

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JENNA GREENWOOD, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT PATTON,

Respondent-Appellant.

UNPUBLISHED

December 19, 2006

No. 271203

Bay Circuit Court

Family Division

LC No. 05-008695-NA

Before: Meter, P.J., and O'Connell and Davis, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating his parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), and (g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that respondent did not provide proper care and custody for Jenna, and that he would not be able to do so within a reasonable time. MCL 712A.19b(3)(g). Jenna was born December 20, 2002, and was removed from her mother's home and placed into foster care shortly after she turned two. Jenna's mother had bipolar disorder, was keeping four pit bulls in the home, and was living with a man who had a history of protective services intervention from parenting his son. The mother's parental rights to Jenna were eventually terminated. Although respondent was initially classified as an uninvolved parent, the proceedings soon turned on whether reunification with Jenna's father, rather than her mother, could be achieved. Jenna was placed with respondent, respondent's live-in girlfriend, and their infant child right before Jenna's third birthday, but within four months, allegations emerged regarding domestic violence in respondent's household, and Jenna was placed back with her original foster family. The record reflects that respondent suffered injuries during the domestic assault, and that his life was threatened during the incident by his girlfriend, who had been assisting respondent with childcare, phone services, and transportation. Respondent had also recently been laid off by his employer and would not resume employment for two months.

Within three weeks after the domestic assault, defendant had one diluted drug test and then a failed drug test. Although respondent reported that his drug use was a one-time occurrence and that he had since attended some NA meetings, respondent's failed drug test occurred right before a hearing at which the trial court was supposed to consider returning Jenna

to him. After presenting four clean tests, respondent was not able to contact his foster care worker because he did not have a home telephone, and he was not able to perform further drug tests because he did not have transportation to the testing site. He then missed fifteen drug tests. Other testimony indicated that marijuana was used at respondent's home before the domestic assault, and that respondent's arguments with his girlfriend had disintegrated into a shoving match on at least one other occasion. At the time of the dispositional hearing, there was no indication that respondent would be able to provide proper care and custody for Jenna in the near future. Therefore, the trial court did not clearly err in finding that subsection (g) was established by clear and convincing evidence. These same facts also substantiated the trial court's findings regarding the other statutory grounds.

Termination of parental rights is mandatory if the trial court finds that the petitioner established a statutory ground for termination, unless the court finds that termination is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 344; 612 NW2d 407 (2000). Although respondent and Jenna were bonded when she resided with him, Jenna had not asked about respondent recently. Further, respondent had not visited Jenna for at least two months before his rights were terminated. It was unclear how much time respondent would need before he would be able to care for Jenna again and, considering her young age, the trial court did not clearly err in finding that termination was not clearly contrary to Jenna's best interests.

Respondent argues that the trial court improperly considered Jenna's adoptability, citing *In re JK*, 468 Mich 202, 214 n21; 661 NW2d 216 (2003). However, the Court in *JK* held that it was improper to compare the advantages of foster parents against the home of the natural parents in the context of determining whether the statutory grounds for termination had been established. *Id.* The *JK* Court did not delve into a best interests analysis because it found that the statutory grounds for termination had not been established. *Id.* The trial court here only considered Jenna's *adoptability*, not the foster caretakers' parenting skills, and considered the issue only as it related to her best interests, not as it related to the statutory grounds for termination. Therefore, the trial court did not contravene the rule in *JK*.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis