

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANTHONY OLESIAK and
CHANDLER MCAVOY, Minors.

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

UNPUBLISHED
November 21, 2006

Petitioner-Appellee,

v

TAMMY MARGARET MCAVOY,

Respondent-Appellant,

and

SANTONIOUS ROGER WARD and JAMES
MCAVOY,

Respondents.

No. 267016
Wayne Circuit Court
Family Division
LC No. 00-393746-NA

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Respondent mother Tammy McAvoy appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *Sours*, *supra* at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

The trial court did not clearly err in finding that statutory grounds for termination were established by clear and convincing evidence with regard to respondent mother. MCR 3.977(J). The evidence showed in material respect that respondent father James McAvoy, despite being well-aware that the children's maternal grandmother, Mary Olesiak, could not provide proper care and custody due to her physical limitation and the profound limitations of these children, frequently left them under Olesiak's supervision, which ultimately resulted in Christopher McAvoy wandering away from the house and drowning in a neighbor's swimming pool. Further, although respondent mother did not have custody of the children and was divorced from respondent father, she had almost daily contact with the children in the father's home, and was thus aware and tacitly approved of the arrangement whereby her mother lived with and provided frequent supervision for the children despite her obvious limitations. This evidence, coupled with the fact that respondent mother previously had been adjudicated neglectful, resulting in respondent father being awarded custody of the children after the wardship was dismissed because respondent mother could not successfully comply with the parent-agency agreement, establishes clear and convincing grounds for termination under MCL 712A.19b(3)(g) and (j).

This same evidence established that termination of respondent mother's parental rights was clearly not contrary to the children's best interests. Indeed, the children are entitled to permanence and stability in an environment that is safe. Termination of the parental rights of respondent mother affords the children an opportunity for such care.

Affirmed.

/s/ Jessica R. Cooper

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski