

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 13, 2012

In the Matter of A. D. ELLIOTT, Minor.

No. 309623
Cass Circuit Court
Family Division
LC No. 10-000123-NA

Before: WILDER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g). We affirm.

I. BASIC FACTS

A.D. is respondent's second child with her husband, Andrew. Their first child, J., was born on September 19, 2010, but was removed from their care almost immediately. In J.'s case, it was revealed that respondent suffered from a seizure disorder, which caused her to black out and experience memory loss. She also had cognitive issues. Andrew had anger management issues and was mildly mentally retarded. The two had a history of domestic violence. After J. was removed, respondent and Andrew failed to cooperate with petitioner or make any progress or changes to alleviate the issues that prompted J.'s removal. Their parental rights to J. were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j) at a July 2011 hearing, which neither parent attended.¹

Thereafter, on September 1, 2011, A.D. was born. Respondent and Andrew were living in a shelter in Indiana at the time. On October 6, 2011, respondent reported that Andrew slapped her. Andrew demonstrated violent tendencies throughout his stay at the shelter, resulting in the shelter asking the family to leave. Respondent called her mother and asked her to pick up A.D. from the shelter and bring him back to Michigan. Respondent indicated in a voicemail message to her mother that she intended to sign over full custody of A.D. to her mother. The maternal grandmother advised petitioner that she was not interested in accepting placement of A.D, as she

¹ Andrew appealed from the order, which this Court affirmed. *In re J A Elliott*, unpublished opinion per curiam of the Court of Appeals, issued December 15, 2011 (Docket No. 305485).

was already caring for J. and did not believe that she could care for two children of their young age. After leaving the shelter, respondent and Andrew moved to a motel in South Bend, which is where they resided through the remainder of the case.

On December 16, 2011, the trial court asserted temporary jurisdiction over A.D. Shortly thereafter, on January 30, 2012, petitioner filed a termination petition. Neither parent appeared for the March 8, 2012, termination hearing, nor had they appeared for any of the previous hearings. The case worker testified that she never met respondent in person but communicated to respondent and Andrew what was expected of them. Respondent and Andrew made no attempt to move to Michigan, even though they were advised that the move would make it easier for them to participate in parenting time and attend court hearings. They were offered train tickets, bus tickets, and gas cards to enable them to participate in services and attend court hearings; nevertheless, they failed to participate in any of the services. In fact, they refused to sign any paperwork for coordination of services until the week prior to the termination hearing. Thus, the caseworker testified that the barriers to reunification were the same as those in J.'s case, i.e., emotional instability, cognitive limitations, domestic violence, substance abuse, unemployment, homelessness, and respondent's seizure disorder. A.D. was doing well with his foster family, who was interested in adopting him and who would allow A.D. to maintain an ongoing relationship with J. and his maternal grandparents. Accordingly, the caseworker believed that it was in A.D.'s best interests to terminate respondent and Andrew's parental rights.

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g), but declined to terminate pursuant to MCL 712A.19b(3)(i) because the appeal process in J.'s case had not been completed when the petition for A.D. was filed. "If it had been affirmed prior to the removal in October, I would have. I actually looked at the dates and considered using that, but given the Court of Appeals' Opinion in regards to [J.], I think it's overwhelmingly clear that 19b(3)(g) applies to this child too."

Respondent now appeals as of right.

II. ANALYSIS

On appeal, respondent concedes that "[a]n examination of the record shows an unfortunate situation of two parents suffering from mental illnesses, mild retardation, and being unwilling or unable to take advantage of services, which would assist them towards stability in their lives. A review of the record indicates that the Trial Court followed the appropriate procedures and court rules for the termination proceedings." Nevertheless, respondent asks this Court "to review the decision of the Trial Court and the record to determine whether or not error occurred."

This Court reviews for clear error a trial court's determination to terminate parental rights. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *VanDalen*, 293 Mich App at 139. “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5).

The trial court terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(g), which provides:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

The trial court did not clearly err in terminating respondent’s parental rights. Respondent was homeless, unemployed, and without transportation at the time of A.D.’s birth and throughout the case. Respondent had limited cognitive abilities, as well as a seizure disorder that caused her to black out unexpectedly and experience memory loss. Further, Andrew, with whom respondent continued to live, had a history of domestic abuse and anger management issues. Respondent only cared for A.D. for the first six weeks of his life, and this period was marked by domestic violence. Respondent failed to participate in the recommended services, refused parenting time, did not appear at any court hearings, and made no effort to comply with her service plan or address the issues that led to A.D.’s removal and prevented reunification. Accordingly, the trial court did not clearly err in finding clear and convincing evidence that respondent failed to provide proper care or custody for A.D. and there was no reasonable expectation that she would have been able to do so within a reasonable time considering the child’s age.

Termination of respondent’s parental rights was in the minor child’s best interests. A.D. needed permanency and was thriving with his foster parents, who were interested in adopting him. Respondent made no attempt to participate in the recommended services and demonstrated no progress. She was not in a position to provide proper care for A.D. where she failed to address her own mental health issues, continued to live with Andrew, and lacked adequate housing, employment, and transportation. Accordingly, the trial court did not clearly err in concluding that termination of respondent’s parental rights was in A.D.’s best interests.²

² Petitioner asserts that MCL 712A.19b(3)(i) (prior termination) formed an additional basis for terminating respondent’s parental rights. We decline to address the issue, given that MCL 712A.19b(3)(g) formed a statutory basis for termination of respondent’s parental rights. Where

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly

we conclude that a trial court properly terminated parental rights under one basis, we need not address the propriety of termination under an alternative basis. See *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000).