

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DE'CARDIEA WESLEY
SULLIVAN, CHINIYA MONAY SULLIVAN,
and DEPOLO DESEAN DERON HARRIS,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CARNEITHA SULLIVAN,

Respondent-Appellant,

and

WESLEY YOUNG, HENRY JACKSON, and
ALVIN HARRIS,

Respondents.

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

PER CURIAM.

Respondent Carneitha Sullivan appeals by right the family court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination were proven by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). These children and their sibling, DeMarion Sullivan, were originally brought to the court's attention when De'Cardiea suffered a skull fracture in September 2006. Because of the severity of his injury and respondent's failure to adequately explain it, the agency sought immediate termination of respondent's parental rights. But the testimony at trial did not provide clear and convincing evidence to support termination. The doctor opined that respondent's explanation for what occurred did not match the child's injury. Respondent had explained that De'Cardiea had pulled a toy onto himself while he was in his playpen, but the doctor believed that if things had occurred the way respondent explained, the fracture would

have been to the front of the child's head, not the back. Yet there was no evidence of any other physical injury to the child, and respondent had brought the child promptly to the hospital following the injury. The doctor also admitted that she was not sure whether respondent said she saw what happened or whether respondent was simply offering a possible explanation. In light of the evidence, the trial court asserted only temporary jurisdiction over the children.

The original disposition hearing occurred in May 2007, at which time respondent was ordered to complete parenting classes, visit the children, and obtain suitable housing. Respondent had already been advised that the home where she lived on Van Dyke was unsafe and in dire need of repair. The children were originally placed with their maternal grandmother. Visits first took place at the agency, but the worker decided to allow the grandmother to supervise the visits outside of the agency so long as they did not occur at respondent's home on Van Dyke. Respondent made progress, completing parenting classes and also finding a suitable home. The agency had just completed emergency funding requests for the new home on Garland when there was a fire in the house on Van Dyke. Both DeMarion and De'Cardiea were injured in the fire, and DeMarion ultimately died from his injuries. Up until that time, reunification seemed imminent. The trial court acknowledged that respondent was not personally responsible for the fire itself but "[w]hat troubles me is the fact that it was made clear to her that the children should not be in that home in the first place." The trial court also acknowledged that respondent had made efforts to complete her treatment plan and shared a bond with the children. Still, the trial court believed that the children would be safer out of respondent's care.

The record supports the trial court's findings. Foster care worker Leola Taylor testified that she admonished respondent on numerous occasions that the home on Van Dyke was not safe for the children. In fact, housing was the only barrier to reunification. Still, respondent and her mother defied the trial court's order: The grandmother allowed the children to stay overnight at respondent's home for the holiday. Respondent makes much of the fact that none of the structural issues with the home caused or exacerbated the fire. But respondent misses the larger point that she was acting in defiance of the agency's instruction and the trial court's orders. The children should not have been in the house at all, and respondent admitted that she knew this. Her failure to heed the agency's instructions was proof that she was not able to provide for her children's safety. De'Cardiea suffered a skull fracture while in respondent's care. DeMarion died in a house fire while in respondent's care. Therefore, the conditions leading to adjudication -- respondent's failure to keep the children safe from injury -- continued to exist without any likelihood that the condition would be rectified within a reasonable amount of time. In addition, respondent was unable to provide proper care or custody for the children, and there was a reasonable likelihood that the children would be harmed if returned to her care.

Having found the statutory grounds for termination proven by clear and convincing evidence, the trial court was obligated to terminate respondent's parental rights unless it clearly was not in the children's best interests to do so. MCL 712A.19b(5). Before the house fire, respondent visited the children regularly. Taylor admitted that the visits went well, that the children looked forward to the visits, and that it was clear that respondent and the children shared a bond. But after the house fire, respondent essentially lost contact with Taylor and the children. Respondent admitted that she did not get along with her sister, with whom the children were placed after the fire. She had very limited contact with the children from the date of DeMarion's

funeral in December 2007 until the termination petition was filed in May 2008. Taylor was not even sure where respondent was living. Respondent had completed parenting classes, but she could not offer testimony about how she expected to keep the children safe. Even if respondent and the children were close, respondent failed to show that she could provide a safe environment for them. Taylor testified that all of the children suffered greatly after their brother's death, but that they were in therapy and that their aunt was very attentive to their needs. They had been out of respondent's care since September 2006 and were entitled to permanence and stability.

We affirm.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jane E. Markey