

STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CANDICE BENTON,
CHARLESTON BENTON, and JASMINE
BENTON, Minors

DEPARTMENT OF SOCIAL SERVICES

Petitioner-Appellee,

v

FLORIDA BENTON,

Respondent-Appellant.

UNPUBLISHED

December 13, 1996

No. 185047

LC No. 90-289875

Before: Doctoroff, C.J., and Corrigan and Danhof, JJ.*

PER CURIAM.

Respondent appeals as of right from the order of the Wayne County Probate Court terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i). We affirm.

The conditions that prompted the Department of Social Services to file the petition against respondent included evidence of sexual abuse, respondent's failure to send her older children to school, the lack of suitable housing, failure to obtain medical treatment for one of her children and leaving the younger children in the care of the seven-year-old child. Respondent's youngest child had not received proper medical care, while the older children had behavioral problems, including the boy's preoccupation with violence. Based on these circumstances, respondent's children were made temporary wards of the court on December 3, 1991.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Between 1991 and 1994, respondent entered into several treatment plans designed to address the problems with her children and to help her regain custody. The plans included substance abuse counseling, visitation requirements, sexual abuse counseling, and parenting classes. Although respondent participated in a substance abuse program, her attendance was sporadic. With regard to mandated sexual abuse counseling, respondent failed to comply with the requirement. Although respondent was able to complete parenting classes, her visitation was erratic. Twice, respondent failed to visit her children in foster care for periods of several months.

Following extensive testimony and arguments, the hearing referee found that respondent was still unaware of some of the reasons why the children came into the care of the court and she was still denying those reasons. The referee concluded that the children would thus be at risk if returned to the home. The hearing referee noted respondent's sporadic visitation and her deficient performance with respect to the counseling requirements. The referee saw no reasonable likelihood that the conditions would be rectified considering the age of the children. The referee also determined that termination of respondent's parental rights would be in the best interests of the children. On February 3, 1995, the Wayne County Probate court entered an order terminating respondent's parental rights. In denying respondent's petition for review of the referee's decision, the probate court found no error of law, and thus affirmed the decision of the hearing referee. Respondent now appeals.

The underlying decision whether parental rights should be terminated is reviewed under a two part test. First, at least one of the statutory grounds for termination under MCL 712A.19b; 27.3178(598.19b) must be satisfied by clear and convincing evidence. Second, once a statutory ground for termination has been found, the decision to terminate is discretionary and the best interests of the child are considered. However, effective January 1, 1995, the statute governing the termination of parental rights was amended by 1994 PA 264 to specify that the best interests of the child are the only basis for a court not to terminate parental rights where statutory grounds for termination are found. MCL 712A.19b(5); MSA 27.3178(598.19b)(5).¹

MCL 712A.19b(3)(c)(i); 27.3178(598.19b)(3)(c)(i) states that the court may terminate parental rights if it finds by clear and convincing evidence 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 amount of time considering the age of the child.

The probate court did not err in affirming the referee's recommendation. MCR 5.991. Moreover, the statutory ground for termination was established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Finally, the probate court did not abuse its discretion in ruling that termination of respondent's parental rights was in the best interests of the children. *In re Jackson*, 199 Mich App 22; 501 NW2d 182 (1993); *In re McIntyre*, 192 Mich App 47; 480 NW2d 293 (1991). The record was clear that respondent did not comply with

the counseling and visitation requirements at any time the children were in foster care between December of 1991 and January of 1995. Considering the proofs as a whole, and giving due deference to the referee's superior opportunity to determine credibility issues, we cannot say that the referee clearly erred in finding clear and convincing evidence that parental rights could be terminated under MCL 712A.19b(3)(c)(i); 27.3178(598.19b)(3)(c)(i).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Maura D. Corrigan

/s/ Robert J. Danhof

¹ In this case, the effective date of the statutory amendment occurred after the close of proofs, but before the referee rendered its findings and conclusions on January 17, 1995. However, our analysis and the result are unchanged under either version of the statute.