

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of FELICIA MOSKOWITZ, Minor.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

UNPUBLISHED  
August 30, 2005

v

JAMES MOSKOWITZ and CAROL  
MOSKOWITZ,

No. 259637  
Ionia Circuit Court  
Family Division  
LC No. 03-000143-NA

Respondents-Appellants.

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Before: Cooper, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Respondents James and Carol Moskowitz appeal as of right from the order terminating their parental rights to their infant daughter under MCL 712A.19b(3)(c)(ii),<sup>1</sup> (g),<sup>2</sup> and (j).<sup>3</sup> We affirm.

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<sup>1</sup> Pursuant to MCL 712A.19b(3)(c)(ii), a trial court may terminate parental rights if:

The parent was a respondent in a proceeding brought under this chapter, 182 days or more have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

<sup>2</sup> A parent's rights may be terminated pursuant to MCL 712A.19b(3)(g) if "The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

The trial court did not clearly err in finding that petitioner established at least one statutory ground for termination by clear and convincing evidence.<sup>4</sup> The infant came into care due to her failure to gain weight during the first month of her life and petitioner's concern that she was malnourished and generally suffering a failure to thrive. The infant weighed six pounds, ten ounces at birth, and went home four days later weighing six pounds, four ounces. While a healthy newborn would have gained four to eight ounces a week, the infant only weighed six pounds, fourteen ounces almost three weeks after her birth. Caseworkers could not determine how much the infant was actually being fed. Respondents failed to maintain feeding logs. Although respondents claimed that the infant ate eight ounces at a time, public health nurse Laurie Brinks testified that a newborn's stomach cannot handle that amount.

One month after her birth, the infant was very weak and thin, had poor coloring, and was lethargic and limp when held. Ms. Brinks testified that the infant did not cry or make eye contact, which was evidence that her parents were unresponsive to her cues.<sup>5</sup> Noticing that the infant was not sucking properly, a caseworker attempted to bring an occupational therapist to the respondents' home. Respondents refused their assistance, insisting that the infant would be fine until she could visit her pediatrician the following day. The infant was removed from respondents' care that night. Caseworkers and healthcare providers testified that the infant may not have survived much longer in the respondents' care.

The infant continues to suffer from health problems and developmental delay. The infant suffers from recurring skin and respiratory infections. Her head is misshapen as a result of being left lying on her back for long periods of time during the first month of her life. She wore a helmet for several months to correct the problem. The infant has now been placed into an early special education program. At the age of one year, she had the cognitive function of an eight month old baby, and had significant issues with gross motor skills, reflexes, muscle strength, and stamina. The infant also had an aversion to touch. She crawled using only her right leg and knee, and had difficulty learning to walk because she did not like her feet to touch the ground. Due to low muscle tone in her mouth and lips and an abnormal curvature of her tongue, the infant had difficulty eating and faced a significant risk of gagging and choking. While most children can handle solid foods by the age of thirteen months, the infant was still only eating baby food. Due to these significant problems, the infant now visits the doctor one to two times a week, and has home sessions with occupational and physical therapists and a school psychologist. Although they participated in services, respondents did not demonstrate that they have the ability to provide proper care and custody for the child within a reasonable time given her unique needs.

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(...continued)

<sup>3</sup> Pursuant to MCL 712A.19b(3)(j), a parent's rights may be terminated if "There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

<sup>4</sup> MCR 3.977(J); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

<sup>5</sup> Ms. Brinks testified that when caregivers do not respond to an infant's cries, the infant learns not to cry.

Furthermore, termination was not clearly against the child's best interests.<sup>6</sup> While respondents indicate that they love their child, the evidence clearly shows that respondents are unable to provide for the infant's unique physical and emotional needs. Respondents are emotionally and developmentally impaired themselves. Although they were provided with intensive social services, respondents' parenting skills did not improve in any significant way. By the time of the final termination proceeding, they still could not read and adequately respond to the infant's cues. A social worker testified that, without a responsible adult living in respondents' home and monitoring the infant's care, the child would be in grave danger.<sup>7</sup> Accordingly, the lower court properly found that termination was in the infant's best interests and terminated respondents' parental rights.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Richard A. Bandstra  
/s/ Kirsten Frank Kelly

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<sup>6</sup> MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

<sup>7</sup> In fact, respondents did not even clean their home without being rewarded for their actions.