

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AALIYAH THOMAS, DEONTA' D.
THOMAS, and JUNEAE' M. THOMAS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner - Appellee,

v

GISSELE MARIE THOMAS,

Respondent - Appellant,

and

VINCENT DOE and ROY MERCER,

Respondents.

UNPUBLISHED
September 1, 2000

No. 219962
Wayne Circuit Court
Family Division
LC No. 96-346371

Before: Bandstra, C.J., and Gage and Wilder, JJ.

PER CURIAM.

Respondent Gisele Marie Thomas appeals by leave granted the February 22, 1999 order terminating her parental rights to Aaliyah, Deonta', and Juneae' Thomas under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

Respondent is the mother of six children. In late September 1996, petitioner Family Independence Agency (FIA) was contacted when three of respondent's children, Shawntia, Tiesha, and Deonta', were abandoned at the Door Step West Shelter in Detroit. Two other children, Aaliyah, and Orlando, had been living with caretakers, Aaliyah since birth and Orlando for between eight and nine months before the filing of the petition. At an adjudicative hearing, respondent admitted to using crack and marijuana and that her substance abuse prevented her from providing a suitable home for her children. The court took jurisdiction over all the children except Orlando, who was released to his legal guardian in Michigan.

At a dispositional hearing, held on July 30, 1997, the court found that Orlando, Shawntia, and Tiesha had a legal guardian in Mississippi and that the guardian had attempted to regain custody of the children after respondent took them from Mississippi. Accordingly, the petition was dismissed with respect to Shawntia and Tiesha and they were released to their guardian in Mississippi.¹ With respect to Deonta' and Aaliyah, the court found that respondent's progress in overcoming her problems with substance abuse was "very limited." The court placed the children in the custody of petitioner and adopted an Initial Service Plan and Parent/Agency Treatment Agreement, which required that respondent establish and maintain a drug and alcohol-free lifestyle, submit to drug/alcohol screens, participate in a drug/alcohol assessment and evaluation, participate in an in/out patient treatment program, attend parenting classes, receive individual and family counseling, display appropriate conduct and interaction with the children, demonstrate an ability to protect the children and to discipline appropriately, participate in a psychological evaluation, obtain and maintain a stable, legal source of income, a safe, stable, adequate and suitable home for child rearing, fully cooperate with petitioner and attend all court hearings, and maintain a consistent and appropriate commitment to the family bond.

On at least eight occasions over the next two years, respondent was referred to and/or entered drug treatment programs. In each of the cases, she did not complete the program. Respondent was terminated from two programs for aggressive and inappropriate behavior. On several occasions, respondent tested positive for marijuana or cocaine. Respondent did not submit to drug screening after March 19, 1998.

Respondent did not visit with Deonta' or Aaliyah on a regular basis between October 1997 and September 1998. A psychologist who observed a visit between respondent, her sister, and Deonta' characterized their interaction as "somewhat disconcerting," apparently basing the characterization on respondent and her sister's criticism of Deonta', respondent's relative lack of interaction with Deonta', the absence of any positive reaction by Deonta' to either respondent or her sister, and the fact that Deonta' did not appear to be upset when respondent and her sister got up to leave.

Junea' tested positive for marijuana when she was born on August 12, 1998. She experienced withdrawal symptoms while in the hospital. Petitioner filed an amended petition, asking that the court take jurisdiction over Junea' because of the pending neglect case involving Deonta' and Aaliyah, as well as Junea's testing positive for marijuana and drug withdrawal symptoms shortly after she was born. Respondent admitted to the allegations in the petition. The court took jurisdiction over Junea' based on respondent's admissions.

Petitioner moved for termination of respondent's parental rights on September 25, 1998, naming all three children and alleging two statutory bases for termination relating to respondent: (1) 182 days or more had elapsed since the original dispositional order, the conditions leading to adjudication continued to exist, and there was no reasonable likelihood that the conditions would be rectified within a reasonable time, MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i); and (2) the parent, without regard to intent, failed to provide proper care or custody for the children, and there was no

¹ By the time of the hearing, Orlando had been returned to his Mississippi guardian.

reasonable likelihood that the parent would be able to provide proper care or custody for the child within a reasonable period, MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).²

A hearing was held on the petition on February 22, 1999. Evidence of respondent's drug abuse and failure to cooperate in counseling and drug treatment was introduced. Sandra Scharrer, the FIA worker in charge of respondent's case, testified that Junea' was born testing positive for marijuana and hepatitis B. Respondent entered Turning Point, a drug treatment program, on September 21, 1998, and completed the inpatient portion of the program on December 19, 1998. During the time respondent was in inpatient drug treatment, she did not test positive for drugs or alcohol. However, she failed to complete the outpatient portion of the treatment and left the program on February 5, 1999, although she attended a counseling session on February 10.

Respondent had lived at a number of addresses since September 1996. Scharrer testified to at least eleven addresses where respondent had lived in the 2 ½ years the case had been open. At the time of the hearing, respondent was living with her sister, Stephanie. In addition, respondent had reported that she was working at Mama Lou's Restaurant, but had not provided any pay stubs or other verification of employment.

Respondent had completed parenting classes in June 1998. However, she did not complete individual, group, or family counseling. While she had received some counseling at the various drug treatment centers to which she had been referred, the counseling related strictly to substance abuse and not to any other issues. While respondent had attended Narcotics Anonymous meetings about once a week, she was supposed to attend five times a week.

Respondent testified that she had lived with her sister for approximately one week at the time of the hearing. She admitted to using marijuana and beer since she was twelve years old, and to using cocaine since 1989. Further, she admitted that she failed to complete several drug treatment programs, but said she had been drug and alcohol-free since September 20, 1998. However, she denied that she had quit the outpatient portion of her drug treatment at Turning Point, saying that she still used outpatient services. She had worked two jobs since September 1998. She worked at Unique Fabricating from at least October 13, 1998 to February 2, 1999. She had been working at Mama Lou's Restaurant for approximately one week at the time of the hearing.

Respondent's sister and Lillian Mercer, Aaliyah's guardian, also testified on respondent's

² Petitioner also moved for termination of the parental rights of Vincent Doe and Roy Mercer, alleging that: (1) Junea's father was unidentifiable and had deserted the child for 28 or more days, MCL 712A.19b(3)(a)(i); MSA 27.3178(598.19b)(3)(a)(i); and (2) the fathers of Deonta' and Aaliyah had deserted the children for 91 or more days and had not sought custody during that period, MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). The court entered an order of termination as to both Doe and Mercer, neither of whom have appealed from the order of termination.

behalf. Mercer testified that, although she had taken custody of Aaliyah at birth,³ she had never understood that she would have permanent custody of Aaliyah. The children were happy to see respondent during visitation and would cry when they had to leave respondent. Thomas testified that respondent did not appear to be using drugs at the time of the hearing. In addition, the children were bonded to respondent and recognized her as their mother. Thomas testified that if respondent could not find a home of her own, she and the children were welcome to live at Thomas' house as long as they wanted. She admitted, however, that respondent and the children had been living with her in September 1996, when the children were abandoned.

The court found that respondent had a "lengthy drug history" which continued at least until her inpatient treatment at Turning Point, and that respondent had not cooperated with the outpatient treatment that was a requirement of Turning Point. In addition, respondent had not cooperated with the drug screening requirement while she was in the outpatient program. Respondent had not cooperated in obtaining family counseling as ordered. In addition, Junea' had tested positive for marijuana when she was born, approximately six months before the hearing. Based on its fact findings, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g).

Respondent contends that the termination of her parental rights was not supported by clear and convincing evidence. We disagree. In a termination hearing, the petitioner bears the burden of showing by clear and convincing evidence a statutory basis for termination. MCR 5.974(F)(3). Once a statutory basis for termination is shown, the trial court shall terminate parental rights unless it finds that termination of parental rights is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, ___ Mich ___, ___; 612 NW2d 407, 412 (2000). This Court reviews the trial court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.*, quoting *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

Respondent's parental rights were terminated on two grounds: (1) 182 days or more had elapsed since the original dispositional order, the conditions leading to adjudication continued to exist, and there was no reasonable likelihood that the conditions would be rectified within a reasonable time, MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i); and (2) the parent, without regard to intent, failed to provide proper care or custody for the children, and there was no reasonable likelihood that the parent would be able to provide proper care or custody for the child within a reasonable period, MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). The court's findings stressed respondent's lengthy drug history, the presence of marijuana in Junea's system when she was born, her failure to complete a drug treatment program, and her failure to cooperate in counseling. The court also noted that the court had not provided her children with a home, characterizing Thomas' testimony that the children and respondent could live with her forever as "very speculative."

³ At the time of the hearing, Aaliyah was four years old.

Respondent points to her own testimony that she had been living with her sister, that she had been drug free since September 1998, that she had successfully completed a drug treatment program, that she had attended Narcotics Anonymous meetings, and that she had worked at a job. This court must accord deference to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). Respondent admitted that she had lived with Thomas for only a week at the time of the hearing and had not worked long enough at her current job to receive a paycheck. Her testimony that she successfully completed the drug treatment program was contradicted by Schaffer's testimony that respondent had quit the outpatient portion of the program at Turning Point. In addition, she had failed to provide samples for drug screens since she left Turning Point. Given respondent's history and the evidence received at trial, the court could well have resolved the conflict between respondent's and Scharrer's testimony against respondent.

Respondent also points to Mercer's testimony that it was in the best interests of the children that they be returned to respondent. Two of the children had never lived with respondent. The court could have determined that, notwithstanding Mercer's testimony, given the evidence received at the hearing, termination would be in the best interests of the children.

The court's findings were amply supported by the record. Respondent had lived a largely transient lifestyle since the court first took jurisdiction over the children. Between March 1998 and the time of the termination hearing, she provided samples for drug screens only when she was in the inpatient treatment program at Turning Point. In August 1998, Junea' was born with drugs in her system. Respondent had failed to complete any of the court-ordered counseling programs. The court's conclusion was not clearly erroneous.

We affirm.

/s/ Richard A. Bandstra

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder