

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM NELSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA CURTIS,

Respondent-Appellant,

and

WILLIAM NELSON,

Respondent.

UNPUBLISHED
September 29, 2005

No. 260533
Branch Circuit Court
Family Division
LC No. 03-002726-NA

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Respondent Melissa Curtis appeals from the circuit court's order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(ii), and (g).¹ We affirm.

Respondent contends that the trial court erred by finding that § 19b(3)(a)(ii) was 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 BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2002). This Court reviews for clear error a trial court's decision that clear and convincing evidence supported a statutory ground for termination. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's factual findings are

¹ The circuit court also terminated the parental rights of the child's putative father, respondent William Nelson, but he has not appealed that decision and is not a party to this appeal.

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, giving due regard to a trial court's special opportunity to observe witnesses. *In re BZ*, *supra* at 296; *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

With respect to § 19b(3)(a)(ii), respondent contends that although her visitation was suspended, she did not desert the child for ninety-one or more days because she was in substance abuse treatment and attended the April 13, 2004, review hearing. Respondent's visitation was suspended in February 2004. Thereafter, she made some effort to comply with the parent-agency agreement and attended the April 13, 2004, review hearing. She also attempted to complete inpatient substance abuse treatment in March and April 2004, although she was asked to leave the program one day early. Thus, we cannot conclude that petitioner proved by clear and convincing evidence that respondent deserted the child for a period of ninety-one or more days without seeking custody of the child during that period. Any error with respect to § 19b(3)(a)(ii) is harmless, however, because petitioner presented clear and convincing evidence to support termination under §§ 19b(3)(c)(ii) and (g), and only one statutory basis is necessary to support termination. *In re BZ*, *supra* at 296; *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

The trial court properly concluded that petitioner presented clear and convincing evidence supporting termination under §§ 19b(3)(c)(ii) and (g). Respondent had no home of her own, no income or means of supporting the child, and a serious substance abuse problem involving both illegal and prescription drugs. She received recommendations to rectify these conditions, but failed to do so. After she was released from prison, she resided at three different locations. At the time of the termination hearing, she was living with her father, who she characterized as an alcoholic at the preliminary hearing. Despite her testimony at the preliminary hearing, at the termination hearing respondent denied telling her FIA caseworker that her father is an alcoholic and claimed that her father is a positive role model to her and would be a positive influence on the child. In addition, from the time that the child was removed from respondent's care until the termination hearing, respondent's only employment was at a gas station during February and March 2004. Respondent also continued to struggle with her substance abuse problem. She returned to Battle Creek and began using drugs immediately after her release from prison. After spending a few days at a homeless shelter, she asked a friend to pick her up because she had nowhere else to go. She also continued to have problems with prescription medications.

Further, no reasonable likelihood existed that the conditions would be rectified within a reasonable time considering the child's age, and no reasonable expectation exists that respondent will be able to provide proper care and custody within a reasonable time considering the child's age. Nothing in the record indicates that respondent has had any success overcoming her substance abuse problems. To the contrary, the record discloses that respondent has repeatedly failed to overcome her drug dependency and is still struggling with addiction. Her drug problems have resulted in charges being brought against her for OUIL and retail fraud. In addition, her work history shows that she is either unwilling or unable to hold a job. As a condition of her release from prison, she is required to find employment and start paying child support. Given her work history, however, it is likely that she will continue to have problems paying child support and, may again, be incarcerated. Thus, the record is devoid of any

indication that respondent's situation will soon improve or that she will soon be able to provide proper care and custody for her son.

Once petitioner presented clear and convincing evidence in support of at least one basis for termination, the trial court was required to terminate respondent's parental rights unless there existed clear evidence that termination was not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 354; *In re CR, supra* at 195. Respondent argues that because the child would need to be moved from his foster care placement to an adoptive placement, termination of her parental rights is not in the child best interests because he could be moved from the foster care placement back into her care. Given respondent's lack of ability to care for her son, however, the trial court did not clearly err in terminating respondent's parental rights. Respondent was unemployed, did not have her own residence, lived with her father who she previously admitted is an alcoholic, and continued to be plagued with drug addiction and had made no progress toward a drug-free life. Because no reasonable likelihood existed that respondent would improve her situation and overcome her drug dependency, the trial court did not clearly err in terminating her parental rights.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey