

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SIDDNEKA MITCHELL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TONY D. STREETS,

Respondent-Appellant,

and

ANNETTE STREETS,

Respondent.

UNPUBLISHED
February 15, 2005

No. 255761
Kent Circuit Court
Family Division
LC No. 01-062100-NA

In the Matter of SIDDNEKA MITCHELL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANNETTE JONES STREETS,

Respondent-Appellant,

and

TONY D. STREETS,

Respondent.

No. 256816
Kent Circuit Court
Family Division
LC No. 01-062100-NA

Before: Smolenski, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(i) and (l). We affirm.

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Although only respondent-mother addressed this issue on appeal, the evidence clearly showed that both respondents' parental rights to Siddneka's half-siblings had been terminated in an order entered three months prior to Siddneka's birth. The evidence also clearly showed that attempts to rehabilitate respondent-mother in that prior termination case had been unsuccessful and that respondent-mother eluded protective services after Siddneka's birth and refused to comply with additional services. Additionally, the evidence showed that respondent-father remained incarcerated and was unable to participate in services through the agency.

Respondent-mother argues that her constitutional right to due process was violated by the trial court's judicial notice of the social and legal files in her prior termination case for several reasons. First, because she had appealed the prior termination order, the facts in that case were still contested and not subject to judicial notice until this Court decided that case.¹ Only facts not reasonably in dispute may be subject to judicial notice. MRE 201(b). Second, the current termination was requested at the initial disposition in which legally admissible evidence was required for termination under MCR 3.977(E)(3). The social and legal files in the prior proceeding contained all relevant and material evidence, acceptable under the evidentiary standard at that termination hearing under MCR 3.977(G)(2), which included both legally admissible and inadmissible evidence. Lastly, she argues that the trial court should not have admitted testimony by caseworkers regarding the facts in the prior proceeding.

A de novo review of the evidence relied upon by the trial court in this case showed that the social and legal files of the prior termination proceeding, which included notes the trial court had taken, contained legally admissible evidence sufficient to establish the grounds for termination in the prior proceeding. Respondents' psychological evaluations and the agency's Updated Service Plans were legally admitted in the prior proceeding and supported by testimony presented by the caseworkers and therapists of facts personally known to them. In the present case, the trial court appropriately considered the legally admissible evidence elicited in the prior proceeding and properly admitted testimony in the current proceeding regarding facts in the prior proceeding. Child protective proceedings are considered one continuous proceeding, and the trial court is expected to take into consideration all relevant facts, including exhibits and

¹ This Court affirmed the decision of the trial court terminating her parental rights to Siddneka's half-siblings under MCL 712A.19b(3)(c)(i), (g), and (j) in *In re Merriweather*, unpublished memorandum opinion of the Court of Appeals, issued April 22, 2004 (Docket No. 250206).

testimony elicited during prior hearings. *In re King*, 186 Mich App 458, 465; 465 NW2d 1 (1990); *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). Therefore, the trial court did not abuse its discretion in this case by considering evidence admitted in the prior proceedings.

With regard to the effect of respondent-mother's appeal of the prior termination order, all of the facts in the prior proceeding were well known to the trial judge, who presided over both the prior and current termination proceedings. Likewise, the trial judge was aware that respondents' parental rights to Siddneka's half-siblings had been terminated because the judge entered that order as well. Child protective proceedings are very fact-intensive, and the multitude of facts established in the prior proceeding did not remain contested merely because respondent-mother appealed the trial court's termination order. The question on appeal was whether those undisputed facts were sufficient to warrant termination. The effect of the facts, not the facts themselves, was contested on appeal, and therefore the facts of the prior proceeding were subject to judicial notice.

Further, the evidence did not show that termination of respondents' parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence showed that respondent-father could not be Siddneka's biological father. He had never lived with Siddneka because he had been incarcerated all of her life and there was no parent-child bond between them. With regard to respondent-mother, a parent-child bond was presumed because she cared for Siddneka for the first four months of the child's life. However, respondent-mother was not able to suitably parent Siddneka and was unlikely to become able to do so because she refused services. The doctrine of anticipatory neglect indicated that Siddneka would be subject to the same instability and neglect that her older half-siblings experienced if parental rights were not terminated. *In re Powers*, 208 Mich App 582, 588, 592-593; 528 NW2d 799 (1995); *In re LaFlure*, *supra* at 392.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad