

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SPENCER LAMARR LEWIS and
MALIK LAMONT HODGE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANNETTE LOUISE LEWIS, a/k/a ANNETTE
LOUIS LEWIS,

Respondent-Appellant,

and

BRIAN MATTHEWS,

Respondent.

UNPUBLISHED

April 16, 2009

No. 287707

Wayne Circuit Court

Family Division

LC No. 05-446176-NA

Before: Zahra, P.J., and O'Connell and K. F. Kelly, JJ.

PER CURIAM.

Respondent mother appeals as of right from an order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

I. Standards of Review

We review for clear error a trial court's decision to terminate parental rights. *In re Roe*, 281 Mich App 88, 95 ; ___ NW2d ___ (2008). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

II. Analysis

Respondent argues that the trial court's decision to terminate her parental rights is clearly erroneous and not in the children's best interests. We cannot agree. A court may terminate parental rights if the petitioner establishes at least one of the statutory grounds enumerated in

MCL 712A.19b(3) by clear and convincing evidence. *Id.* at 210. “Once a ground for termination is established, the 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.” *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Here, the trial court terminated respondent’s rights based on the following statutory grounds:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(c)(i), (3)(c)(ii), (3)(g), and (3)(j).]

Clear and convincing evidence sufficiently supports the trial court’s determination to terminate respondent’s rights. In the present matter, the children were removed from respondent’s home in September 2005 when petitioner received a complaint that one of the children had been physically abused. The court took temporary custody over the children and a parent agency agreement (PAA) was created for respondent, which required parenting classes, a mother-baby program, visitations, counseling, psychological and psychiatric evaluations, drug screens and treatment, suitable housing and income, and GED classes and completion. The children remained in care for almost three years and during this time respondent failed to substantially comply with this treatment plan. Respondent completed only ten of approximately 100 required screens and six of those completed screens tested positive for marijuana. She did not visit her children for extended periods of time, the caseworker was sometimes unaware of her

whereabouts, and she failed to get a court-ordered tuberculosis test after one child contracted tuberculosis. Respondent also did not comply with provisions of the PAA regarding attending counseling, completing a psychiatric evaluation, obtaining a GED, and attending the mother-baby program. She did not have stable housing or employment and she repeatedly put marijuana use above seeing her children. Respondent's noncompliance is evidence of her inability to provide proper care and custody to her children. *In re JK, supra* at 214; *In re Trejo, supra* at 360-361 n 16. Under these facts, we cannot conclude that the trial court's decision to terminate respondent's parental rights constituted clear error.

Respondent, however, points out that she finished parenting classes and was working, going to school, and attending substance abuse counseling at the time of the final hearing. In respondent's view, the conditions that led to adjudication can be rectified because the children are only five and three years old, and she has "shown a determination to develop a greater degree of maturity" For these reasons, respondent asserts that the court's findings under §§ 19b(3)(c)(i) and (g) are not supported by clear and convincing evidence. However, a parent must not merely "go through the motions," but must also benefit from the services offered in order to provide a safe and nurturing home. *In re Gazella, 264 Mich App 668, 676; 692 NW2d 708 (2005)*. It is plain under the facts of this case that respondent failed to benefit from the services provided despite a reasonable opportunity to do so. Thus, respondent's argument is unavailing. We note that even if we were to agree with respondent, statutory grounds still exist justifying the court's determination. Given respondent's failure to abide by her treatment plan and her history of a long-term serious drug problem, there remains a reasonable likelihood that the children would be harmed if returned to her care. MCL 712A.19b(3)(j). Contrary to respondent's position, it is not necessary that there be evidence of physical harm or neglect to support termination under § 19b(3)(j). See *In re Trejo, supra* at 360-361 n 16.

Lastly, respondent argues that the trial court erred by determining that termination was in the children's best interests. We disagree. Respondent repeatedly demonstrated over time that she could not be depended upon to put her children before her drug use. Her continued use of marijuana would potentially put her children at risk of harm and would likely create instability and lack of permanency. In addition, respondent's history of failing to follow through on services demonstrates that there is no guarantee that respondent would benefit from services in the future. "[T]he Legislature did not intend that children be left indefinitely in foster care" *In re Dahms, 187 Mich App 644, 647; 468 NW2d 315 (1991)*. The trial court did not clearly err in failing to find that termination of respondent's parental rights would be clearly contrary to the children's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly