STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of NICHOLAS RYAN LUALLEN, ASHLEY ANN MARIE LUALLEN, and HAILEY SUEMARIE HANSHEW, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELENDY FRANCIS PARKER,

Respondent-Appellant.

UNPUBLISHED
May 22, 2008

No. 276629
Oakland Circuit Court
Family Division
LC No. 05-705251-NA

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to the minor children Nicholas Luallen (d/o/b 2/15/00) and Ashley Luallen (d/o/b 12/19/01) under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if children return to parent's home), and to Hailey Hanshew (d/o/b 1/19/06) under sections (g) and (j).[1] We affirm.

[1] MCL 712A.19b(3)(c)(i), (g), and (j) provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(continued…)

I. Basic Facts and Procedure

In March 2005, respondent lived in a house with her children Nicholas and Ashley, three siblings over whom she had guardianship and her then-boyfriend, Corey Nalepa, and his two children. On March 9, 2005, police and emergency personnel were dispatched to respondent's house because her ten-year old brother Daniel had died in his sleep of natural causes. One of the police officers became concerned about the condition of the house and notified child services. After an investigation, the prosecutor's office filed a petition for temporary wardship of Nicholas and Ashley. Guardianship over her two remaining siblings was transferred to another relative.

Respondent's pled no contest to the petition, and the court assumed jurisdiction of Nicholas and Ashley. The petition primarily concerned environment neglect, specifically citing that:

> "the living room covered with clothing, toys and debris; the kitchen cluttered with food and dirty dishes and other items; the basement nearly impassable, with none of the floor visible and clothing stacked several feet high, and scattered near the furnace and hot water heater. There was insufficient sleeping arrangements to accommodate all of the home's occupant's, and at least one of the children was arranged to sleep on a towel on the floor. Many of the home's electrical outlets had exposed wiring, and were without faceplates. One outlet near the kitchen was charred and black. The temperature of the home was high, estimated at approximately 85 degrees. Bugs were flying throughout the house.

The petition also noted that respondent had received prior services to address environmental neglect, but failed to address the problem. The petition also stated that respondent "is not presently possessed of sufficient parenting and household management skills to provide a safe and appropriate environment for seven children." Respondent's parent agency agreement (PAA) required that she (1) take parenting classes and learn discipline and parenting skills; (2) attend

(…continued)

> (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *
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> (g) 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 with a reasonable time considering the child's age.
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> * * *
>
> (j) 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.

family/grief counseling; (3) maintain safe and suitable housing and organize chores with the children; (4) pay bills on time and apply for services or funds, if necessary; (5) finding work; and (6) work with Families First.

At a July 13, 2005 dispositional hearing, DHS worker Rochelle Ross testified that respondent successfully addressed the home conditions, and was taking parenting classes through Lighthouse. DHS requested discretion to permit unsupervised and overnight visits if respondent complied with her PAA. The prosecutor maintained, though, that the children should not be returned so soon, since respondent should first get a job, complete parenting class, and start counseling. The guardian ad-litem for the children (GAL) agreed. The court allowed unsupervised and overnight visits and set a date for the permanency planning hearing (PPH).

At the PPH on November 1, 2005, Rachelle Rowell of DHS reported that Nicholas and Ashley were doing well and respondent and her new fiancé, Donovan Hanshew (Hanshew), had attended a parenting class with the children. Respondent's therapist indicated that respondent was doing well in therapy and had no concerns with returning the children. DHS requested discretion to return Nicholas and Ashley before the next review. The GAL opposed this, because respondent had no job. The court asked why respondent was not employed as required by the PAA and her attorney answered that she was pregnant, but still seeking work. The court found that respondent had not complied with the PAA, and ordered the prosecutor to file termination petitions and that visitations be supervised. The amended petition to terminate was not actually filed until March 18, 2006.

Respondent gave birth to Hailey on January 19, 2006, and DHS filed a complaint for temporary ward ship on January 20, 2006 and a termination petition on January 23, 2006. Respondent tested positive for PCP on December 25, 2005. Respondent claimed that a friend had administered her the drug without her knowledge. There was also testimony that respondent did not receive prenatal care until January 2006 because she feared that Hailey would be removed from her custody.

A preliminary hearing was held in regard to Hailey. Deanna Boehm of DHS testified that respondent had attended counseling and parenting classes and had maintained her home. She testified that respondent informed her that she could not have worked because her pregnancy was high risk. Boehm testified that Hanshew claimed to work as a floor installer, but he could not name his employer, and claimed he was paid in cash. In Florida, he had juvenile controlled substance arrests and charges in 1995 and 1996, plus convictions in 2002 for carrying a concealed weapon and "loitering and prowling." Boehm felt that respondent had failed to comply with the PAA and would not agree that she substantially complied with the PAA. The referee characterized the instant case as one of serious and chronic neglect. The referee found probable cause with regard to both parents. The referee found that respondent "has two children currently in the foster care system . . . . [The referee also found respondent] needs to be able to support herself and children and learn appropriate parenting skills." The referee found that Hanshew had no legal employment. Respondent was allowed supervised visitation and ordered to undergo drug screens and verify parenting class attendance.

On March 13, 2006, the court adjourned respondent's bench trial to allow her attorney to prepare. Also at the hearing, Luallen relinquished his parental rights and Hanshew pleaded no contest to allegations regarding Hailey. The court terminated Luallen's parental rights.

The bench trial began on April 14, 2006. Rowell testified that respondent entered into a PAA in July 2005 and that respondent corrected the housing problem and continued to have suitable housing. Respondent had received an inheritance, but allegedly spent it all fixing her house, which she then sold. Respondent purchased a mobile home. Respondent became pregnant and did not tell Rowell of the pregnancy for five to six months. After learning of respondent's pregnancy, Rowell evaluated the mobile home and found respondent did not have sufficient furniture for a newborn. Respondent and Hanshew were not employed and living on $2,000 that remained from the sale of her home. Respondent indicated to Rowell that she had a high-risk pregnancy. Despite the high-risk pregnancy, respondent did not seek prenatal care.[2] Respondent completed her parenting classes and was making progress in therapy. On the day trial commenced respondent provided Rowell a letter purporting to verify employment. Rowell testified that she called the employer, Ms. Sally D. Coleman, who confirmed that her company has employed respondent and Hanshew since January 2006. Rowell indicated that from around January 2006 to April 14, 2006, respondent twice tested positive for marijuana.

Boehm testified that she became involved after respondent tested positive for PCP while pregnant. Respondent mentioned that she had a sonogram and another visit to the hospital, but avoided prenatal care for fear of losing custody of Hailey. Respondent claimed she had a high-risk pregnancy, but Boehm questioned this claim given the lack of prenatal care. Boehm spoke with respondent at the hospital and learned that respondent did not have a crib at home and was not prepared to care for a newborn.

Sally Coleman, respondent's employer, testified by speakerphone. She claimed to have had major surgery in April and that she could not leave her home for another two or three months. Both respondent and Hanshew were independent contractors for Coleman's company, City Service Maintenance, since mid-February 2004. However, in the letter confirming employment, Coleman indicated that respondent began employment in January 2006. Respondent and Hanshew cleaned hospitals, offices and construction sites. Respondents had a large vehicle and Coleman had to advance them gas money, since they appeared to be in such dire straits. But they could each earn $150 a day cleaning for construction jobs, which picked up every spring. Until recently, they were in training. From her start date to April 22, 2006, respondent earned $636 and Hanshew earned $466, before taxes. Coleman testified that respondent's paycheck for May would be around $750. Coleman believed respondent would average $600 monthly. Coleman's letter described them as "a great team. We are very satisfied with their work." Coleman still helped them out with cash advances in emergencies. For example, Coleman recently advanced them money for a hot water heater.

The court terminated respondent's parental rights to her children. In regard to Hailey, the court found that respondent did not seek prenatal care to avoid involvement from the DHS, tested positive for PCP shortly before her birth, and did not have sufficient furniture for a

[2] Records from St. Joseph Hospital were also admitted. These showed a visit on June 20, 2005, with abdominal cramping. An ultrasound was performed. Respondent returned with cramping and back pain on August 18. She was given Tylenol 650 mg and referred for prenatal care. She refused a pelvic and blood tests and denied ever using alcohol or illegal substances.

newborn. In regard to all the children, the court found most problematic respondent's lack of focus in failing to comply with the PAA. The court noted that despite running out of inheritance money, she refused to obtain employment or to cooperate with the DHS. The court ordered that visitation continue under DHS, pending a best interests hearing.

The best interests hearing began on July 12, 2006 and continued into January 30, 2007. Respondent testified that she stopped working for Coleman on July 5, 2006, but would start a new job cleaning carpets. Respondent testified she was "a little bit behind" on the trailer lot rent, which the office reported as $1,281 for three months. Respondent explained that she had fallen severely behind on her bills, because they were paying the bills of Hanshew's ex-girlfriend.

Rowell believed that respondent loved her children but had problems knowing when to ask for help. For example, respondent could have applied for lot rent if respondent had told Rowell that she was behind. Also, respondent and Hanshew had denied doing any drugs before positive screens. While respondent was doing well in therapy, Rowell feared she might continue making poor decisions. She felt that the children were very bonded with her. There was evidence that respondent and Donavan expended about $1,000 a month without the children and would expend $2,300 with the children. The court adjourned the best interests hearing until October 2006. The court noted that respondent had made some progress, but her smoking marijuana, lying about becoming pregnant, not having full and stable employment or income, and having a possibly unrealistic budget made it "real hard for me not to terminate your parental rights." The court ordered continued supervised, random drug screens three times a week and verification of employment.

At the October 26, 2006, hearing, the court learned that October rent had not yet been paid. Respondent indicated that the carpet-cleaning job was "joke," and that she currently worked in a pizzeria. Also, respondent improperly brought another person to her visitation. Records apparently indicated that this person was involved in respondent's life at the time the court assumed jurisdiction over the children. The court stressed the importance of verifying employment and providing documentation to the DHS. The court also indicated the need to be in complete compliance with the PAA, and adjourned the hearing until January 2007.

On January 30, 2007, the court conducted the final best interest hearing, in which respondent's parental rights were ultimately terminated. The court indicated that there was no documentation that rent was paid, though respondent's attorney explained that rent, "had been taken care of." Respondent claimed to be employed, but failed to provide verification of employment. The court then indicated its intent to terminate respondent's parental rights, and entertained argument in this regard. Respondent's attorney highlighted that respondent was compliant with the PAA except in regard to documentation. Respondent's attorney maintained that terminating respondent's parental rights for failing to provide documentation was inappropriate. Petitioner responded by arguing that respondent failed to show that lot rent was paid, proof of employment had not been provided despite a three month window do so, and that respondent violated a court order by taking the children to her home during a visitation. The prosecutor also cited a June 30, 2006 psychological report that concluded:

> Unfortunately, [respondent] has displayed a consistent pattern of poor judgment skills, poor problem solving skills, poor coping skills, irresponsible behaviors

> and a lack of follow-through even with the external stimuli of the court. There is no reasonable likelihood that [respondent] will make substantial changes in order to rectify the scenario with any reasonable amount of time, therefore a long-term plan of care which does not include [respondent] should be sought.

The GAL also opined that respondent was not prepared to care for the children and had not made sufficient improvement to indicate that she would be able to care for the children. The court essentially agreed with petitioner and the GAL and terminated respondent's parental rights.

II. Analysis

A. Termination

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Trejo, supra*, 462 Mich at 353; MCL 712A.19b(5). This Court reviews the lower court's findings under the clearly erroneous standard. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520, reh den 460 Mich 1205 (1999); MCR 3.977(J). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

1. Hailey

We first conclude that the court did not err in terminating respondent's parental rights to Hailey. Evidence clearly showed that respondent could not provide proper care and custody of Hailey. Respondent became pregnant with Hailey after the court had assumed jurisdiction over Nicholas and Ashley. The record reveals that respondent, despite her belief that she had a high-risk pregnancy, did not seek prenatal care for Hailey only because she believed that DHS would also remove Hailey. She tested positive for PCP shortly before she gave birth to Hailey and then twice tested positive for marijuana in the following months. Around the time she gave birth to Hailey she admitted that she did not have proper furniture, food or care items for Hailey. Respondent clearly elevated her desire to keep Hailey above Hailey's needs and placed Hailey's health in jeopardy. We conclude that petitioner proved at least that respondent failed to provide proper care and custody of Hailey and would not be able to do so in the foreseeable future. Petitioner also established that there is a reasonable likelihood of harm to Hailey if returned to respondent's home.

2. Ashley and Nicholas

Although a closer question, we cannot conclude that the court clearly erred in terminating respondent's parental rights to Ashley and Nicholas. On appeal, respondent emphasizes that respondent rectified the housing conditions that prompted petitioner to file this action. However, the mere physical rectification of the housing conditions does not imply that respondent has rectified the poor decisions that led to care for seven children in those housing conditions, which

was the paramount concern. Further, respondent voluntarily entered into the PAA, which required her to address the barrier of unemployment and verify payment of housing costs, specifically noting that she should apply for services if unable to pay. Respondent admits she did not entirely comply with the PAA. A parent's failure to comply with a PAA pursuant to court order can indicate neglect. *In re Trejo Minors*, 462 Mich 341, 360-361 n 16; 612 NW2d 407 (2000).

On the other hand, we agree that respondent complied with many aspects of the PAA agreement. Specifically, there is evidence that respondent maintained proper housing conditions, completed parenting classes, regularly attended therapy (11 of 15 sessions), visited the children and that she was making progress. However, the record also reflects respondent's proclivity to become overwhelmed and make decisions contrary and potentially harmful to the children. Respondent's therapist, Alyssa Trumbull, testified that respondent often becomes overwhelmed and makes poor decisions when she is overwhelmed. Trumbull testified that therapy had not yet even identified triggers that cause respondent to become overwhelmed. In the time since the court assumed jurisdiction and the termination trial, respondent failed to show any improvement in her decision-making process. Further, the court is correct that respondent showed little initiative or focus in complying with basic elements of the PAA. There is no dispute that respondent no longer had inheritance money or social security benefits she had previously received for caring for her siblings. The PAA agreement recognized this and provided that respondent overcome the barrier of employment. Even assuming that respondent's pregnancy made employment difficult, respondent failed to provide any verification of employment until over four months after she gave birth. At the time of trial, she also could not support herself without borrowing money for gas and food. Even accepting her proffer of a letter from her employer as verification of employment, she had only earned $600 over three months. In addition, respondent has a history of not informing DHS of her problems to allow for the provision of necessary services. Given the history of services provided by DHS, the circumstances resulting of her termination of parental rights over Hailey, her proclivity to become overwhelmed and make decisions contrary and potentially harmful to Hailey, and her lack of focus and failure to comply with the PAA, this Court cannot conclude the court clearly erred in finding at least one of the statutory grounds supported termination, *supra*, at 1 n 1. Accordingly, we may not reverse on this basis.

B. Best Interests

Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of the child's parental rights is clearly not in the child's best interest. MCL 712A.19b(5); MCR 3.977(E)(3); MCR 3.977(F)(1); MCR 3.977(G)(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Gazella*, 264 Mich App 668, 672-673; 692 NW2d 708 (2005). Determination of the child's best interest may be based on evidence introduced by any party or based on the whole record presented in establishing a ground for termination. *Trejo*, *supra* at 353.

The court did not err in concluding that the termination of parental rights was clearly not in the child's best interest. There was testimony that the children had bonded with defendant, but the abundance of evidence indicated that the problems existing during the adjudicative phase of the instant case still existed and possibly worsened at the time of the best interests hearings.

Weighing the continuation of problems that resulted in the termination of respondent's parental rights against the recognized bond between the respondent and the children, we cannot conclude that the court clearly erred in its best interests findings.

Affirmed.

/s/ Michael J. Talbot
/s/ Brian K. Zahra
/s/ Patrick M. Meter