

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ARIANA NOELLE ADELBERG,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA ADELBERG,

Respondent-Appellant.

UNPUBLISHED
September 14, 2006

No. 269242
Saginaw Circuit Court
Family Division
LC No. 04-029292-NA

In the Matter of ARIANA NOELLE ADELBERG,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT ADELBERG,

Respondent-Appellant.

No. 269243
Saginaw Circuit Court
Family Division
LC No. 04-029292-NA

Before: Fort Hood, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondents, Angela Adelberg and Robert Adelberg, appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). Because the trial court's jurisdiction was proper, clear and convincing evidence supported termination of respondents' parental rights, and termination was not clearly against the child's best interests, we affirm.

The minor child, Ariana (d/o/b 6/24/95), became a temporary ward in October 2004, when respondents admitted they were unable to safely control Ariana's Type I insulin-dependent diabetes. Ariana had been in guardianship with her aunt, Sally Jo Messersmith, but Messersmith wished the guardianship dissolved because she could no longer meet the child's special medical needs. The Messersmiths' home was a three-hour drive from respondents' home, but respondents visited frequently and respondent father took care of Ariana there. Respondent mother was unable to participate. She suffers from a degenerative brain disorder, is physically disabled, uses a wheelchair and walker, and cannot measure insulin or give shots.

Before moving in with the Messersmiths, Ariana resided with respondents. During this time, respondents received assistance from Families First and other services, including diabetes training and a conservator/payee from Guardianship Services. But, respondents allowed Ariana to give herself insulin shots. This practice resulted in Ariana's insulin levels reaching dangerous highs and lows, and she required hospitalization several times. Also, respondent mother had been addicted to and withdrew from Oxycontin.

At disposition in October 2004, the court found that respondents needed training to meet Ariana's medical needs and ordered them to comply with a case services plan and parent agency agreement (PAA), including diabetes training, a substance-free lifestyle, psychological evaluations, and unsupervised visitations. Regular reviews were held beginning in January 2005. Respondent father attended diabetes education and demonstrated competence in all areas. Respondent father also learned meal planning and did the cooking. Respondent mother also attended but did not receive as high a rating. She was diagnosed with depression and attended counseling. While petitioner rated respondents' progress as poor, the court found that respondent father had learned what was necessary to address the child's medical condition.

Over the next several months, problems with respondents' compliance arose. Respondent father had trouble counting and administering carbohydrates to Ariana. He also had issues communicating with the foster parents. Petitioner found that respondents' home was dirty and needed costly repairs. A parent mentor worked with respondent father on housekeeping skills. At visitations, respondents did not follow the food plan and the child was over the carbohydrate limit. During one visit, her sugar level went dangerously low. Instead of immediately administering a "fix," a high carbohydrate food, respondent father called the foster parents and 23 minutes elapsed between the reading and the "fix."

During this time, Ariana also was attending counseling. Her psychological evaluation disclosed developmental delays and an expectation that she would be unable to responsibly manage her diabetes until her late teens. Ariana's counselor saw Ariana react to her parents with anger and felt that respondent father was passive, disconnected, and repeatedly falling asleep. Respondent mother had canceled the parent mentor and wanted to stop participating in family therapy. Respondents did not timely provide a plan for childcare for the times when respondent father would not be available. Respondents also failed to follow the advice of Dr. Gutai, a pediatric endocrinologist, that respondent mother should step back and allow respondent father to take the lead in Ariana's care. Further, the foster father heard respondent mother telling Ariana to lie, and respondent mother grabbed the child around the neck and pulled the child toward her in a gesture considered abusive by the therapist and CASA. Respondents also told Ariana that she would be coming home.

Visitations ceased when petitioner filed the termination petition. Initially Ariana was sad but then began improving. The therapist believed that a fundamental change in family dynamics was necessary before respondents could resume caring for Ariana. Respondent father had received extensive diabetes training at Hurley and DeVos medical centers as well as at Covenant Health Care. According to children's special health care nurse Linda Dann, who had worked with respondents, there were no other trainings or services available to improve respondents' ability to care for Ariana's diabetes. Ultimately, the court terminated respondents' parental rights in a lengthy opinion and order entered in February 2006.

On appeal, respondents first contend that the court erred when it assumed jurisdiction because the case did not fit the criteria of MCL 712A.2(b) which governs jurisdiction in juvenile proceedings. We reject this argument because respondents agreed to the court's jurisdiction and admitted that they were unable to safely control the child's diabetes without further training. Further, the trial court found that the child's home or environment was unsafe because of the parents' inability to deal with her medical condition.

Respondents next claim that termination of their parental rights to the minor child was clearly erroneous because they were not given a sufficient opportunity to improve. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 354-357; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). The record belies this contention. Respondents received numerous services, yet the weight of the evidence was that they failed to benefit sufficiently to safely care for Ariana. See *In re Gazella*, 264 Mich App 668, 675-677; 692 NW2d 708 (2005). There was no evidence that further services or programs could have been attempted. Our review of the record reveals that after more than a year, respondents still resisted advice of medical personnel and the therapist, and remained unable to safely care for Ariana. While respondents loved the child very much, they could not address her physical and emotional needs or provide proper care and custody. Termination of their parental rights under subsections (c)(i), (g), and (j) was not clearly erroneous.

Finally, respondents contend that termination was clearly contrary to the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. While Ariana was bonded with respondents, the evidence showed that they failed to overcome barriers to reunification and that uncertainty over Ariana's placement caused her distress. Respondents cannot provide a permanent, safe home where Ariana's medical needs can be adequately addressed and will be unable to do so within the foreseeable future. We find no clear error in the trial court's best interests decision.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio