

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ASHLYE NEVEAH AMBROSE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

THOMAS AMBROSE, SR.,

Respondent-Appellant,

and

MARY JO ISENHART,

Respondent.

In the Matter of ASHLYE NEVEAH AMBROSE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARY JO ISENHART,

Respondent-Appellant,

and

THOMAS AMBROSE, SR.,

Respondent.

UNPUBLISHED

April 8, 2008

No. 280932

Kent Circuit Court

Family Division

LC No. 06-050855-NA

No. 280933

Kent Circuit Court

Family Division

LC No. 06-050855-NA

In the Matter of THOMAS AMBROSE, JR.,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARY JO ISENHART,

Respondent-Appellant,

and

THOMAS AMBROSE, SR.,

Respondent.

No. 280934
Kent Circuit Court
Family Division
LC No. 07-053014-NA

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals as of right from the trial court order terminating her parental rights to Ashlye and Thomas pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), (l), and (m), and respondent father appeals as of right from the same order terminating his parental rights to Ashlye pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g). We affirm.

Respondent father first argues that the trial court clearly erred in finding that the statutory bases for termination were established by clear and convincing evidence. This Court reviews decisions terminating parental rights for clear error. MCR 3.977(J). Clear error has been defined as a decision that strikes this Court “as more than just maybe or probably wrong.” *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

We agree that the trial court clearly erred in finding that MCL 712A.19b(3)(c)(i) was established where none of the conditions leading to adjudication, as listed on the initial petition, dealt with respondent father. However, this error is harmless where petitioner established MCL 712A.19b(3)(c)(ii) and (g) by clear and convincing evidence. MCL 712A.19b(3). Respondent father’s lack of housing and stable income are the other conditions that cause the children to come within the court’s jurisdiction under sections (c)(ii) and also comprise the underlying basis of his failure to provide proper care and custody for Ashlye under section (g). Respondent father did not have stable housing or income for Ashlye, and after 18 months, he did not appear to be any closer to obtaining stable housing or income. In addition, respondent father was facing the possibility of being sentenced to time in jail for a pending larceny charge. Although respondent

father testified that he could move into his parents' home, which was found to be appropriate previously, respondent father had not done so and he did not have any means of supporting himself or Ashlye. While respondent father had applied for Social Security disability benefits, his application was twice denied and there was no way of knowing whether his "case" for benefits would ultimately be successful. Ashlye had spent nearly all of her life in foster care and there was no legitimate expectation that respondent father would be able to provide proper care and custody for her within a reasonable time. Therefore, the trial court did not clearly err in finding that sections (c)(ii) and (g) were established by clear and convincing evidence.

Respondent father next argues that the trial court clearly erred in finding that petitioner made reasonable efforts to preserve and unify the family. "[P]etitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); MCL 712A.18f(1), (2), and (4). Petitioner provided respondent father with numerous services in an attempt to reunify him with Ashlye. Respondent father does not argue that a specific service was omitted, only that he was not given enough time to find housing and obtain employment or disability benefits. Considering the nearly 18 months the case was pending, that argument is unpersuasive. The trial court did not clearly err in finding that petitioner's efforts were reasonable.

Lastly, respondent father argues that the trial court erred in its best interests determination. 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 interest. MCL 712A.19b(5); *Trejo, supra* at 344. Respondent father was not able to provide Ashlye with stable housing and adequate income. There was no indication that respondent father would ever be able to do this. Ashlye was 18 months old at the time of the termination trial. Although she resided with respondent father for two months after the case was filed, she lived in foster care or relative care for approximately 14 months. While respondent father argues that he would have completed his treatment plan in a few more months, respondent father was no closer to obtaining housing or employment than he was at the inception of the case. Ashlye could not go on in foster care indefinitely and, therefore, the trial court did not clearly err in its best interests determination.

Respondent mother concedes that the trial court did not clearly err in finding that statutory bases for termination were established, MCL 712A.19b(3)(l) and (m), but argues that the trial court erred in its best interests determination with regard to her. MCL 712A.19b(5). Respondent mother may have made great progress in her treatment plan and improved immensely since her prior terminations, but still could not provide stable housing and income for her children. Housing and income were at issue from the inception of the case, and respondent mother made no progress in this regard. Her proposed arrangement for housing, for which she lacked a down payment to secure the location, was inadequate and failed to constitute stable housing for these two very young children. In addition, respondent mother had no viable means to support the children. We note that the initial petition for termination was denied and that the trial court provided respondent mother with an opportunity, spanning nearly 18 months, to secure stable housing and income. Where there was no indication that respondent mother would be capable of providing stable housing and income for her children in the discernible future, the trial

court did not clearly err in finding that termination of respondent mother's parental rights was not contrary to the children's best interests.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Deborah A. Servitto