

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRIAN ALEXANDER
WAHMHOFF, CHRISTIAN MICHAEL
WAHMHOFF, AUGUSTINE MARIE
WAHMHOFF, and DOMINIC JAMES ALLEN
WAHMHOFF, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MINDY L. WAHMHOFF,

Respondent-Appellant,

and

WAYNE WAHMHOFF

Respondent.

UNPUBLISHED

May 15, 2008

No. 281009

Osceola Circuit Court

Family Division

LC No. 06-004198-NA

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

PER CURIAM.

Respondent-appellant appeals by right the family court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Between 2000 and 2006, petitioner investigated numerous complaints concerning the children. Services were provided to respondent-appellant and to Wayne Wahmhoff,¹ respondent-appellant's husband and the father of the children. In June 2006, a petition was filed with respect to both respondents, seeking to place the children in the court's temporary custody. The petition alleged that respondents had failed to properly supervise the children, failed to address the children's medical and dental needs, and lacked the intellectual capacity to properly care for their four young children.

¹ Respondent Wayne Wahmhoff is not a party to this appeal.

When the children were taken into the court's custody, Brian, then almost six years old, had substantial dental issues and needed four mini-root canals, fillings for 11 cavities, and extensive treatment for three rotten teeth. Dominic, an infant, suffered from torticollis, a condition involving weakened neck muscles, which required extensive physical therapy. When first placed in foster care, the children swore, threw temper tantrums, and refused to follow instructions.

Respondent-appellant submitted to a psychological evaluation, which showed that she was in the mild range of mental retardation and that, even with extensive accommodations, it was highly questionable whether she had the intellectual capacity to parent the children without continuous help. The evaluator concluded that, although respondent-appellant loved the children and was willing to work with petitioner to give the children a nurturing home, her prognosis for improvement was "relatively poor."

The caseworker testified that respondent-appellant had failed to substantially comply with her service agreement, which required that she participate in parenting classes and counseling, attend visits, and attend Dominic's medical appointments. The caseworker found that, although respondent-appellant completed a set of parenting classes, there was no improvement in her parenting skills. The worker testified that respondent-appellant had missed 16 out of 28 of Dominic's appointments and had failed to perform exercises with Dominic as often as she had been instructed. The foster parents caring for the children testified that the children exhibited temper tantrums and inappropriate behaviors after visits with respondents, but explained that the children had become happier and better adjusted in the three months since their parents' visitation privileges were suspended. There were also concerns that respondents, both of whom relied on respondent-appellant's disability payments to support the family, were unable to meet their financial obligations.

The family court found that the evidence supported termination of both respondents' parental rights. The court found that Wayne lacked any interest in caring for the children or assisting respondent-appellant in caring for the children, and that he had not sought employment to financially support the family. The court observed that respondent-appellant was not cruel or wicked, but determined that she was unable to care for the children because of her disability and that she was unlikely to gain the skills to do so. Noting the dramatic improvement in the children's behavior and health since their placement in the court's care, particularly following the suspension of respondents' visitation privileges, the court concluded that termination of both parents' parental rights was not contrary to the children's best interests.

On the record before us, we conclude that the family court did not clearly err by finding that petitioner had proven §§19b(3)(c)(i) and (g)² by clear and convincing evidence. MCR 3.977(J); see also *In re Gass*, 173 Mich App 444, 448-449; 434 NW2d 427 (1988) (the parent's cognitive deficiencies were evidence that she could not properly care for her child and would not be able to do so within a reasonable time); and see *In re Youmans*, 156 Mich App 679, 690; 401 NW2d 905 (1986) (the parents' negligent disregard for their child's medical needs constituted evidence of present and future neglect). Further, the family court properly determined that

² We need not address whether petitioner proved § 19b(3)(j) by clear and convincing evidence in this case because only one statutory ground need be proven in order to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

termination of respondent-appellant's parental rights was not clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Contrary to respondent-appellant's argument on appeal, the family court did not rely upon Wayne's neglect to establish the statutory grounds for termination of respondent-appellant's parental rights. Rather, the court independently found that respondent-appellant's cognitive limitations prevented her from being able to properly care for the children on her own. The family court did not clearly err by terminating respondent-appellant's parental rights to the minor children.

Affirmed.

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