

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
September 11, 2012

In the Matter of GILDNER-RAY/BOUWMAN,  
Minors.

No. 307464  
Manistee Circuit Court  
Family Division  
LC No. 09-000024-NA

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Before: WILDER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

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

I. BASIC FACTS

The condition leading to petitioner's intervention was primarily prenatal drug exposure. Respondent had three children at the time of the termination hearing. I.B. was born on March 26, 2007, testing positive for opiates. No action was taken to remove I.B. from respondent's care because petitioner could not establish that the positive test was the result of drug abuse, as opposed to respondent's claim that she took Vicodin for a toothache. A.C. was born on March 16, 2009. This time there was no question that the child had been exposed to opiates in utero. A.C. suffered through a 40-day opiate withdrawal. After the A.C. was removed from respondent's care, she and the child's father executed a power of attorney, appointing Norma Starks, the paternal grandmother, as I.B.'s and A.C.'s temporary guardian. Respondent later admitted that she had been taking methadone for about a year without a prescription. Based on respondent's plea and the caseworker's testimony, the trial court found statutory grounds to exercise jurisdiction over I.B. and A.C. pursuant to MCL 712A.2(b)(1) based on her failure to provide, when able to do so, "support, education, medical, surgical, or other care necessary" for the children's "health or morals," as well as the ground of "a substantial risk of harm" to the children's "mental well-being." Respondent gave birth to a third child, M.B., on April 23, 2010. M.B. also tested positive for opiates. The trial court asserted jurisdiction over M.B. Throughout the proceedings, I.B. remained with Starks. A.C. and M.B. remained with a paternal aunt, Heather Flietstra. Both Starks and Flietstra were interested in caring for the children long-term in whatever capacity was needed. The children's father agreed that termination of parental rights was in the children's best interests; he supported his family members adopting the children.

Respondent's parental rights were ultimately terminated at a November 1, 2011, termination hearing after the trial court heard testimony regarding respondent's continued substance abuse, lack of housing, insufficient parenting skills, and emotional instability.

## II. ASSUMPTION OF JURISDICTION

On appeal, respondent first challenges the trial court's assumption of jurisdiction. Shortly after A.C. was taken into petitioner's protective custody, but before the court authorized the child protective proceedings petition, the parents executed a power of attorney, appointing the children's paternal grandmother, Norma Starks, as guardian. It is undisputed that Starks, who later served as a foster parent for I.B., provided a safe and suitable home environment for children. Therefore, respondent contends, I.B. and A.C. were not lacking proper custody or care and were not living in an unfit or unwholesome environment.

Respondent did not timely challenge the court's assumption of jurisdiction after entry of the adjudication order; therefore, this issue is waived. "Ordinarily, an adjudication cannot be collaterally attacked following an order terminating parental rights." *In re SLH*, 277 Mich App 662, 668; 747 NW2d 547 (2008). Even if it had been timely challenged, respondent's claim that that trial court lacked jurisdiction is without merit. "A newborn suffering narcotics withdrawal symptoms as a consequence of prenatal maternal drug addiction may properly be considered a neglected child within the jurisdiction of the probate court." *In re Baby X*, 97 Mich App 111, 116; 293 NW2d 736 (1980). It is undisputed that respondent had a long-standing methadone addiction and that all three children were exposed to methadone in utero. Thus, there were sufficient grounds for the trial court to take jurisdiction over these children. Furthermore, the trial court properly assumed jurisdiction over I.B. under the well-recognized doctrine of anticipatory neglect. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973).

Furthermore, respondent did not have custody of A.C. at the time she sought to establish Starks as guardian. A.C. had been removed from respondent's custody shortly after his birth, and the court had already awarded petitioner temporary custody of I.B. pending completion of a preliminary hearing. As properly noted by the trial court, a court is authorized, pursuant to MCR 3.965(B)(3), to make temporary orders for the protection of children pending completion of the preliminary hearing. Therefore, respondent's attempt to circumvent the child protective proceedings by hastily appointing a guardian between the time of A.C.'s removal and the time the petition was authorized was ineffective.

## III. TERMINATION OF PARENTAL RIGHTS

Respondent does not directly challenge the trial court's findings of statutory grounds for terminating her parental rights; rather, respondent asserts that the trial court clearly erred in not establishing a guardianship with family members as an alternative to termination. However, respondent appears to also indirectly challenge the trial court's findings of statutory grounds, cryptically noting that she had begun treatment through a methadone clinic in August 2011 and might possibly be weaned off methadone within approximately one year.

The trial court must order termination of parental rights if it also finds that termination is in the children's best interests. MCL 712A.19b(5). This Court reviews decisions concerning the termination of parental rights for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009); MCR 3.977(K). Termination of a parent's rights need be supported by only a single statutory ground. *In re HRC*, 286 Mich App at 461 ("Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision.").

The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence. The statutory provisions provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

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(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.

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(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.

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(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.

After the two older children were removed from respondent's care, she was ordered to comply with and benefit from a treatment plan. Respondent's treatment goals included obtaining and maintaining sobriety, achieving emotional stability, acquiring appropriate parenting skills, achieving financial stability, and acquiring suitable housing. She was offered a variety of services, including a substance abuse assessment, inpatient and outpatient substance abuse treatment, random drug screens, individual counseling, parenting classes, transportation, community mental health services, employment services, housing assistance, foster care monitoring, family reunification funds, and parenting time.

In April 2011, respondent admitted using methadone on a daily basis yet refused treatment. Respondent began outpatient treatment in July 2011, but her case was closed due to

her lack of participation. She tested positive for drugs, including methadone and marijuana, and missed numerous drug screens throughout the pendency of the case. The evidence showed that respondent would have to comply with a year-long program followed by continued outpatient counseling to provide relapse strategies. Respondent tested positive for marijuana, benzodiazepines, and opiates in the weeks leading up to the termination hearing.

Respondent failed to gain employment or avail herself of job seeking, education, and training programs. She participated in, but failed to benefit from, parenting classes in 2009, and she refused to participate in additional parenting classes. During a supervised visit in April 2011, respondent was extremely overwhelmed with all three of the children and requested that the visit end early. At a later visit, the foster care caseworker had to run after the oldest child four times because he was almost out into the road. Respondent also lacked appropriate housing throughout the duration of the proceedings. There was ample evidence that, despite more than two years of services, respondent failed to demonstrate any positive changes in her ability to provide a safe, stable and drug-free environment for her children. There was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages. Moreover, respondent's continued drug use since M.B. was born with prenatal drug exposure, coupled with a lack of housing and employment and recent arrests, clearly showed a likelihood of harm to the children if they were returned to respondent's care. Thus, the trial court did not clearly err in terminating respondent's parental rights on all three statutory grounds.

Likewise, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. There was sufficient evidence that respondent had a minimal bond with her oldest child and that there was no bond between respondent and her other two children who had been in foster care since birth. Respondent made no significant efforts to obtain suitable housing or get a job. Her mental and emotional stability worsened. Reviewing the record as a whole, the trial court did not clearly err in finding that termination was in the children's best interests.

#### IV. GUARDIANSHIP IN LIEU OF TERMINATION

Finally, respondent contends that the trial court erred in not considering a permanent guardianship in lieu of termination. However, as detailed in respondent's own brief, from April 2010 through January 2011 the trial court considered guardianship as part of a three-fold permanency plan for the children that also included reunification and adoption. The trial court also issued the necessary orders to evaluate the viability of a guardianship. Thus, the trial court clearly considered guardianship as an alternative to terminating respondent's parental rights.

Moreover, the trial court did not clearly err when it determined that the children's need for permanence and stability required the more permanent solution of adoption rather than guardianship. A trial court may order a guardianship in a child protection proceeding if it is in the children's best interests. MCL 712A.19a(7)(c). While placement with relatives may weigh against termination, a trial court is not required to leave a child with relatives in lieu of terminating an unfit parent's rights. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010); *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), overruled on other grounds 491 Mich 81 (2012).

The court properly considered and reasonably rejected guardianship as a viable option at a pivotal hearing in May 2011. Until the May 2011 final permanency planning hearing, the court considered guardianships with Starks and Flietstra. However, the trial court was then presented with evidence that adoption was in the children's best interests given their young ages and respondent's increasing emotional instability. The foster care worker opined that adoption, rather than guardianship, was in the children's best interest because the children needed a permanent home. Starks preferred adoption and Flietstra testified that she favored adoption over guardianship because it would be unfair to the children to have respondent come back into their lives in a couple of years and try to regain custody. Similarly, the GAL recommended proceeding with termination of respondent's parental rights because the children needed permanency and respondent had not made any progress after two years. Therefore, the trial court did not clearly err when it reasonably concluded that adoption, rather than guardianship, was in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Peter D. O'Connell  
/s/ Kirsten Frank Kelly