants compliance with their requests in regard to bringing food for the children.

...(TR 6/28/19. Pg. 11, Lines 16-25)...

The Witness: In regards to Shanae, she currently has visitation supervised with her kids twice a week at our department. Like I said, she has not been consistent in participating, and there are concerns when she does participate. Shanae has been advised and encouraged on several

occasions to provide a nutritional snack or something for the children as their visitation is closer to lunch time. She consistently does not bring a snack for the children. Shanae is very, very sporadic in her interactions with the children during parenting time.

DHHS has also noted that the Appellant is very sporadic with interacting with her children. She has exhibited issues with completing tasks, which shows a clear lack of focus necessary to properly parent the minor children.

...(TR 6/28/19, Pg. 12, Lines 1-7)...

She will bring bags of items or toys or I – I don't know where she's getting these things from, your Honor. She fills the entire visitation room with these items, and she goes from one item or one task to another, not completing any – any game or anything with her children. She may spend maybe two minutes and then she goes to another task with them.

DHHS recommended suspending the Appellant's parenting time due to her sporadic behavior during the visitations and her lack of participation.

...(TR 6/28/19, Pg. 18, Lines 12-25)...

Q. Your request is to suspend parenting time for mom, correct?

A. Yes.

Q. Have there been any indications while they're at parenting time that she's a danger to the children?

A. She's not a danger, but the children are very dysregulated during parenting time. It's also a concern that she's not – she's not consistent in her parenting time. The children sat at our office for an hour on Tuesday waiting for her, along with last week she was a no show. So, she's not

consistently participating. She's not stable mentally, emotionally, or with her sobriety. At this point I feel it's unhealthy for the children right now to have that until she's stable.

Argument

- I. The Michigan Department of Health and Human Services has proven by clear and convincing evidence that the suspension of Respondent Mother's, Shanae Beito, parenting time was appropriate due to her ongoing drug use, lack of participation in services issued by the Department, failure to maintain appropriate contact with the Department, and failure to inform the Court of her whereabouts.**

MCLS 712A.13a(13) states that "if a juvenile is removed from the parent's custody at any time, the court shall permit the juvenile's parent to have regular and frequent parenting time with the juvenile...If the court determines that parenting time, even if supervised, may be harmful to the juvenile's life, physical health, or mental well-being, the court may suspend parenting time until the risk of harm no longer exists.

In this case, Respondent Mother's parenting was suspended on June 28, 2019. This suspension was done because Respondent Mother's actions during her scheduled visitations and lack of consistent participation in her parenting time visits have created a large concern for the well-being of her minor children. There is also great concern that these behaviors won't change due to Appellant's continued drug use and lack of participation in services. One of the initial allegations against both parents revolved around their use and manufacturing of illegal drugs. Respondent Mother has admitted to using methamphetamine and marijuana. This drug use has occurred in

front of the children and has made one child, Giovanni DOB 04/03/2014, to run to a neighbor's home in order to seek assistance in getting his sister, Faith DOB 03/26/2015, out of the home due to the Respondent Mother's behavior. This incident occurred on May 11, 2019. The minor child Giovanni has also reported his mother's use of marijuana; stating that she keeps it in bags all over the house, smokes it, and acts weird after smoking it. Over the course of this case, the Respondent Mother has admitted to the drug use but has refused to comply with drug screening. Her drug use has led to erratic behaviors such as boiling rocks in an attempt to turn them into gold and believing that crystal meth crystalizes the body. Dr. Randall Haugen evaluated the Respondent Mother and reported that her parenting time should be suspended until she stabilized. DHHS agreed due to observing her behaviors during parenting time. (TR 6/28/19, Pg. 7, Lines 12-23). The Appellant's lack of ability to complete games before moving on, and overall behaviors during parenting time have caused her children to become dysregulated during the parenting time.

The Court of Appeals has upheld the suspension of a parent's parenting time when the petitioner has shown that contact may be harmful to the children's mental and emotional health. *Luna v. Regnier*, 326 Mich. App. 173, 179 (2018).

The dysregulation of the children is concerning since it can have a long-term impact on the mental and emotional well-being of the children. At the time of the suspension, the Appellant took no steps to aid her own stabilization and to this date, she has still made no efforts in order to stabilize herself. She continues to not report for drug testing, she has failed to obtain stable housing, she has failed to comply with services that were recommended to aid her in getting her children

returned to her. Her children have expressed concern over her physical and mental well-being due to her erratic behaviors. Without treatment and with her ongoing drug use, especially the drug use in the presence of the minor children, these behaviors will continue to harm her children, so the court was justified in suspending the Respondent Mother's parenting time.

Clear and convincing evidence is the standard adopted by a majority of the States when dealing with balancing the rights of the natural parents and the State's legitimate concerns. *Santosky v. Kramer*, 455 U.S. 745, 769 (1982). To establish proofs by clear and convincing evidence, the evidence must produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts at issue. *Hunter v. Hunter*, 484 Mich. 247, 265 (2009).

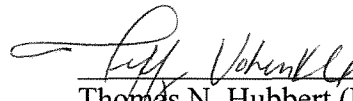
Given the evidence shown in the Statement of Facts provided by the Appellant and the Appellee, which includes the Respondent Mother's admission to using methamphetamine and marijuana and using these drugs in the presence of her minor children; this burden has been met. The actions of the Respondent Mother and her lack of willingness to address her drug issues presents clear evidence that parenting time will be harmful to her children even if supervised; so, the Court used proper judgment when suspending the Respondent Mother's parenting time.

REQUEST FOR RELIEF

WHEREFORE, the People of the State of Michigan on behalf of the Petitioner the Department of Health and Human Services humbly requests that this Honorable Court reject the Appellant's request and affirm the Order suspending Appellant's parenting time.

Dated: December 16, 2019

Respectfully Submitted,



Thomas N. Hubbert (P81122)
Assistant Prosecuting Attorney
60296 M-62
Cassopolis, MI 49031

2019 DEC 18 PM 3:19
60296 M-62

STATE OF MICHIGAN
IN THE COURT OF APPEALS

In the Matter of:

GIOVANI ROBERTS, DOB 04/03/2014,
FAITH ROBERTS, DOB 03/26/2015,

Petitioners/Appellees,

Court of Appeals Docket No. 349961
Lower Court File Nos. 19-000053-NA
(19-080/081-NA)
Cass County Circuit Court
Family Division

v

SHANAE BEITO,
Respondent-Appellant,

PROOF OF SERVICE

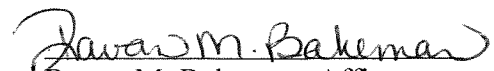
STATE OF MICHIGAN)

COUNTY OF CASS)

The undersigned says that on the 17th day of December, 2019, she served a copy of the People's Response to Shanae Beito's Brief on Appeal and Proof of Service on Elizabeth McCree, Guardian Ad Litem, Sarah Scoggin, Attorney for Respondent Mother, and Daniel French, Attorney for Respondent Father, by then and there placing same in the Attorney Mailbox located in the Central File area of the Cass County Law and Courts Building, 60296 M-62, Cassopolis, Michigan 49031.

The undersigned states that on the 17th day of December, 2019, she served a copy of the People's Response to Shanae Beito's Brief on Appeal and Proof of service on Norm R. Perry, Attorney for Appellant Shanae Beito, by placing it in an envelope addressed to him at 8976 US 31, P. O. Box 241, Berrien Springs, Michigan 49103, and did deposit the same in a United States Mail receptacle with proper postage affixed thereto.

DATE: December 17, 2019


Ravan M. Bakeman, Affiant