

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TOMMY JAY RULE FOSTER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEVEN LEMER FOSTER,

Respondent-Appellant,

and

TINA ANN SZUMANSKI, a/k/a TINA ANN-
MARIE SZUMANSKI, a/k/a TINA MARIE
SZUMANSKI,

Respondent.

In the Matter of TOMMY JAY RULE FOSTER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TINA ANN SZUMANSKI, a/k/a TINA ANN-
MARIE SZUMANSKI, a/k/a TINA MARIE
SZUMANSKI,

Respondent-Appellant,

and

UNPUBLISHED

August 4, 2009

No. 289345

Wayne Circuit Court

Family Division

LC No. 86-253632-NA

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STEVEN LEMER FOSTER,

Respondent.

Before: Saad, C.J., and Sawyer and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents Steven Lemer Foster and Tina Ann Szumanski appeal the court's November 10, 2008, order that terminated their parental rights to the minor child, Tommy Jay Rule Foster (d/o/b 1/1/01), pursuant to MCL 712A.19b(3)(c)(i), (3)(g), (i), (j), and (l). For the reasons set forth below, we affirm.

Pursuant to MCL 712A.19b(3)(c)(i), the trial court found that "[t]he 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. Jurisdiction over Tommy was based on the application of the doctrine of anticipatory neglect, *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973), which provides that the parents' treatment of other children is indicative of how they would treat the child in question. Here, "the conditions that led to adjudication" with respect to Tommy were those surrounding the temporary wardship over his older siblings, which continued at the time of and after the termination of respondents' parental rights to Tommy. The underlying conditions included respondent father's drinking, the children's poor school attendance, and respondents' inability to manage their household and finances despite receiving extensive services, which resulted in two evictions and a lack of food. The proper inquiry is whether those conditions, to which the trial court presumed Tommy would be subject, continued to exist and whether there was any reasonable likelihood that they would be rectified within a reasonable time.

The record supports the court's ruling that respondent father's drinking continues to exist. Respondent father has not consistently submitted to alcohol screens as required by the parent-agency agreement. He failed to provide any screens in 2008 and provided only three of 52 requested screens in 2007. And, in 2006, respondent provided two screens during the entire year. Another of the initial conditions of adjudication relating to both respondents, school attendance, continued to be a problem. While respondents were able to bring their housekeeping to a marginally acceptable level, they did not adequately manage resources, as they remained unable to allocate bus fare for visits, even though both respondents worked and received Supplemental Security Income benefits from the government. Under these conditions, the trial court did not clearly err when it found that the initial conditions of adjudication continue to exist.

Further, the trial court did not clearly err when it found that there is no reasonable expectation that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i). Respondents have received ten years of services during this case, and intensive services were provided before this case began. Over this length of time, respondents have benefited only slightly, but in the opinion of foster care worker Beverly Purnell, not enough to provide the structure that Tommy needs. The family has functioned marginally with intensive in-home services, which are no longer available to

them. Under these circumstances, the trial court did not clearly err by finding no reasonable expectation that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children.

Because one statutory ground for termination was established by clear and convincing evidence, we need not consider whether the other grounds cited by the trial court also supported the termination decision.¹ *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

II. Best Interests of the Child

The trial court did not clearly err by finding that termination was in Tommy's best interests. Tommy has been in the care of respondents for only five weeks of his life. His parents, by failing to substantially comply with their treatment plan, and by providing only minimally adequate custody for the older children with extensive assistance (which is no longer available), have demonstrated their inability to provide minimally adequate care and structure for Tommy, who has special needs and must continue therapy. Tommy is developing well in his foster care placement and, according to an agency report filed subsequent to termination, his foster parents want to adopt him.

Respondents argue that the trial court improperly took into consideration Tommy's foster care placement. Respondent mother relies on *Fritts v Krugh*, 354 Mich 97; 92 NW2d 604 (1958), overruled on other grounds *In re Hatcher*, 443 Mich 426 (1993), to support her position. In *Fritts*, the Court found no evidence of neglect to justify termination and observed that "[i]t is totally inappropriate to weigh the advantages of a foster home against the home of the natural and legal parents. Their fitness as parents and the question of neglect of their children must be measured by statutory standards without reference to any particular alternative home which may be offered the children." *Fritts, supra* at 115. In *In re Mathers*, 371 Mich 516, 530; 124 NW2d 878 (1963), the Supreme Court agreed that it was inappropriate to weigh the advantages of alternative placements against placement with the parents when deciding the questions of parental fitness and neglect. However, the Court also noted that such evidence "may have been relevant to an order of disposition . . ." *Id.*

Here, the court did not consider Tommy's foster home placement when deciding whether statutory grounds warranted termination of respondents' parental rights and, instead, considered his placement when deciding whether termination would be in his best interests. Importantly, an express statutory provision for the consideration of best interests of the child did not exist when the above cases were decided and were added by the 1994 amendments to the termination statute. *In re Trejo, supra* at 350-351. Before those amendments, a trial court had the discretion

¹ Though we note that the court clearly erred when it relied on statutory subsection MCL 712A.19b(3)(i) for the termination of respondents' parental rights. While the court properly found that respondents' parental rights to another child were terminated under MCL 712A.19b(3)(l), the record does not contain evidence that the termination was due to "serious and chronic neglect or physical or sexual abuse" under (3)(i). In any event, the court had ample grounds to terminate respondents' parental rights to Tommy and, therefore, this error does not affect the disposition of the case.

whether to terminate parental rights once it found the existence of one or more statutory grounds for termination. Now, “[o]nce the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under subsection 19b(5),²] the liberty interest of the parent no longer includes the right to custody and control of the children.” *Id.* at 355. In other words, once a statutory ground is established, the parents’ interest in the care and custody of their child yields to the state’s interest in the protection of the child. *Id.* at 356. Thus, while it is inappropriate for a court to consider the advantages of a foster home in deciding whether a statutory ground for termination has been established, such considerations are appropriate in a best interests determination. Accordingly, the court did not clearly err in its best interest determination.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Stephen L. Borrello

² The court in *In re Trejo* considered statutory subsection (5) as it existed before the recent amendment that was effective July 11, 2008.