

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAN THOMAS WASHINGTON,
JR., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ARRLISHIA APRIL LANE,

Respondent,

and

DAN THOMAS WASHINGTON, SR.,

Respondent-Appellant.

UNPUBLISHED

February 8, 2005

No. 256250

Wayne Circuit Court

Family Division

LC No. 02-410922

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Respondent-appellant Dan Thomas Washington, Sr. (hereinafter “respondent”) appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first contends that the trial court erred by finding that statutory grounds for termination were proven by clear and convincing evidence. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). This Court reviews for clear error a trial court’s decision that clear and convincing evidence supported a statutory ground for termination of parental rights.

¹ The circuit court also terminated the parental rights of the child’s mother, respondent Arrlishia April Lane, but she has not appealed that decision and is not a party to this appeal.

MCR 3.977(J); *Trejo, supra* at 356-357. A trial court's factual findings are clearly erroneous if, although some evidence exists to support the findings, a reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

The first statutory basis for termination upon which the trial court relied is MCL 712A.19b(3)(c)(i). This provision authorizes termination of parental rights if 182 days have elapsed since the trial court issued an initial dispositional order, and "[t]he 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." The trial court did not clearly err in finding that petitioner satisfied this statutory basis for termination by clear and convincing evidence.

A number of factors led to the termination of respondent's parental rights, including the fact that respondent lacked proper housing for himself or his child, his visits with the child were sporadic, he abused drugs and alcohol, and he did not take medication or visit his psychiatrist regularly to treat his depression. At the adjudication hearing on October 1, 2002, respondent stated that he lacked legal means of supporting the child and that he had lived with various relatives and had no permanent address. He also indicated that he was seeking employment and wished to care for the child. At the termination hearing in April 2004, respondent admitted that he still lacked appropriate housing.

Respondent was also required to submit to random drug testing as part of his treatment plan. Of the nine drug screens submitted, most tested positive for either alcohol or marijuana, including the most recent screen. Only two drug screens were negative. Thus, by the time of the termination hearing, respondent still was unable to remain drug and alcohol free, as his treatment plan required. In addition, although respondent admitted that he had been hospitalized for mental health problems at least fifteen times, he did not follow through with his mental health treatment. The foster care worker did not receive any documentation in 2004 indicating that respondent was taking his medication regularly, and respondent failed to maintain regular contact with the agency handling his mental health treatment. Furthermore, out of eighteen possible visits, respondent visited the child only eight times. On some occasions, respondent simply did not show up for visits and failed to cancel them.

The evidence showed that the conditions that led to the adjudication continued to exist. Although respondent had successfully completed parenting classes, other conditions involving his lack of housing, drug and alcohol use, and failure to follow through with his mental health treatment had not been rectified. There was no evidence that these conditions would be rectified within a reasonable time, considering the child's age. Thus, the trial court did not clearly err by finding that petitioner satisfied the statutory ground for termination under MCL 712A.19b(3)(c)(i), by clear and convincing evidence.

The trial court also relied on MCL 712A.19b(3)(g), which authorizes termination if "[t]he 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." For the same reasons as stated above, the trial court did not clearly err by finding that petitioner presented clear and convincing evidence to satisfy this statutory basis for termination. At the time of the termination hearing, respondent

was unable to provide proper care or custody for his child, and there was no reasonable expectation that he would be able to do so within a reasonable time, considering the child's age.

The trial court further relied on MCL 712A.19b(3)(j), which authorizes termination if “[t]here 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.” The trial court did not err by finding that petitioner presented clear and convincing evidence to satisfy this statutory basis for termination. Respondent did not have a home at the time of the termination hearing and was temporarily living with his niece. Respondent indicated that his current housing situation was not suitable for his child. Thus, the trial court did not clearly err in finding that there was a reasonable likelihood of harm if the child was returned to respondent’s home.

Respondent also argues that the trial court erred in determining that termination of his parental rights was in the child’s best interests. Once the petitioner presents clear and convincing evidence of at least one statutory basis for termination, the trial court must issue an order terminating parental rights unless there exists clear evidence that termination is not in the child’s best interests. MCL 712A.19b(5); *Trejo, supra* at 355-356. This Court reviews a trial court’s decision terminating parental rights for clear error. *Id.* at 356.

Respondent contends that the trial court clearly erred by terminating his parental rights because public policy favors keeping children with their natural parents and because, if given time, he would be able to properly plan and care for his child. We cannot conclude that the trial court clearly erred in terminating respondent’s parental rights considering his lack of progress while the child was in care. Thus, we cannot conclude that terminating respondent’s parental rights was contrary to the child’s best interests.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper