

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A.R.T., Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHN WESLEY STAFFORD, III,

Respondent-Appellant.

UNPUBLISHED
March 28, 2006

No. 263087
Wayne Circuit Court
Family Division
LC No. 87-263629-NA

In the Matter of C.R.R. III and C.C.D.R.T., Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WENDY YVETTE THOMPkins,

Respondent-Appellant,

and

CHARLES ROBERT RUCKER, JR.,

Respondent.

No. 263088
Wayne Circuit Court
Family Division
LC No. 87-263629-NA

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

In Docket No. 263087, respondent John Wesley Stafford III appeals as of right from an order terminating his parental rights to the minor child, A.R.T., under MCL 712A.19b(3)(c)(i) and (g).¹ In Docket No. 263088, respondent Wendy Yvette Thompkins appeals as of right from an order terminating her parental rights to the minor children, C.R.R. III and C.C.D.R.T., under MCL 712A.19b(3)(c)(i), (g), (i), (j), and (l).² We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2002). This Court reviews for clear error a trial court's decision that clear and convincing evidence supported a statutory ground for termination. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's factual findings are clearly erroneous if, although some evidence exists to support the findings, the reviewing court is left with a definite and firm conviction that a mistake has been made, giving due regard to a trial court's special opportunity to observe witnesses. *In re BZ, supra*; *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

Petitioner presented clear and convincing evidence supporting termination of Stafford's parental rights under both subsections (c)(i) and (g). The primary concern was Stafford's lack of housing. During Stafford's involvement in this case, unsupervised day and overnight visits were allowed only during one month, but were stopped because Stafford had lost his housing. Stafford admitted at trial that he had no residence of his own at that time and had slept the previous night on the floor at a relative's house. Stafford was in fact homeless during much of the lower court proceedings. Although he obtained housing on a few occasions, he lost his housing shortly thereafter. Given Stafford's housing history, the trial court did not err by declining to wait longer to determine whether Stafford's housing, alleged to take effect on June 15, 2005, would come to fruition and was suitable. Notwithstanding the apartment lease that Stafford presented at trial, he failed to maintain suitable and stable housing during the 2-1/2 years before the court terminated his parental rights. The trial court did not clearly err by determining that petitioner satisfied the statutory grounds for termination under subsections (c)(i) and (g).

Stafford also argues that termination of his parental rights was not in the child's best interests. Once the petitioner presents clear and convincing evidence of at least one statutory

¹ The circuit court also terminated the parental rights of the child's mother, respondent Wendy Yvette Thompkins. This Court affirmed the trial court's order terminating Thompkins' parental rights in a prior appeal. *In re Thompkins*, unpublished memorandum opinion of the Court of Appeals, issued July 24, 2003 (Docket No. 242637). Thus, Thompkins' parental rights to A.R.T. are not at issue in this appeal.

² The circuit court also terminated the parental rights of the children's father, respondent Charles Robert Rucker, Jr., but he is not a party to this appeal.

ground for termination, the trial court must issue an order terminating parental rights unless there exists clear evidence that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 354; *In re CR, supra* at 195. This Court reviews a trial court's best interest decision for clear error. *In re JK, supra*.

The trial court did not err in concluding that the evidence failed to show that termination of Stafford's parental rights was not in A.R.T.'s best interests. The trial court was primarily concerned with A.R.T.'s age. A.R.T. turned eight years old in May 2005, and had been in foster care since she was two. Octavia Tron, Stafford's and A.R.T.'s family counselor, testified that A.R.T. was confused regarding what was happening and felt that she was "in limbo." Tron also opined that A.R.T. would be harmed mentally and emotionally if she was returned to Stafford because he could not provide a stable environment for A.R.T. In light of Tron's testimony, the trial court reasoned that A.R.T. needed stability and that her present situation was causing her to act out and exhibit "counter-productive" behavior. The trial court agreed with Tron that Stafford did not appreciate the behavior that A.R.T. was displaying and recognize the need for continued therapy. The trial court's reasoning was sound and the decision was not clearly erroneous.

Respondent Thompkins likewise argues that petitioner failed to present clear and convincing evidence supporting termination of her parental rights. MCL 712A.19b(3)(l), however, requires only that Thompkins' parental rights to another child were terminated as a result of proceedings under MCL 712A.2(b) or a similar law in another state. It is undisputed that Thompkins' parental rights to eight other children were previously terminated. Accordingly, clear and convincing evidence was presented to support termination of Thompkins' parental rights under subsection (l). Because only one statutory basis is necessary to support termination, termination of Thompkins' parental rights was proper unless it was clearly not in the children's best interests. *In re BZ, supra*; *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

In any event, termination was also proper under subsections (c)(i), (g), (i), and (j). Petitioner's primary concern regarding Thompkins was her violent relationship with Rucker. Thompkins' attendance at domestic violence counseling sessions was sporadic, and she did not appear to be benefiting from counseling. Rather, she chose to continue her abusive relationship with Rucker. Thompkins admitted that C.C.D.R.T. was conceived while her personal protection order ("PPO") against Rucker was in effect. In addition, domestic violence charges against Rucker had been dismissed because Thompkins did not appear in court to testify against him. Thompkins denied that Rucker had come to her house in November 2004, and attempted to kick in her front door and assault her despite the fact that Officer Dasumor Mitchell observed damage to the door. Nevertheless, Thompkins chose not to file a police report regarding the incident. Most troubling about the November 2004 incident is that C.R.R. III and C.C.D.R.T. were with Thompkins at her home during the incident. C.R.R. III's foster mother observed Rucker get into a car with Thompkins and the children before the incident occurred. Thus, despite Thompkins' knowledge that she had to terminate her relationship with Rucker to regain custody of her children, she chose to continue her relationship with Rucker.

Further, Thompkins appeared to be in denial of her relationship with Rucker. She initially testified at trial that there was no possibility that Rucker could be the father of her unborn child. She had admitted to her counselor, Elizabeth Fox, however, that Rucker was the father of her unborn child, but that he had forced himself on her and she had made a mistake. After hearing Fox's testimony, Thompkins admitted that she had engaged in sexual relations

with Rucker during the previous year. She did not maintain that Rucker had forced himself on her, but claimed that Fox had misunderstood her. Fox opined that if Thompkins' relationship with Rucker was ongoing, Thompkins was still in the very beginning stages of therapy.

The above evidence shows that Thompkins did not benefit from domestic violence counseling. Although she attended some domestic violence counseling sessions, it appears that the sessions did not affect her choices and behavior. "[I]t is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). We cannot conclude that the children would not be at risk in Thompkins' custody given her continued relationship with Rucker and denial of the fact that the relationship exists. Although Rucker attempted to break her door down while the children were in her custody, Thompkins testified that she did not feel that Rucker was a threat and did not intend to renew her PPO against him. Thus, because a reasonable likelihood of harm to the children exists if they are returned to Thompkins' custody, the trial court properly terminated Thompkins' parental rights under subsection (j).

Termination was also proper under subsections (c)(i), (g), and (j). More than 182 days had elapsed since the initial dispositional order, and the conditions that led to the adjudication continued to exist without a reasonable likelihood that they would be rectified within a reasonable time. At the time of trial, Thompkins was in the same situation that she was in at the time of the adjudication, and nothing had changed. Thompkins argues that she was informed at the June 28, 2004, hearing that she would have one year to comply with the treatment plan. At that hearing, however, petitioner informed Thompkins that she would have approximately one year *at most* to comply with the treatment plan. The trial court terminated Thompkins' parental rights ten months later. Thus, she was afforded an adequate opportunity to comply with the plan, and termination was proper under subsection (c)(i).

Finally, termination was proper under subsection (g) for the same reasons. Thompkins failed to provide proper care and custody of her children because of her relationship with Rucker, and no reasonable expectation existed that she would be able to do so within a reasonable time. Moreover, termination was proper under subsection (i) because it was undisputed that Thompkins' parental rights to the children's siblings had been terminated because of serious and chronic neglect and prior attempts at rehabilitation were unsuccessful. Accordingly, clear and convincing evidence supported the termination of Thompkins' parental rights under multiple statutory subsections.

Affirmed.

/s/ Alton T. Davis
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot