

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of STEVEN COBB, JR., SYDNEY  
ELLIOTT, JAYLYNN TAYLOR, and KAYLEEN  
COBB, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DARLA COBB,

Respondent-Appellant.

UNPUBLISHED  
September 16, 2008

No. 285885  
Berrien Circuit Court  
Family Division  
LC No. 2006-000096-NA

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Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Respondent Darla Cobb appeals as of right from the order terminating her parental rights to her four minor children, Steven Cobb, Jr., Sydney Elliott, Jaylynn Taylor, and Kayleen Cobb.<sup>1</sup> We affirm.

I. Basic Facts And Procedural History

A petition was filed in September 2006, seeking temporary custody of the children due to the parents'<sup>2</sup> criminal histories and Cobb's substance abuse and improper supervision. Cobb pleaded no contest in October 2006, and the referee used the petition allegations to support the plea.

The petition alleged that Cobb left the children home alone on September 7, 2006. Sydney, then eight years old, awoke to get ready for school and could not find Cobb. Steven was still sleeping but then went to Cobb's mother's home after Sydney called her dad. Sydney told CPS that she changed Kayleen's diaper and fed both younger sisters. Sydney also said that her

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<sup>1</sup> MCL 712A.19b(3)(c)(i) (conditions of adjudication continue), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if children return to parent's home).

<sup>2</sup> The fathers' rights were not terminated because of procedural issues.

mom left them alone a lot, but not for a while. The previous night, Sydney said, her mother was drunk and kept trying to use the phone to call her crack dealer. However, her boyfriend kept turning the phone off. Sydney's father, contacted police. At 4:15 p.m., Cobb called petitioner. She said she left at 5:00 a.m. to pick up her boyfriend, but her van broke down. She claimed that she left the children with Sydney's father. The next day, petitioner spoke with Kathy Scarry of the county health department, who said Cobb was receiving their services and tested negative for substances on August 29. Scarry said Cobb told her that her sister was watching the children and apparently left them alone.

When the children were removed, Cobb refused a drug screen. She and Sydney's father were on parole. Cobb received disability of \$603 a month for bipolar disorder and reported not taking her medicines. Her recent screens were positive for crack. Since 1990, CPS received 17 to 19 referrals for the family. Four were confirmed. In January 2006, Families First was provided, plus therapy and substance abuse counseling. Cobb tested positive for marijuana a few times during this period. In March 2006, Cobb left the children alone and did not return for two days. Cobb's mother took care of the children. The case was closed in July 2006. Cobb was on parole until February 2007 for larceny from a person. She had been incarcerated three times in the past eight years.

At the adjudicational/plea hearing, the referee found, by a preponderance of the evidence, that the material allegations in the petition were true. The trial court assumed jurisdiction and proceeded to disposition. The referee found placement with Cobb contrary to the children's welfare because Cobb left them "home alone for an extended period" in a "very unsafe situation." Cobb needed to work on issues including substance abuse, and DHS should investigate relative placements. Supervised visitation was continued. Cobb's parent agency agreement (PAA) required parenting classes, therapy and treatment for bipolar disorder, and substance abuse assessment, screens, and counseling.

The first review was held in January 2007. The referee found Cobb made minimal progress. Cobb had no-showed at visits with Steven. She also did not come to some visits with the younger children. In December, Cobb was jailed briefly for probation violation (associating with a known felon) and then on "house arrest." She was being evicted for nonpayment of rent. Out of 31 scheduled drug screens, Cobb completed nine and had one positive. She admitted using drugs. Since her release from jail, she was compliant with New Hope Treatment Center and tested negative. Cobb reported taking medicines for bipolar disorder (Geodon, Prozac, Cymbalta, and Lamictal). She admitted skipping two counseling sessions to "rebel" against petitioner. She almost wanted to let petitioner "have my children" to avoid the stress. Cobb had "struggled greatly with self-injurious behaviors, depression and manic episodes."

The next review was in March 2007. Cobb turned in 27 out of 35 screens from December 2006 to February 2007; all were negative. She refused to provide a hair follicle test. However, she attended all 12 visitations with the younger children. She provided meals and her parenting was appropriate. She and her boyfriend had a new three-bedroom apartment. Cobb visited with Steven monthly. Cobb's attendance at substance abuse counseling was irregular. However, her progress was good and she successfully completed the County Health Department program. She was not expected to relapse. The outreach counseling report was positive and recommended unsupervised visits. Cobb wrote that she had learned to be more patient and stopped using drugs. DHS helped her a lot. She had not realized how her lifestyle affected her

children. She described the children in glowing terms. She also wrote suggestions for self-improvement and described negative messages received as a child. Jaylynn reported good visits with Cobb and said she “can’t wait to go home.” Sydney also wanted to go home. The referee found some compliance by Cobb and some benefit. Supervised visits continued.

At the next hearing in June 2007, Cobb participated by speakerphone because she was in the Van Buren County Jail. She was doing quite well until her arrest on charges that predated the removal. Visits had taken place at McDonald’s and at Cobb’s home with the three girls. Cobb also visited Steven regularly in Detroit and then in her home, once unsupervised. In late May, Cobb stopped visiting. When Cobb later wanted to restart the visits, a drug screen was required, but Cobb was not home when the New Hope staff arrived. Cobb’s screens were negative except for Vicodin covered by valid prescriptions. Cobb had had minor surgery in February 2007 to remove a mass on her back. She was controlling her temper better and had learned appropriate supervision. The children’s visits to her home were “highly successful.” She had made a budget, and Donarski did not think she would return to drugs. She missed two drops but attributed them to moving. Sydney and Jaylynn wanted to go home and be with their mother. However, Sydney enjoyed not having to take care of younger siblings. Donarski wrote on May 31 that Cobb was “doing exceedingly well in [the] past 5 months in meeting all the requirements of the Court and in her therapy goals.” Sydney was very upset by Cobb’s new legal woes and felt she could not rely on either parent. The foster care review board did not support reunification because Cobb did not demonstrate a full commitment to change.

A permanency planning hearing (PPH) was held on in September 2007. Cobb claimed that she always paid her bills, did not discipline the children physically, and provided food, clothing, and shelter for them. She claimed that on the day of children’s removal, she left them with her sister, who decided to walk to their mother’s for a change of clothes. After two months of noncompliance, Cobb felt she did all that was asked of her. Her mother was now occupying her house and would be a good caretaker. The trial court found minimal to some compliance and no benefit by Cobb. She had 47 no-shows out of 117 screens. The trial court directed the agency to initiate termination proceedings. DHS denied placement with Cobb’s mother.

The termination petition was authorized and a review held in January 2008. The girls were doing very well in foster care. Steven struggled with anger and did not trust that his parents could provide for him and his sisters. His behavior was “out of control.” Before the incarceration, Cobb “had begun fully participating in services [and] . . . demonstrating benefit.”

The termination hearing was held in February 2008. Cobb’s criminal record was admitted and showed numerous misdemeanors and three felonies (larceny from a person, 2002; attempted receiving and concealing stolen property, probation violation, 1996; attempted breaking and entering of an occupied dwelling with intent to commit larceny, 1988). In September 2007, Cobb had pleaded guilty to the misdemeanor of manufacturing or delivering a false prescription of a controlled substance in violation of MCL 333.7401(2)(f). She was sentenced to 18 months to seven years in prison. Her earliest release date is February 2009.

The trial court terminated Cobb’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Cobb now appeals.

## II. Statutory Grounds For Termination

### A. Standard Of Review

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.<sup>3</sup> We review for clear error a trial court's decision terminating parental rights.<sup>4</sup> 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.<sup>5</sup> Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.<sup>6</sup>

### B. Analysis

Although Cobb was making progress in an intensive rehabilitation program in prison and had improved with services before being incarcerated, she would be unable to resume visitation until at least March 2009. After that, given her history, it is unlikely that she would be able to overcome her problems sufficiently to provide proper care and custody for her children within a reasonable time. Previously, the children had gone long periods in the care of relatives and friends when Cobb would relapse. The older children had learned not to depend on Cobb; the oldest girl, Sydney, had cared for her younger sisters although she was only eight years old. Cobb's lifestyle was characterized by instability, crime, and substance abuse, and would not be safe for the children. We conclude that the trial court did not clearly err in finding that statutory grounds for termination of Cobb's parental rights were established by clear and convincing evidence.

## III. Best Interests Determination

### A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the trial court finds from evidence on the whole record that termination is clearly not in the child's best interests.<sup>7</sup> There is no specific burden on either party to present evidence of the children's best

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<sup>3</sup> MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

<sup>4</sup> MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

<sup>5</sup> *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

<sup>6</sup> MCR 2.613(c); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

<sup>7</sup> MCL 712A.19b(5); *Trejo*, *supra* at 350.

interests; rather, the trial court should weigh all evidence available.<sup>8</sup> We review the trial court's decision regarding the child's best interests for clear error.<sup>9</sup>

## B. Analysis

Concerning the children's best interests, the evidence did not show a strong bond between Cobb and her children. Baby Kayleen did not live with Cobb for any significant period. At visitations, Sydney and Jaylynn gravitated more toward Cobb's mother or a family friend than toward Cobb. Cobb did not visit Steven for the first several months after the removal, and again stopped visiting after the warrant was issued. Although Cobb loved the children and they loved her, her unavailability due to incarceration meant that she could not provide the stable home that the children desperately needed. We conclude that the evidence did not show that the children's best interests precluded termination of Cobb's parental rights.

In sum, we conclude that Cobb's parental rights were properly terminated.

Affirmed.

/s/ William C. Whitbeck  
/s/ Richard A. Bandstra  
/s/ Pat M. Donofrio

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<sup>8</sup> *Trejo, supra* at 354.

<sup>9</sup> *Id.* at 356-357.