

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TASHIBA FIERA TRAVIS and
TYRICO TUCKER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TISHA LYNISE TUCKER,

Respondent-Appellant,

and

HARRISON GREEN,

Respondent.

UNPUBLISHED
February 24, 2005

No. 257061
Wayne Circuit Court
Family Division
LC No. 00-389717-NA

Before: Wilder, P.J., and Sawyer and White, JJ.

PER CURIAM.

Respondent-appellant (hereinafter respondent) appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm in part, and remand for further proceedings.

The court took jurisdiction over the minor children on grounds of neglect and respondent's failure to protect them. The referee found that respondent's then live-in boyfriend had sexually abused an older daughter of respondent several times while respondent was present in the home. Respondent refused to believe that any sexual abuse had occurred. In May 2000, the police observed in the family home a loaded handgun, drugs and drug paraphernalia, bare mattresses on a bedroom floor, filthy conditions and insufficient fresh food. Testimony indicated that respondent's boyfriend, and possibly also respondent, sold drugs from the home. Respondent permitted her boyfriend to whip the children with a belt, and she and the boyfriend inflicted serious emotional abuse on the children.

The trial court entered an order of disposition on July 17, 2000, which directed respondent to participate in a treatment plan that included family, individual and group counseling, a drug assessment and random drug screens, visits with the children, parenting and domestic violence classes, and which required respondent to obtain stable and suitable housing

and employment. After nearly four years, respondent did not achieve substantial compliance with these requirements.

At the time of the termination hearing, respondent had not substantiated that she had steady employment, would not allow petitioner to assess her home, had not regularly attended drug screens, and for prolonged periods failed to visit the children regularly. Although respondent made some progress in counseling over the years,¹ she ultimately did not consistently attend or participate in counseling sufficient to have obtained insight into her responsibility to keep the children safe. For example, at the termination hearing in July 2004, she reiterated her disbelief that her former boyfriend had sexually abused her daughter, and her belief that her daughter was not telling the truth.² Respondent also acknowledged at the termination hearing that she had “men over my house all the time,” and that at least one of the men refused to identify himself when a worker of petitioner visited the residence.

The trial court did not err in finding clear and convincing evidence that respondent would not be able to protect her children from abuse and further neglect anytime within the foreseeable future. Respondent’s failures to comply with most aspects of the parent-agency agreement signify that a return of the children to her custody would entail a substantial risk of harm to the children, since it is reasonably likely that she will make inappropriate judgments regarding the children’s well being, as she did previously. MCL 712A.19a(5); *In re Trejo*, 462 Mich 341, 360-361 n 16; 612 NW2d 407 (2000). The record reflects no reasonable likelihood or expectation that respondent could provide proper care and custody for the children within a reasonable time. We conclude that the trial court did not clearly err in terminating respondent’s parental rights under MCL 712A.19b(3)(c)(i), (g) and (j). MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Under normal circumstances, given respondent’s history, it would be apparent that the evidence did not show that termination of respondent’s parental rights was clearly not in the children’s best interests. MCL 712A.19b(5); *Trejo, supra* at 354. In the instant case, however, while it is apparent that the children should not be returned to their mother’s care and custody, there is a substantial question whether, given their ages, preferences,³ and bond to their mother,

¹ An August 20, 2003 court report by petitioner indicated that (1) as of May 2003 respondent had participated in individual and family counseling, and (2) “had made substantial progress and was benefiting from the services,” including by “engag[ing] in the discussions regarding the allegations of sexual abuse and admitt[ing] to the possibility of the incident occurring. . . . Additional discussions included the safety issues involved when having men in the home around the children.”

² Respondent continued to entertain this view despite the referee’s specific finding, on the basis of testimony of two children and a police officer, that the sexual abuse had occurred, and the referee’s admonishment that respondent needed to acknowledge the abuse to avoid termination of her parental rights.

³ Tashiba, who was almost 15 at the time of the termination, did not want to be adopted. Tashiba’s guardian ad litem did not favor terminating respondent’s rights to Tashiba.

and their fairly long-term placement with their aunt and uncle, termination is in their best interests.⁴ The court did not directly address this issue. The court's conclusion,

[t]hat whether or not the uncle takes these children and adopts them or we put them in a foster care, they will be better off, in this Court's judgment, than being with the mother and the environment in [sic] which she has given to these children and the attitude,

is sound. However, the court did not address whether termination was clearly not in their best interests because a long-term foster care arrangement would be preferable under the circumstances. We are unable to review the court's findings on this issue because they are unstated. We remand for consideration and factfinding regarding long-term foster care or guardianship as it bears on the question of the children's best interests. The court may take additional testimony as it deems relevant.

Affirmed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ David H. Sawyer

/s/ Helene N. White

⁴ While the aunt and uncle originally expressed a preference to adopt, rather than be granted a guardianship, at the time of the final hearing, that preference was reversed.