

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PATRICIA FRERICKS,
ANGELO ROBERT M. VALDERAS, and
JULIAN VALDERAS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GENEVA DAWN SPRINGALL,

Respondent-Appellant.

UNPUBLISHED

July 17, 2008

No. 282570

Oakland Circuit Court

Family Division

LC No. 07-732498-NA

Before: Fitzgerald, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

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

Respondent's history with Children's Protective Services ("CPS") dated back to 1992 and included numerous referrals for substance abuse and other problems. Services were provided to respondent, and on three separate occasions CPS opened cases, but respondent's drinking and drug use continued. In April 2006, all of the children started residing with their respective fathers and saw respondent only for visitation. During a visit with the children on January 20, 2007, respondent consumed six or seven beers and administered medication to her four-year-old son that was prescribed for another child. Respondent attempted, through physical force, to prevent her sister from telephoning 911 when her sister realized the child needed medical attention. When police arrived, respondent denied the child had taken any medication, but the child was able to verbalize that respondent had given him medicine. Due to the medication overdose, the child was hospitalized, and an initial petition seeking termination of respondent's rights was filed.¹

¹ We note that respondent, at the outset of proceedings, informed the lower court of American Indian lineage through her great grandparents. However, based on the lower court record, the

During the best interests phase, evidence was presented that respondent had been sober for approximately five months and was missed by the two youngest children. Evidence about the oldest child was conflicting because this child apparently did not consistently elect to spend time with respondent when visitation was available, but neither did she want respondent's rights to be terminated. The court admitted into evidence the psychological report that indicated respondent had exhibited evasive behavior during the evaluation. Although the evaluator did not find placement of the children with respondent appropriate, termination of respondent's parental rights was not recommended based on the children's level of emotional attachment to respondent.

Respondent does not contest the trial court's finding of statutory grounds for termination of her parental rights. Rather, respondent argued that the trial court erred in its best interests determination. The law governing best interests is well established. Once there is clear and convincing evidence of at least one statutory ground for termination, the trial court "must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests."² *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). In this case, the trial court did not clearly err in its best interests determination. Respondent's neglect of the children was chronic and severe and resulted in her infliction of a life threatening injury on the four-year-old child. Furthermore, her behavior indicated she continued to struggle with accepting responsibility for her actions, which threatened her newfound sobriety. Even though the children had attained permanency through placement with their fathers, and would not be in significant danger if their contact with respondent was limited to supervised visitation, there remained risks to the children's emotional status should respondent relapse or continue in her inability to accept responsibility for her behavior.

Respondent next protests the decision of the Department of Human Services ("DHS") to pursue the termination of her rights instead of arranging for the children to remain in their fathers' custody while she exercised visitation rights. Contrary to respondent's preference, DHS is required to file a petition seeking termination whenever a parent inflicts a life threatening injury upon a child. MCL 722.638(1)(a)(v) and (2).

Finally, respondent argues that DHS should have previously pursued a temporary wardship case against her to better prepare her for the current situation where termination was sought in the initial petition. This argument is without merit. Respondent must take responsibility for her own failure to learn from the all-too-numerous prior CPS interventions. See *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008) (a parent "must take responsibility for his own failure to follow the court's instruction"). Given the prolonged history of interaction

(...continued)

minor children do not appear to qualify under the definitional requirements of the Indian Child Welfare Act, 25 USC 1903.

² In this case, the court went beyond the statutory best interest inquiry by concluding that termination was in the children's best interests. This finding, while not required by MCL 712A.19b(5), "is permissible if the evidence justifies it." *In re Gazella*, 264 Mich App 668, 677-678; 692 NW2d 708 (2005).

between respondent and CPS, respondent cannot legitimately claim to be surprised by the demands and expectations placed on her.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Pat M. Donofrio