

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOHN CHARLES ALES, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANGELA PALMER,

Respondent-Appellant.

UNPUBLISHED
June 15, 2006

No. 266969
Huron Circuit Court
Family Division
LC No. 04-003462-NA

In the Matter of JOHN CHARLES ALES, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHN ALES,

Respondent-Appellant.

No. 267268
Huron Circuit Court
Family Division
LC No. 04-003462-NA

Before: Cooper, P.J., and Neff and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to their minor child pursuant to MCL 712A.19b(3)(c)(i) and (c)(ii). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for

termination by clear and convincing evidence, the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). In applying the clearly erroneous standard, the Court should recognize the special opportunity the trial court has to assess the credibility of the witness. MCR 2.613(C); *In re Miller*, 433 Mich 331,337; 445 NW2d 161 (1989).

The trial court did not err when it found the statutory grounds to terminate respondents' parental rights to be proven by clear and convincing evidence. The trial court took jurisdiction over the minor child because of respondent-mother's issues with marijuana abuse and respondent-father's failure to cooperate with services.

Respondent-mother was ordered to provide weekly drug screens and complete a substance abuse treatment program. Respondent-mother had a substance abuse evaluation and the recommendation was for her to participate in an inpatient treatment program. She did not complete a program although she made three different attempts and walked out each time. Drug screens were positive from May through June 2004. From June until November 2004, respondent-mother had only a few positive screens. She did not provide screens from November 2004 until April 2005 and screens were negative from May 6, 2005 to August 26, 2005. Respondent-mother did not see the minor child from November 2004 until May 19, 2005 because of her failure to provide drug screens. Her therapist testified as her advocate that she was doing well and that her parental rights should not be terminated. He suggested that the court set up a program to allow her to reach her goals during a period of six months to a year. What the therapist did not take into account was that respondent-mother had received services for two years and was unable to show the court that she had adequately addressed her marijuana abuse problem during that time period. For a year before the birth of this minor child, respondent-mother had been ordered by the trial court to address this issue when her two older children were taken into the temporary custody of the court. When the minor child was born, respondent-mother was obviously still using because the minor child tested positive for marijuana at birth. Respondent-mother only started to comply with the court's orders just before the permanency planning hearing regarding this child, almost a year after the child's birth. The trial court was obviously not convinced that respondent-mother had adequately addressed her marijuana use issue or that she would be able to do so within a reasonable time. The court did not clearly err in reaching this conclusion.

The trial court also did not err in finding that other conditions continued to exist at the time of the termination trial that respondent had failed to rectify and that she would be unable to do so within a reasonable time. In the course of the proceedings, it was determined that respondent-mother had anger issues,¹ and she was required to complete an anger management

¹ The Family Independence Agency (Huron County Circuit Court, Family Division) requested a psychological evaluation which was completed on August 4, 2004. The evaluating psychologist noted that Angela Palmer stated "I get pissy if I don't get my way," and admitted to slamming doors and yelling as means of dealing with anger. The psychologist concluded that she "feels entitled to get her way and feels justified in misbehavior if this doesn't happen," that "she is
(continued...)

program. She did finally start anger management just before the permanency planning hearing, although she had several referrals and intake appointments for which she did not show before this. Respondent-mother was required to pursue a job or a GED but did not do so and did not have a legal source of income.

Respondent-father did not initially comply with the court's orders to provide drug screens when it was determined that he lived with respondent-mother and her two older minor children had been removed from her care. It was standard policy that he participate in the agency requirements because he and respondent-mother were presenting themselves as a unit. Respondent-father did not comply with the requirements for drug testing and did not attend the court hearings in spite of receiving notice of the hearings. Respondent-father refused to acknowledge paternity of the minor child and required a DNA test to be done to establish his paternity. Respondent-father did not show any interest in the proceedings involving the minor child for the first six months of the minor child's life, although the trial court specifically informed him that the clock was ticking from the date the minor child was taken into care when he was just a couple of days old. Respondent-father tested positive for marijuana when he first began drug testing and claimed this was as the result of the prescribed drug, marinol. His physician told the caseworker that respondent-father requested the drug for nausea. Respondent-father claimed to have liver cancer and then hepatitis-C, yet he failed to provide any confirmation of a diagnosis. When respondent-father was ordered to stop taking marinol, his drug tests were negative for marijuana but positive for opiates, which respondent-father claimed to be as the result of a prescription for loracet, a prescribed pain medication. Respondent-father took two sets of parenting classes because he lived with both respondent-mother and his wife during the course of the proceedings and gave the caseworker two different addresses. The evidence showed that respondent-father did not act like a responsible parent when the minor child was taken into care and did not attempt to do so until just before the permanency planning hearing after the minor child has been almost a year in foster care. The trial court did not err when it found that the conditions that led to adjudication continued to exist, that other conditions that he was ordered to rectify continued to exist at the termination trial, and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time.

Respondent-father argues that the trial court erred when it failed to find that termination of respondent-father's parental rights was not in the best interests of the minor child. The trial court did not err. Respondent-father did not show that he and the minor child had bonded even though the trial court granted liberal visitation to respondent-father provided that he follow through on his drug testing and had clean screens. Respondent-father's efforts to show the trial court that he complied with the treatment plan came too late, almost a year after the minor child

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comfortable exploiting others for personal gain," and that "[s]he is erratic in her moods and prone to temper outbursts." Anger management was identified as an issue and counseling recommended.

During the Permanency Planning Hearing, foster care case worker Monica Siegfried testified that she had witnessed one physical altercation (involving yelling and slapping by both parties) between respondent Palmer and respondent Ales, but also stated that was the only incident she had witnessed where respondent Palmer demonstrated "loss of temper."

had been taken into care. The evidence showed that respondent-father was unstable and immature and that his lifestyle was chaotic and self-indulgent. The minor child needed stability and permanency and respondent-father could not provide that for him.

Respondent-father also argues that the trial court erred by delaying respondent-father's involvement in the proceedings for six months. We find no error. Respondent-father received notice of the proceedings from the very beginning and failed to appear in court. He claimed that he was in the hall on a bench and did not know that he could watch the proceedings because they also involved respondent-mother's two other children. Even when respondent-father did appear in court several months after the court took temporary custody over the minor child, he refused to acknowledge paternity and required DNA testing to be done. Throughout this process, the trial court warned respondent-father that the timeline ran from the date the minor child was taken into care and not when respondent-father acknowledged paternity. Even after paternity was acknowledged, respondent-father would not comply with the treatment plan until he was appointed an attorney and the next review hearing occurred. The delay of respondent-father's involvement in the case was because of his own decision not to be involved and to ignore the court's orders. The court had jurisdiction over the minor child as a result of respondent-mother's admissions of the allegations in the petition. Respondent-father was not entitled to any other preliminary examination or "putative father hearing."

Respondents argue that the trial court erred because it did not remand the case for a permanency planning hearing based on the fact that the termination trial was not held timely pursuant to MCR 3.977(G). This court rule provides that the hearing on a supplemental petition requesting termination of parental rights must be held within 42 days after the filing of the petition, but that the court may, for good cause shown, extend the period an additional 21 days. The court rule does not provide any sanctions for failure to comply with this timeline and this Court should not impose sanctions that the Legislature has declined to impose. *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993). Respondents have not shown any prejudice to their case. The delay actually provided respondents with an opportunity to improve their compliance with the court orders. The trial court's failure to hold a hearing on the supplemental permanent custody petition within the time period prescribed in MCR 3.977(G)(1)(b) does not require reversal. *Id.* Moreover, the delay did not deny respondents due process. *In re Kirkwood*, 187 Mich App 542, 546; 469 NW2d 280 (1991). They were afforded a full hearing and an opportunity to be heard before the termination of their parental rights.

Respondent-father argues that the trial court erred at the conclusion of the permanency planning hearing by not finding that initiating the termination of his parental rights was clearly not in the best interest of the minor child pursuant to MCR 3.976(E)(2). The trial court did not err. Although respondent-father had made some progress, and the trial court acknowledged this progress, respondent-father failed to comply with the court's orders regarding drug screening for six months and, when he did comply, he tested positive for marijuana and opiates. Respondent-father claimed that the positive tests were the result of medication prescribed by his physician, yet he tested negative after the court ordered the filing of a petition to terminate his parental rights. In addition, respondent-father refused to participate in the early court proceedings involving the minor child, despite receiving notice, and refused to acknowledge paternity until a DNA test proved that he was the father. Finally, respondent-father showed the trial court that he did not have a stable lifestyle because he vacillated between being involved with and living with

respondent-mother and with his wife. Although the case worker recommended that respondent-father receive three more months before the court should determine if the permanency plan should be termination, the case worker was new to the case and had not been involved in respondent-father's refusal to participate in the proceedings during the first six months and the trial court's warning to respondent-father that the clock started ticking when the child was removed from respondents' care and not when he established paternity.

Respondents argue that the petition was deficient because it did not cite or quote the specific statutory subsections under which the petitioner was seeking termination. The petition stated that termination of parental rights was being sought and reviewed the factual basis for termination. There is no specific court rule or statute that requires that the statutory subsection be set forth in the petition. It is for the court to determine whether the facts alleged in the petition fall within one or more of the statutory grounds for termination and whether clear and convincing evidence established the petition's allegations. MCR 3.977(F)(1); MCR 3.977(G)(3).

Affirmed.

/s/ Jessica R. Cooper
/s/ Janet T. Neff
/s/ Stephen L. Borrello