

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRICE ANCHORAGE ZANDER
SARTIN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NOELIE FOSTER-SARTIN,

Respondent-Appellant.

UNPUBLISHED

July 10, 2008

No. 282244

Kent Circuit Court

Family Division

LC No. 07-054206-NA

Before: Jansen, P.J., and Zahra and Gleicher, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating her parental rights to her minor child under MCL 712A.19b(3)(j) [a reasonable likelihood exists, based on the parent's conduct or capacity, that the child will suffer harm if returned to the parent's home]; (l) [parental rights to another child were previously terminated]; and (m) [parental rights to another child were voluntarily terminated]. We affirm.

I. Facts and Proceedings

In 2002, the circuit court terminated respondent's parental rights to two children after respondent pleaded no contest to second-degree child abuse. In 2003, respondent voluntarily released her parental rights to a third child. The circuit court terminated respondent's rights to a fourth child in November 2004. The issues addressed during the 2004 proceedings included respondent's financial instability, lack of employment and stable housing, poor parenting skills, domestic violence, and relationships with men who had extensive criminal histories.

Respondent gave birth to the involved minor child on September 7, 2007. On September 12, 2007, the Department of Human Services (DHS) filed a petition seeking custody of the minor child. The circuit court found probable cause to support the petition, removed the child from respondent's custody, and placed him in foster care.

On October 31, 2007, the circuit court conducted a combined adjudication trial and termination hearing. The evidence revealed that respondent remained unemployed, lived in three different places during her pregnancy with the involved minor child, and subsisted on

supplemental social security of approximately \$623 a month. Respondent admitted to protective service workers that she conceived the minor child during a brief relationship with a man who had recently been released from prison. The evidence revealed that respondent subsequently became engaged to a different man, who also had a significant criminal history. The circuit court noted that when the hearing concluded, the child's father would be served with a personal protection order based on respondent's report that he had choked and harassed her.

Shelly Nieboer, a foster care worker, testified that respondent stopped attending psychological counseling sessions approximately four months before the child's birth, and never attended parenting classes. According to Nieboer, respondent visited with the child for two hours each week but was "usually ready to leave a good 10 to 15 minutes" before the visits were scheduled to end. Nieboer described that the child had "some pretty significant health concerns," including acid reflux requiring frequent suctioning, and breathing difficulties treated with a nebulizer. Nieboer explained that despite having received instructions to refrain from exposing the child to second-hand cigarette smoke, "a pretty significant smoke smell" remained after respondent's final parenting time.

The circuit court terminated respondent's parental rights pursuant to MCL 712A.19(b)(3)(j), (l) and (m), finding that it would be contrary to the child's welfare "to remain in the mother's home because the conditions of custody in the home and with the individual with whom the child resided are not adequate to safeguard the child from harm to the child's life, physical health, and mental well being."

Respondent now appeals as of right.

II. Issue Presented and Analysis

Respondent concedes that clear and convincing evidence supported the circuit court's decision to terminate her parental rights on the basis of subsections (l) and (m). Respondent instead challenges the circuit court's finding that her custody of the child contravened the child's best interests. If the trial court finds a ground for termination of parental rights has been established, "the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000), citing MCL 712A.19b(5).

According to respondent, Michigan law "states a preference that a minor child be raised by his biological parents," and places a burden on petitioner "to provide whatever assistance is reasonably necessary to accomplish this goal." Respondent argues that petitioner's failure to permit her to enter into a parent-agency agreement requires that we reverse the circuit court's order terminating her parental rights.

Ample evidence supported the circuit court's conclusion that affording respondent further services would not change the outcome. Almost three years elapsed between the third proceeding to terminate respondent's parental rights and the birth of the child involved in these proceedings. During that interval, respondent failed to obtain stable housing or to attend parenting classes, persisted in pursuing relationships with abusive men convicted of felonies, attended parenting time visits wearing smoke-drenched clothing, and departed from the visits before they concluded. The circuit court did not clearly err when it concluded that the precarious

patterns of respondent's life were unlikely to change with the provision of additional services. Furthermore, petitioner need not provide services if it justifies a decision not to do so. See MCL 712A.18f(1)(b); *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). Here, petitioner reasonably decided that services unlikely would remedy conditions that had existed for many years, and promptly sought termination rather than reunification. We thus conclude that petitioner justified its unwillingness to provide services, and that clear and convincing evidence supported the circuit court's finding that termination of respondent's parental rights served the child's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher