

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 22, 2011

In the Matter of R. R. ROBBINS, Minor.

No. 299463
Wayne Circuit Court
Family Division
LC No. 04-437255

Before: K. F. KELLY, P.J., and BORRELLO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent D. I. Sanders appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), (i), (j), and (l). For the reasons set forth in this opinion, we affirm.

Respondent first came before the trial court in 2004 with allegations that her minor child was neglected for a variety of reasons. While that initial petition was pending, respondent gave birth to a second child. Immediately following the birth of her second child, another petition for temporary custody was filed. Eventually, respondent's parental rights to her two older children were terminated under MCL 712A.19b(3)(c)(i), (g), and (j) on January 28, 2008. This Court affirmed that decision in *In re Robbins*, unpublished opinion per curiam of the Court of Appeals, issued June 23, 2009 (Docket No. 284790), lv den 485 Mich 851 (2009), reh den 485 Mich 903 (2009).

This case involves the birth of a third child; the issues presented in the prior case are similar to those presented here. On June 30, 2009, respondent tendered a plea of admission to allegations in the petition in exchange for petitioner's agreement not to seek termination of her parental rights for six months. Following numerous hearings on the matter, the trial court found six statutory grounds to terminate both respondents' parental rights. Further, it found that termination was in the minor's best interests because neither parent showed much interest in the minor child.

On appeal, respondent argues that the trial court erred in finding that each of the six statutory grounds for termination were established by clear and convincing evidence. "The proofs supporting a court's termination decision must qualify at least as clear and convincing." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). We review the trial court's findings for clear error. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

First, the record clearly establishes that termination was appropriate under § 19b(3)(l). Under that subsection, it was only necessary that petitioner establish that respondent's parental rights to another child were previously terminated as result of proceedings under MCL 712A.2(b). Respondent does not dispute that her parental rights to two other children were previously terminated as a result of such proceedings.

Further, while only one statutory ground for termination is required, *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000), the trial court did not clearly err in finding that each of the five other statutory grounds for termination were established by clear and convincing evidence. Although § 19b(3)(i) differs from § 19b(3)(l) in that it requires that a prior termination of parental rights be "due to serious and chronic neglect or physical or sexual abuse," the evidence here clearly establishes the requisite "serious and chronic neglect." Contrary to what respondent argues, her parental rights to the child's two older siblings were not terminated on the basis of a single incident of medical neglect, but rather because of her ongoing failure to demonstrate an ability to provide proper medical and other care for her children, and her inability to provide a home environment free of domestic violence, despite the extensive services provided to her. The trial court did not clearly err in finding that § 19b(3)(i) was established by clear and convincing evidence.

The trial court also did not clearly err in finding that respondent deserted the child without seeking custody for the requisite 91-day period under § 19b(3)(a)(ii). The evidence that respondent did not visit the child between October 28, 2009, and February 17, 2010, stopped participating in services, informed the caseworker that she no longer wanted to work on her treatment plan, and failed to attend court hearings, supports the trial court's determination that § 19b(3)(a)(ii) was established. Cf. *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56 (1991).

In addition, contrary to respondent's argument on appeal, the trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist as required by § 19b(3)(c)(i). While there was no evidence that respondent actually neglected the child, such evidence was not required under the doctrine of anticipatory neglect. *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005). The conditions that led to the adjudication pursuant to respondent's plea of admission included the circumstances involving the prior termination of respondent's parental rights to the child's older siblings, respondent's mental health and domestic violence history, and respondent's lack of sufficient income to maintain appropriate housing. Although respondent acquired a legal source of income, she failed to demonstrate an ability to provide proper medical and other care for her child or to provide a home environment free of domestic violence. The evidence showed that respondent was terminated from her parenting classes and therapy sessions for lack of attendance, and that she stopped visiting the child. The trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist and were not reasonably likely to be rectified within a reasonable time considering the child's age. The same evidence also supports the trial court's findings with respect to §§ 19b(3)(g) and (j). Respondent's failure to work on her treatment plan, or to demonstrate that she benefited from services, showed that the child would be at risk of harm if placed in her home. *In re Gazella*, 264 Mich App at 676-677.

Lastly, respondent incorrectly asserts that the trial court's ultimate decision whether to terminate her parental rights was discretionary. Once a court finds that a statutory ground for termination has been established, it shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5); see also *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). Although the trial court's best interests decision is also reviewed for clear error, MCR 3.977(K); *In re JK*, 468 Mich at 209, respondent here does not present any challenge to the trial court's best interests decision, or otherwise address the child's best interests. Regardless, considering respondent's demonstrated lack of interest in the child and the child's special medical needs, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello
/s/ Amy Ronayne Krause