

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PARYONA GENENICE
BROOKS and TENACIA MONIQUE BARNES,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
June 14, 2005

v

PHYLLIS BARNES, a/k/a PHYLISS MARIE
BARNES,

No. 256173
Wayne Circuit Court
Family Division
LC No. 00-389307

Respondent-Appellant,

and

EUGENE BROOKS,

Respondent.

Before: Talbot, P.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(g), (i), and (j). We affirm.

This appeal concerns Paryona Genenice Brooks and Tenacia Monique Barnes, the youngest two of respondent's five children.¹ This matter came to the attention of the Family

¹ Respondent's brief on appeal states that the appeal concerns the trial court's termination of her parental rights to all five of her children. However, this appeal is limited to Paryona and Tenacia. The trial court terminated respondent's rights to Paryona and Tenacia on May 28, 2004. Respondent filed her claim of appeal concerning this decision on June 15, 2004. It was not until August 2, 2004, that the trial court terminated respondent's rights to the older children (Paris Marie Lyons, Laday Eugene Laycell Brooks, and LaDaysha May Brooks). Counsel for respondent indicated in a telephone conversation with the clerk's office that she would file a separate claim of appeal regarding the older children.

Independence Agency² when an older sibling of the children was born testing positive for cocaine in May 2000. At this time, respondent admitted that another sibling of the children, born in June 1999, was also cocaine-positive at birth. Respondent stated that she had been using cocaine for the last nine or ten years. In 2001, while pregnant with Paryona, respondent was stopped for driving while impaired and tested positive for cocaine. Tenacia tested positive for cocaine when she was born in October 2003. Respondent's parental rights to the two children were terminated on May 28, 2004.

Respondent first argues that the trial court erred by denying her motion to reopen proofs after the close of the termination trial. Respondent was absent from the trial, but appeared before the court with her attorney on the day a decision was to be issued and sought to reopen proofs so that she could present her own testimony, the testimony of her therapist, and documentary evidence of her progress regarding her drug addiction. A decision on a motion to reopen proofs is reviewed for an abuse of discretion. *Bonner v Ames*, 356 Mich 537, 541; 97 NW2d 87 (1959); *People v Collier*, 168 Mich App 687, 694; 425 NW2d 118 (1988). "Relevant in ruling on a motion to reopen proofs is whether any undue advantage would be taken by the moving party and whether there is any showing of surprise or prejudice to the nonmoving party." *Id.* at 694-695. Other relevant factors include whether newly discovered material evidence is sought to be admitted and the timing of the motion during the trial. *People v Moore*, 164 Mich App 378, 383; 417 NW2d 508 (1988), mod and remanded on other grounds, 433 Mich 851 (1989).

Here, it does not appear that the additional evidence respondent sought to present would cause surprise or unfair prejudice or would provide unfair advantage for respondent. However, other compelling reasons justified the trial court's decision to deny the motion to reopen proofs. Respondent has not contended that she lacked notice of the termination trial, yet she failed to appear without explanation or excuse. Furthermore, respondent's motion to reopen proofs did not seek to present newly discovered evidence or evidence that could not have been presented earlier through no fault of respondent, but in effect sought to extend the time in which she might be allowed to address the barriers to reunification. Contrast *Collier, supra* at 694-697 (where the trial court abused its discretion for refusing to reopen proofs for testimony of a late-arriving defense witness). This case has a lengthy history predating the birth of both Paryona and Tenacia, in which respondent repeatedly underwent drug treatment, yet failed to provide consistent drug screens and provided several positive screens, along with numerous diluted ones. Additionally, more than three years after the court's assumption of jurisdiction over respondent's older children, respondent gave birth to Tenacia, who was respondent's third child to test positive for cocaine. Given these factors, we conclude that the trial court was within its discretion in concluding that some temporal cutoff must apply, and that respondent's motion to reopen proofs to present evidence of her recent progress should be denied.

Next, respondent contends that the trial court clearly erred in finding that there was clear and convincing evidence to show that there was a statutory ground for termination. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for

² The Family Independence Agency has since been renamed Department of Human Services under Executive Order 2004-38.

termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999). The trial court's decision regarding termination is reviewed for clear error. *Id.* at 451.

Respondent argues that there was not clear and convincing evidence to show statutory grounds for termination because she was denied her due process rights by the trial court's denial of her motion to reopen proofs to present her testimony, the testimony of her therapist, and exhibits and documentation in support of her case. Respondent's argument that her due process rights were violated is cursory and consists of one sentence.³ Respondent does not support her argument that there was not clear and convincing evidence to show statutory grounds for termination with any facts, and her argument merely consists of the definition of "clear and convincing." Because of the cursory nature of respondent's argument, we deem this issue abandoned on appeal. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995).

In any case, we conclude that the trial court did not clearly err by finding that a statutory ground for termination was established by clear and convincing evidence. In order to terminate parental rights, the trial court need only find, by clear and convincing evidence, that one of the statutory grounds for termination exists. MCL 712A.19b(3). One of the statutory grounds for termination found by the trial court was MCL 712A.19b(3)(g), which provides:

The 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.

Here, the evidence clearly indicates that respondent had been using cocaine for years, and that two of the children's older siblings were born with cocaine in their systems. Respondent used cocaine while pregnant with Paryona and after her birth. When Tenacia was born, she also tested positive for cocaine. That Tenacia had cocaine in her system at birth is strong evidence of neglect. *In re Gentry*, 142 Mich App 701, 708; 369 NW2d 889 (1985). That three of five of respondent's children tested positive for cocaine at birth shows that respondent has consistently placed her drug addiction before the welfare of her children. Respondent's failure to comply with her treatment plan supplies further evidence of her failure to provide proper care and custody. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Respondent has demonstrated only intermittent abstinence from cocaine and, since Tenacia's birth, she has made little to no progress in complying with her parent-agency agreement. The trial court did not clearly err in concluding that respondent failed to provide proper care and custody for the children, and that there was no reasonable expectation that respondent would be able to provide proper care and custody for the children within a reasonable time considering their ages, MCL 712A.19b(3)(g).

³ In any case, respondent was not denied the opportunity to present evidence, as she does not contend that she was not properly notified of the termination hearing; it was respondent who chose to absent herself from the hearing.

Next, respondent argues that termination of her parental rights was clearly not in the best interests of the children.

If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests. [MCL 712A.19b(5).]

Respondent argues that termination of her parental rights was clearly not in the best interests of the children because she was not allowed to present evidence in support of her case. As discussed, the trial court did not abuse its discretion in refusing to reopen proofs. Respondent-petitioner offers no other reason why the termination of her parental rights is clearly not in the children's best interests, other than the statement in her brief on appeal that "she had always been unwavering in her attempts to continue in her recovery efforts so that she could provide a safe home for her children." Respondent has abandoned this argument by insufficiently briefing it on appeal. *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 251-252; 673 NW2d 805 (2003).

In any case, we conclude that the trial court did not clearly err in finding that the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. Tenacia, approximately seven months old at the time of termination, had been in foster care since birth. Paryona, approximately 2½ years old at the time of termination, had also been out of respondent's care for seven months. Respondent failed to successfully address her cocaine addiction over the four-year pendency of this case. Respondent does not point to any evidence supporting her argument that termination was clearly not in the children's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ Brian K. Zahra
/s/ Pat M. Donofrio