

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RABECCA WELLS, DAVIS
WELLS, BRIAN WELLS, and TRAVIS WELLS,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAVID WELLS,

Respondent-Appellant,

and

SHANNON WELLS,

Respondent.

UNPUBLISHED
October 28, 2003

No. 247504
Genesee Circuit Court
Family Division
LC No. 01-113612-NA

In the Matter of RABECCA WELLS, DAVID
WELLS, BRIAN WELLS, and TRAVIS WELLS,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHANNON WELLS,

Respondent-Appellant,

and

DAVID WELLS,

No. 247962
Genesee Circuit Court
Family Division
LC No. 01-113612-NA

Respondent.

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondent David Wells appeals as of right and respondent Shannon Wells appeals by delayed leave granted the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm. This appeal is being decided without oral argument under MCR 7.214(E)(1)(b).

Respondent Shannon Wells challenges the sufficiency of the evidence establishing the statutory grounds for termination. We conclude that the trial court did not clearly err by finding that the grounds for termination were shown by clear and convincing evidence. MCR 5.974(I), now MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The principal condition that led to the adjudication was that respondents were living with the minor children in a two-bedroom trailer that housed four adults and seven children and had broken plumbing and a cracked sewer line. The electricity in respondents' trailer had been shut off several months earlier and then disconnected for illegal usage. At the time of the termination trial, respondents continued to lack adequate housing. The testimony indicated that they were living in a one-room motel unit with a kitchenette. Given this testimony, the trial court did not clearly err by concluding that the conditions of adjudication continued to exist.

The evidence also supported the trial court's conclusion that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children. Throughout the pendency of this case, respondents lacked suitable housing for the children. Furthermore, respondent Shannon Wells' conduct throughout the case indicates little likelihood of any essential change that would enable her to maintain stable housing. She showed a history of maintaining employment for only short periods of time. She did not show any benefit from parenting classes or from petitioner's advice concerning parenting behaviors. She did not follow through with counseling or with the recommended psychiatric evaluation and did not take the recommended money management classes. The evidence at trial offered no basis to conclude that she would obtain safe and suitable housing in the reasonable future.

On appeal, respondent cites evidence from the hearing on respondents' motions for rehearing that respondents had obtained a suitable two-bedroom apartment several days after the termination trial.¹ However, both respondents testified at the hearing that they did not have suitable housing at the time of the termination trial. The evidence before the court at the termination trial clearly established this statutory basis for termination, and the court was therefore required to terminate parental rights unless termination would be clearly contrary to the best interests of the children. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

¹ The record indicates that the apartment was never inspected for suitability.

Respondent further asserts that hearsay evidence was improperly admitted to show that the conditions of adjudication continued to exist. This issue was not preserved for appeal by objection in the lower court. MRE 103(a)(1); *In re Atkins*, 112 Mich App 528, 542; 316 NW2d 477 (1982). In any event, it fails on its merits because where, as here, jurisdiction is established by legally admissible evidence, the Michigan Rules of Evidence do not apply in subsequent termination proceedings if termination is sought on the same ground that led to the assumption of jurisdiction. *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000); *In re Snyder*, 223 Mich App 85, 89; 566 NW2d 18 (1997).

The termination of parental rights pursuant to MCL 712A.19b(3)(g) and (j) was also supported by clear and convincing evidence. The evidence that the four minor children were living in a two-bedroom trailer with broken plumbing that housed seven children and four adults, and that respondents' electricity had been shut off several months earlier, clearly established that respondent failed to provide proper care and custody for the minor children. There was also ample evidence at trial that respondent would not be able to provide proper care and custody in the reasonable future considering the ages of the children. The evidence indicated that respondent did not complete various aspects of the parent-agency agreement, including psychological counseling, a psychiatric examination, money management classes, maintaining employment, and furthering her education. A parent's failure to carry out the parent-agency agreement is evidence of the parent's failure to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Although respondent appears to argue that reasonable services were not provided, the evidence indicated that services were available in Genesee County, where the case originated, and it was respondents' choice to move to Macomb County.

Respondent's psychological testing showed that she is mildly or borderline retarded, and she scored below average on all four scales of understanding for good parenting. The psychologist concluded that the minor children were at risk for abuse or neglect because of respondent's intellectual limitations and her poor understanding of parenting. Respondent's failure to obtain the recommended psychological counseling and psychiatric review for possible medication suggests little likelihood that respondent's parenting skills will improve in the foreseeable future. The trial court did not clearly err by finding a reasonable likelihood, based on both the conduct and capacity of respondent, that the children would be harmed if returned to her care.

We also reject respondent's contention that the trial court clearly erred by concluding that termination was not clearly contrary to the best interests of the children. MCL 712A.19b(5). All of the children have done very well in foster care. In light of the psychological evidence that the children would be at risk for abuse in respondent's care, and where the testimony overwhelmingly indicated that respondent failed to make any meaningful change in her behavior, the trial court did not make a mistake by concluding that termination was not contrary to the best interests of the children.

Respondent David Wells claims error in the trial court's denial of his motion for rehearing. We review the trial court's decision to deny the motion for rehearing for an abuse of discretion. *In re Toler*, 193 Mich App 474, 478; 484 NW2d 672 (1992). A motion for rehearing will not be considered "unless it presents a matter not previously presented which, if true, would cause the court to reconsider its decision." *Id.*; MCR 5.992(A), now MCR 3.992(A). The

motion for rehearing in this matter did not present any new facts that would have warranted reconsideration of the decision to terminate parental rights. During the lengthy pendency of this case, respondents failed to establish that they had the wherewithal and stability to care for their children. The fact that respondents managed to marshal their resources and obtain allegedly suitable housing several days *after* the termination trial supplies no assurance whatever that respondents will be able to care for the children on an ongoing basis. Further, a review of the record indicates that the existence of suitable housing would not have altered the weight of the testimony establishing grounds for termination under statutory subsections (g) and (j). Because termination of parental rights need be based only one statutory ground, *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999), the trial court did not abuse its discretion in denying respondent's motion for rehearing.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello