

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JASON JAMES FORD, DAVID
JOHN FORD, CHRISTOPHER JOSEPH
SETTERS, and KODY JAICOBBS SETTERS,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

EARL SETTERS,

Respondent-Appellant,
and

SAMANTHA JEAN FORD,

Respondent.

In the Matter of JASON JAMES FORD, DAVID
JOHN FORD, CHRISTOPHER JOSEPH
SETTERS, and KODY JAICOBBS SETTERS,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SAMANTHA JEAN FORD,

Respondent-Appellant,
and

EARL SETTERS,

UNPUBLISHED
August 30, 2005

No. 257733
Macomb Circuit Court
Family Division
LC No. 02-053468-NA

No. 257777
Macomb Circuit Court
Family Division
LC No. 02-053468-NA

Respondent.

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

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

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The principal conditions leading to adjudication were the failure of respondents to provide suitable and stable housing, respondent mother's history of alcohol abuse, and respondent father's deficient parenting skills, exemplified by his being belligerent toward the children, frequently swearing at them, and providing little care for them. Although we find that there was not clear and convincing evidence that respondents continued to lack suitable housing at the time of the termination trial, the evidence indicated that other conditions of adjudication continued to exist such that termination was warranted. During the eighteen months from the entry of the initial dispositional order to the termination trial, respondent mother never complied with the requirement of the parent-agency agreement that she obtain a substance abuse assessment. She also failed to comply with two referrals for drug screens and only partially complied with a third. She produced some diluted screens and missed numerous screens. Respondent mother has commenced therapy twice, and both cases were closed for noncompliance. She had only recently begun counseling for a third time and had attended only six sessions at the time of the termination trial. From this evidence, it is reasonable to infer that respondent mother has not successfully addressed her substance abuse problem. Given respondent mother's lack of progress over this lengthy period, we conclude that the trial court was justified in concluding that this condition of adjudication would not be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i).

The evidence also indicated that respondent father did not remedy his parenting skills or practices. Although he completed parenting classes, there was no evidence that he benefited from them. Throughout this matter, both respondents failed to visit the children consistently, causing great distress to Jason and David. During visits, respondent father would usually watch television or be outside instead of interacting with the children. The visits were reportedly chaotic and disastrous. Thus, the evidence indicated that respondent father continued to lack minimally adequate parenting skills. Given evidence that respondent father failed to even begin counseling for fourteen months after the initial disposition, and failed to demonstrate a benefit from parenting classes over that same period, we are not left with a definite and firm impression that the trial court made a mistake by finding that his deficient parenting skills would not be rectified in a reasonable time, *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000), or that its decision was more than "maybe" or "probably" wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Therefore, the trial court did not clearly err by terminating respondent father's parental rights under MCL 712A.19(b)(3)(c)(i).

Termination under MCL 712A.19b(3)(g) was also warranted by the evidence. Respondents clearly failed to provide proper care and custody for the children by failing to provide safe and stable housing; in the case of respondent mother, failing to obtain prenatal care for Kody; and in the case of respondent father, providing little care for the children and being belligerent toward them. Both respondents have failed to comply with important aspects of their parent-agency agreements, most notably by failing to visit with the children consistently. Neither parent consistently attended therapy until shortly before the termination trial. Respondent father has never established paternity for the children as the agreement required, and as we have already noted, respondent mother did not comply with those provisions addressing her substance abuse. A parent's failure to comply with the parent-agency agreement is evidence of the parent's inability to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). On appeal, respondent father complains that the trial court disregarded the testimony of Cynthia Zitney, with whom respondent father had begun counseling in January 2004.¹ Zitney testified that she saw a lot of progress and she believed the children could be returned to respondents in four or five months. However, the trial court specifically examined Zitney's testimony and found it "a little bit lacking." The court found that her testimony fell short of establishing that respondents were "almost there" in their progress toward reunification. The trial court's credibility determination is entitled to substantial deference, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1999), and the record supplies no reason to question the lower court's impression. Indeed, Zitney's testimony that termination should be looked at in cases of physical or sexual abuse suggests that she disagreed as a general principle that neglect could justify termination. This position is clearly contrary to the legislature's judgment that failure to provide proper care and custody, *without regard to intent*, is reason for termination of parental rights. MCL 712A.19b(3)(g). Respondents' failure to demonstrate improved parenting skills, and their failure to comply with important aspects of the parent-agency agreement supply adequate evidence for termination under statutory subsection (g). The same evidence supports the trial court's conclusion that there is a reasonable likelihood that the children would be harmed if returned to respondents. MCL 712A.19b(3)(j).

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the children. MCL 712A.19b(5). The evidence indicated that visits with respondents were traumatic for the two older children, Jason and David. The children's behavior improved significantly after visitation was suspended. Kody, born in July 2002, has been out of respondents' care since the age of approximately six weeks. At the time of

¹ Respondent father had completed eleven sessions with Zitney at the time of the termination trial.

the termination trial, Christopher, born in May 2001, had been out of respondents' care for approximately twenty months, more than half of his life. As permanency is in the best interests of the children, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the children.

Affirmed.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray