

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ARMANI LEE SMITH and
INDIA DORTHA SMITH, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RICARDO ARMSTEAD, a/k/a RICARDO L.
TAYLOR,

Respondent-Appellant,

and

TAMIKA N. SMITH and QUENTIN L.
TROTMAN,

Respondents.

UNPUBLISHED
April 18, 2006

No. 264505
Wayne Circuit Court
Family Division
LC No. 01-402397- NA

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INDIA DORTHA SMITH, Minors.

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RICARDO ARMSTEAD, a/k/a RICARDO L.
TAYLOR, and QUENTIN L. TROTMAN,

Respondents.

Before: Fort Hood, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father Ricardo Armstead appeals as of right from an order terminating his parental rights to his minor child, India, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), and respondent-mother Tamika Smith appeals as of right from the order terminating her parental rights to her minor children, Armani and India, pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), (g), and (j). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, the trial court must terminate parental rights unless it determines that to do so is clearly not in the child's best interests. *In re Trejo Minors*, 462 Mich 341, 353-354; 612 NW2d 407 (2000); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

The minor children came into care because India, then five months old, ingested narcotics, and a drug screen revealed that she was positive for opiates, cocaine, and amphetamines. Respondent-mother admitted to cutting drugs with the child in the home and stated that respondent-father physically abused her and forced her to sell drugs. Respondents were both provided with a treatment plan.

Although respondent-father was provided with service of the proceedings, he admitted that he initially felt it was best that he not get involved because of his past drug history. When the petition was filed to terminate both respondents' parental rights, respondent-father began to attend the court proceedings and began to work on a treatment plan. He was required to submit to random drug screens and obtain treatment for domestic violence. Respondent-father submitted to only a few random drug screens, and the screens were not done on the designated day. One of screens came back positive, and respondent admitted to taking Tylenol with codeine without a prescription. Respondent-father also admitted to selling drugs in the past but testified that he had not sold drugs in many years. Although he completed domestic violence classes and was involved in counseling, respondent-father was reluctant to admit that he was involved in domestic violence despite numerous reports that he had beaten respondent-mother, causing bruises and black eyes, within the past few years. While testifying, he did finally admit to having physical altercations with respondent-mother but minimized the significance of this activity. Respondent-father's treatment plan required him to obtain his GED, but he did not provide evidence that he was working on obtaining it or that he had obtained it. Respondent-father did continue to have a legal source of income and maintained housing. However, he had a

significant arrearage in child support and did not feel the need to liquidate his assets in order to pay the required support.

There was overwhelming evidence supporting termination of respondent-father's parental rights pursuant to MCL 712A.19b(3)(c)(i). The major issues that caused India to come into the care of the court were illegal drugs in the home and respondent-father's domestic violence towards respondent-mother. Almost four years passed before the termination trial, and respondent-father had continued to physically abuse respondent-mother as recently as a year before the trial and did not comply with the requirement that he provide random weekly drug screens. The conditions that led to adjudication clearly continued to exist, and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the age of the minor child who was four years old at the time of the termination trial.

The trial court also did not clearly err in finding that MCL 712A.19b(3)(g) and (j) were established by clear and convincing evidence with respect to respondent-father. Respondent-father failed to provide proper care and custody of India. He was involved in selling drugs and consistently physically abused respondent-mother. This is not an environment that could be considered appropriate to raise a minor child and did not constitute proper care and custody. Moreover, there was a reasonable likelihood that India would be harmed if returned to his home.

Respondent-father argues that the trial court erred because the order stated that the court relied on the testimony of the assistant attorney general. However, any error in this regard was harmless. More than sufficient properly admitted evidence established that respondent-father's parental rights should be terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

With regard to respondent-mother, the facts were clear and convincing for the trial court to find that MCL 712A.19b(3)(c)(i) was met. The terms of respondent-mother's treatment plan addressed the issues that brought the minor children into the temporary care of the court: drugs and domestic violence. Respondent-mother did not comply with any of the terms of the treatment plan even though she had almost four years in which to do so. She did not submit to weekly drug screens, did not receive treatment for domestic violence, did not have a suitable home, did not maintain a legal source of income, did not stay in contact with the DHS worker, and did not consistently visit the minor children. The parenting classes that she did complete appeared to be of no benefit, and respondent-mother did not complete the second set that she was required to take. During the course of the proceedings, respondent-mother had been beaten by respondent-father, and several witnesses testified about the bruises on her face and black eyes that occurred as a result. Although the time frame was not clear, it appeared that respondent-father had been physically violent to respondent-mother within the year before the termination trial. There is no dispute that the conditions that caused the minor children to come within the jurisdiction of the court continued to exist at the time of the termination trial almost four years later, and there was no reasonable likelihood that the conditions would be rectified within a reasonable period of time considering the ages of the minor children.

The trial court also did not clearly err in finding MCL 712A.19b(3)(g) and (j) were established with respect to respondent-mother. The fact that respondent-mother was cutting drugs in the home with the minor children and India, at five months old, ingested drugs cannot be considered anything but failure to provide proper care and custody. The evidence presented at the termination trial did not reflect that respondent-mother was in any better position to provide

proper care and custody. The evidence showed that respondent-mother had been raising the minor children in a home in which illegal drugs and domestic violence were commonplace. Her conduct during the almost four years that ensued after the minor children were removed from her care did not show that she was in any better position to insure that the minor children would be safe. As the result of respondent-mother's conduct, the minor children would be at risk of harm in the foreseeable future if returned to her home.

The evidence also established MCL 712A.19b(3)(b)(ii) with respect to respondent-mother. India suffered physical injury when she ingested narcotics and was taken to Children's Hospital. Clearly, respondent-mother could have prevented this from occurring. Respondent mother admitted that she had been cutting drugs in the home and did not wash her hands when she made India's bottle. She also admitted that respondent-father was physically violent towards her, that she was afraid of him, and that he forced her to sell drugs. During the four years that the minor children were in the temporary care of the court, respondent-mother continued a relationship with respondent-father, refusing to go to a safe house when she feared that he would harm her and failing to get a restraining order to keep respondent-father away from her. During that period of time, respondent-mother had bruises and black eyes as the result of being beaten by respondent-father. In addition, respondent-mother failed to show the court that she no longer was involved with drugs, failing to submit to the random drug screens ordered by the court. The evidence was clear and convincing that there was a reasonable likelihood that the minor children would suffer injury in the foreseeable future if placed in respondent-mother's home.

Respondent-mother did not raise the issue of the reasonableness of the efforts of DHS or services provided to her at the time of the termination trial. Failure to raise this issue at trial results in a waiver of the right to raise the issue on appeal. *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987). However, the evidence is clear that respondent-mother was provided with many services and failed to follow through or take advantage of those services. She cannot now claim that sufficient services were not offered.

Finally, the trial court did not clearly err when it failed to find that the children's best interests precluded termination of respondent-mother's parental rights. Respondent-mother did not consistently visit the minor children and did not provide her grandmother and her aunt with the financial means to raise them. She did not inquire about their medical, educational, and emotional needs, much less participate in obtaining the professional help that they needed. Even when the minor children were returned to her care for a short period of time, she refused to take India to Children's Hospital after her brother had inappropriately touched her, resulting in the minor children being removed from her care again. Any bond that respondent-mother had with the minor children was clearly outweighed by their need for safety and stability.

Affirmed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Patrick M. Meter