STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LILLIAN MICHELLE POTTS
and LORETTA MARIE POTTS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CARMELLA ELAINE WELLS and GRADY POTTS,

Respondents-Appellants.

UNPUBLISHED
August 19, 2004

No. 253451
Kalamazoo Circuit Court
Family Division
LC No. 01-000176

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

MEMORANDUM.

Respondents appeal as of right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(i),[1] (g), and (j). We affirm.

The trial court did not commit clear error in finding that petitioner had established at least one of the grounds for terminating respondents' parental rights by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The condition that led to the adjudication was Lillian's positive test for cocaine at birth and respondent mother's positive test for cocaine following Lillian's birth. In the approximately eighteen months that followed Lillian's birth, respondent mother tested positive for cocaine and alcohol on several occasions, but denied that she abused substances. Further, in light of the evidence of drug abuse by both parents, evidence that both children suffered from fetal alcohol syndrome, and evidence that it would take a substantial amount of time to treat the substance abuse, the trial court did not clearly err in finding that respondents failed to provide proper care and custody for their children and that there was no reasonable expectation that they would be able to do so within a reasonable time. There was also evidence that respondents' drug and alcohol use placed their children at a substantial risk of harm and that neither respondent took Lillian's numerous medical issues

[1] Subsection (i) applies to respondent mother only.

seriously. Therefore, the trial court did not clearly err in finding that petitioner had established the statutory grounds for termination of respondents' parental rights.

Further, the record does not demonstrate that termination of both respondents' parental rights was contrary to the best interests of the children. Both children suffered from the affects of fetal alcohol syndrome and required extra care and patience, with Lillian requiring a great deal of extra attention. The children were progressing in foster care and were in a day care that could handle their needs. While the children saw their parents weekly at supervised visitation and recognized their parents, the children had never lived with their parents. Moreover, respondents were given many chances to overcome their substance abuse issues and, in the face of lab reports showing that each had positive results for cocaine and alcohol, they denied any substance use.

Finally, respondent father argues that the trial court erroneously assigned to him the burden of proof regarding the best interest determination. To the extent that it appears that the trial court assigned the burden of proof to respondent father, we find the error harmless where the trial court considered the record as a whole and the evidence clearly did not support a finding that termination was contrary to the best interest of the children.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly