

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JORDAN ASHLEY MILLER and
DA'SHAYLA LYNN MILLER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CLINIQUE MILLER,

Respondent-Appellant.

UNPUBLISHED

February 7, 2008

No. 278696

Genesee Circuit Court

Family Division

LC No. 04-118627-NA

Before: Saad, C.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Respondent appeals as of right from the circuit court's order terminating her parental rights pursuant to MCL 712A.19b(3)(c)(i) [the conditions leading to the adjudication continue to exist with no reasonable likelihood of rectification within a reasonable time given the children's ages], (c)(ii) [the parent received recommendations to rectify other conditions and had a reasonable opportunity to do so, but failed to rectify the other conditions], (g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that she might do so within a reasonable time given the children's ages], and (j) [a reasonable likelihood exists, based on the parent's conduct or capacity, that the children will suffer harm if returned to the parent's home]. We affirm.

I. Facts and Proceedings

In November 2003, Children's Protective Services (CPS) received a complaint that respondent's boyfriend had slapped Jordan, and that respondent failed to provide proper care for her children, who had sickle cell anemia. One of the children also had severe asthma. CPS initiated an investigation, and determined that respondent suffered from mental illness, but frequently failed to take her prescribed medications. Respondent signed a parent-agency agreement requiring her to maintain a clean and stable home, attend AA meetings and parenting classes, and participate in weekly counseling sessions.

CPS provided respondent with several parenting assistance services, but a CPS worker concluded that she failed to comply with the attendance requirements of some, and failed to

benefit from others. On September 9, 2004, the Department of Human Services (DHS) filed a petition requesting that the circuit court exercise temporary jurisdiction over the children. The petition alleged that respondent lacked the ability to care for her chronically ill daughters, had not benefited from parenting instruction, had a history of mental illness and medication noncompliance, and lived in “deplorable” conditions. After a preliminary hearing, the circuit court authorized the petition, took temporary custody of the children, and referred them to the DHS for placement. The circuit court determined that respondent could not maintain her home, had mental health problems, neglected to take her prescribed medications, and lacked parenting skills. It ordered respondent to participate in AA, attend parenting classes, and obtain counseling.

At an adjudication hearing conducted on October 12, 2004, respondent admitted that she suffered from mental health problems and required medication. The circuit court concluded that sufficient evidence supported its exercise of jurisdiction, and ordered respondent to comply with a parent-agency agreement. The court also ordered that the maternal grandmother “is to not have visits with the children at this time.”

After dispositional hearings in January and April 2005, the circuit court continued the children as temporary court wards. At both hearings, the circuit court determined that respondent lacked a legal source of income and appropriate housing. At a review hearing held in July 2005, the circuit court found that respondent still lacked employment and suitable housing, and could not control the children during visits. The court concluded that the children remained at substantial risk of harm if returned to respondent’s custody.

At a permanency planning hearing on September 7, 2005, the court again found that respondent lacked housing and employment, ordered that the children remain in care, and authorized petitioner to file a termination petition. A supplemental petition, filed in December 2005, alleged that respondent had derived little if any benefit from the services offered, behaved inappropriately when visiting her children, and could not properly care for her children because of her mental disorders. The DHS filed a second supplemental petition in January 2006, setting forth additional concerns regarding respondent’s parenting ability, and requesting suspension of her parenting time. The circuit court authorized the petition and suspended visitation pending the termination hearing.

Meanwhile, the children’s maternal grandmother filed a request for consideration as a custodial placement, and the circuit court adjourned the termination trial so that the DHS could conduct a home study. In the interim, the court granted the grandmother extended parenting time. In July 2006, however, the DHS moved to suspend visitation with the grandmother, alleging that both children had bruising on their arms and legs after an overnight visit with her. At a hearing conducted in August 2006, a CPS investigator advised the court that the children reported having been “whip[ped]” by their grandmother, and both expressed a preference to live with their foster parent. The court ordered supervised parenting time with the grandmother.

The termination hearing commenced on December 21, 2006. A DHS worker testified that respondent failed to adequately comply with the parent-agency agreement, which included attendance at therapy intended to address her mental and emotional health needs. Additionally, the worker stated that after the filing of the initial petition, respondent failed to verify any employment other than braiding hair, and did not obtain suitable housing. He opined that

respondent failed to benefit from parenting classes, could not control the children during visits, and was unable and unwilling to address their medical needs. The worker concluded that the conditions that led to the initial adjudication continued to exist, with no reasonable likelihood of remediation.

A psychologist testified that if respondent failed to properly attend to her mental health treatment needs, her deficiencies would “significantly interfere with her parenting.” A different psychologist testified that the children bonded well with their foster parent, and opined that due to the children’s young ages, termination of respondent’s parental rights would not contravene their best interests.

Respondent did not testify. Her mother and sister, who shared a home, testified that they felt able and willing to have custody of the children.

The circuit court concluded that clear and convincing evidence supported the termination of respondent’s parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g) and (j). The court also found that termination of respondent’s parental rights was “certainly” in the children’s best interests.

II. Issues Presented and Analysis

Respondent first contends that insufficient evidence supported the circuit court’s reliance on subsections (c)(i), (c)(ii), (g) and (j). This Court reviews for clear error a circuit court’s finding that a ground for termination has been established by clear and convincing evidence “and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (internal quotation omitted); see also MCR 3.977(J). Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

The conditions leading to the children’s adjudication as temporary court wards involved respondent’s inability to care for them due to her mental and emotional disorders, her noncompliance with therapy, her failure to take prescribed medications, and the “deplorable” condition of her home. The record clearly and convincingly establishes that these conditions continued to exist at the time of the termination hearing. Furthermore, respondent’s failures to progress toward achieving multiple elements of her treatment plan, despite having been afforded various services over the course of more than two years, clearly and convincingly demonstrates the unlikelihood that she could remedy her parenting deficiencies within a reasonable time given the children’s young ages. Although respondent contends on appeal that she was “beginning to get the appropriate medical care for her mental condition,” ample evidence establishes that due to nonparticipation by respondent, she did not achieve the objectives of the multitude of services offered, and continued to lack the skills necessary to properly parent her daughters. Consequently, the circuit court properly invoked subsection (c)(i) as a basis for termination.

On the basis of the same clear and convincing evidence discussed above, the circuit court properly terminated respondent’s parental rights pursuant to subsection (g), correctly concluding that she failed to provide proper care and custody for her children, and that no reasonable expectation existed she could do so within a reasonable time, considering their young ages.

At the time of the termination hearing, respondent lacked suitable housing and the financial means to care for her daughters. Her children continued to require medical care for their sickle cell anemia and Da'Shayla's asthma. This evidence, in combination with the proofs establishing the unlikelihood of timely rectifying the conditions leading to the adjudication, equally demonstrates the reasonable likelihood that the children would suffer harm if returned to respondent's care, as contemplated by subsection (j).¹

Although respondent argues that the circuit court should have placed the children with their grandmother and aunt as an alternative to terminating her parental rights, once a statutory ground for termination is established by clear and convincing evidence, the inquiry is not whether the children have a bond with respondent or with particular relatives, but whether termination is "clearly not" in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). The relevant evidence, concerning respondent's lack of progress, the children's young ages, and the lengthy period they had resided in foster care, did not clearly show that termination of respondent's parental rights would contravene the children's best interests. And contrary to respondent's argument, in the context of ascertaining the children's best interests, the circuit court committed no error by noting the evidence of the children's significant bond to their foster mother. *In re Hamlet (After Remand)*, 225 Mich App 505, 520; 571 NW2d 750 (1997), overruled in part on other grounds in *In re Trejo, supra* at 353-354. Therefore, the circuit court did not err in terminating respondent's parental rights to the children. *In re Trejo, supra* at 356.

Affirmed.

/s/ Henry William Saad
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher

¹ Because the circuit court properly terminated respondent's parental rights pursuant to subsections (c)(i), (g) and (j), the existence of any one of which warrants termination, we need not specifically consider whether the court erred to the extent it relied on subsection (c)(ii).