

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BAILEY COLE HAMMETT,
Minor.

BAILEY COLE HAMMETT,

Appellant,

v

FAMILY INDEPENDENCE AGENCY,

Intervening Petitioner,

and

CASSIE HAMMETT,

Respondent-Appellee.

UNPUBLISHED
October 23, 2003

No. 245221
Ingham Circuit Court
Family Division
LC No. 01-050524-NA

Before: Donofrio, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Appellant appeals by delayed leave granted the trial court's order denying the petition to terminate the parental rights of respondent, his mother. We vacate and remand.

Appellant (DOB 8-30-01) was born addicted to cocaine. He was placed in foster care. Intervening petitioner filed an amended petition seeking termination of respondent's parental rights on the grounds that: she used cocaine during her pregnancy and had a longstanding addiction to cocaine, she had a history of involvement with protective services and had her parental rights to four other children terminated in 1998, and she failed to comply with a parent-agency agreement.

At the permanent custody hearing the parties stipulated that respondent's parental rights to four other children were terminated in 1998. A pediatric neurologist testified that appellant exhibited symptoms of brain damage caused by respondent's cocaine use during pregnancy, including spastic muscle tone, disturbed sleep, crying for no apparent reason, and impaired visual attentiveness. The physician opined that appellant's symptoms most likely were from exposure to cocaine, and stated that appellant would always need more care than would a child without such symptoms. A foster care worker acknowledged that respondent was enrolled in parenting

classes and visited appellant regularly; nevertheless, she recommended that respondent's parental rights be terminated because appellant continued to have serious medical problems that respondent was reluctant to acknowledge. Respondent's adult daughter testified that respondent maintained regular employment and no longer abused cocaine. Respondent acknowledged that she served a prison term and that she became addicted to cocaine in 1995. She admitted that she used cocaine while she was pregnant with appellant, but asserted that she had not used cocaine for nine months. Respondent stated that if she learned that appellant had actual medical problems she would do everything in her power to obtain needed treatment for him.

Initially, the trial court took the issue of whether to terminate respondent's parental rights under advisement, ordered the caseworker to prepare a program of drug screens and visitations, and scheduled a review hearing in three months. Appellant moved for reconsideration, arguing that the trial court erred or abused its discretion by failing to enter an order terminating respondent's parental rights. The trial court held a hearing and acknowledged that respondent had had her parental rights to four other children terminated, but questioned whether that fact mandated a conclusion that she could never parent another child. The trial court answered that question in the negative, and concluded that in this case termination of her parental rights would not be in appellant's best interests. The trial court denied the petition to terminate respondent's parental rights, and ordered a continued program of supervision.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the trial court's findings of fact for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *Jackson, supra*. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order the termination of parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). MCL 712A.19b(5) does not impose a burden of production on the party opposing termination. The trial court may consider evidence introduced by any party in determining whether termination is clearly not in the child's best interests. *Trejo, supra*. The trial court's opportunity to find that termination is clearly not in the child's best interests is primarily for the benefit of the child. *Id.*, 356. We review the trial court's decision regarding the child's best interests for clear error. *Id.*, 356-357.

We vacate the trial court's order denying the petition to terminate respondent's parental rights. The undisputed evidence showed that respondent's parental rights to four other children were terminated in 1998 due in large part to her longstanding abuse of cocaine, and that respondent continued to abuse cocaine after her parental rights were terminated. The trial court observed that respondent's parental rights to other children were terminated and thus acknowledged, at least implicitly, that clear and convincing evidence existed to terminate respondent's parental rights under MCL 712A.19b(3)(i). Because intervening petitioner established a statutory ground for termination by clear and convincing evidence, the trial court was required to terminate respondent's parental rights unless it found that termination was clearly not in appellant's best interests. MCL 712A.19b(5).

The evidence showed that appellant suffered neurological damage due to respondent's ingestion of cocaine during pregnancy, and that his resulting physical problems were serious, likely permanent, and would always require extraordinary care. At the time of the permanent custody hearing respondent had not used cocaine for nine months; however, her past efforts at addressing her substance abuse problem had proved unsuccessful. Respondent maintained that she would endeavor to obtain needed treatment for appellant if she became convinced that he had serious problems, but the evidence showed that she doubted that his difficulties were in fact serious. On the other hand, the evidence showed that appellant's foster mother appreciated the extent of his physical problems and was committed to addressing those problems. The evidence showed that appellant had virtually no bond with respondent, but was attached to his foster mother. Respondent did not have full-time employment or health insurance, and did not have independent housing.

The trial court was entitled to consider evidence regarding respondent's efforts to address her substance abuse problem and to improve her circumstances. *Trejo, supra*, 353-354. However, while it is appropriate for the trial court to consider respondent's rehabilitative efforts to understand the parental environment, the focus of attention must remain in the context of the child's best interests from the child's perspective. Therefore, we vacate the trial court's order and remand for a determination under the appropriate standard enunciated in *In re Trejo, supra*, 462 Mich 353-354 where the focus of the inquiry shall be whether termination is clearly not in the child's best interests regardless of the mother's interests.

Vacated and remanded.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Peter D. O'Connell