STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED May 8, 2012
In the Matter of S. GILBERT, Minor.	No. 306621 Dickinson Circuit Court Family Division LC No. 10-000515-NA
In the Matter of S. GILBERT, Minor.	No. 307039 Dickinson Circuit Court Family Division LC No. 10-000515-NA

Before: WHITBECK, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

Respondents contend that the trial court's findings were clearly erroneous, and that the Department of Human Services (DHS) failed to sustain its burden of proving the statutory grounds. Termination of parental rights is appropriate where petitioner proves one or more grounds for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court reviews the lower court's findings under a clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

In the case at bar, the trial court did not clearly err in finding clear and convincing evidence to satisfy the statutory grounds. The child was removed in July 2010 because of respondent mother's prior termination, Children's Protective Services (CPS) history, and drug use. Other issues were crime and domestic violence. Respondents entered into a CPS service agreement and the child was returned home in August 2010. Respondents then pleaded responsible to an amended petition wherein respondent mother admitted her drug and criminal histories and recent prescription drug abuse. Respondent father had a pending case of driving with a suspended license (DWLS) and a long criminal history.

An order of disposition was entered in September 2010. Respondents were required to comply with a parent agency agreement (PAA) including substance abuse assessments, treatment, and screens; AA/NA attendance; cooperation with the parent aide and DHS; and continuation of a reformers' group at their church. Respondent mother tested positive for a nonprescribed opiate on September 24, 2010, and had a diluted test result on October 18, 2010. Respondent father tested positive for THC (marijuana) twice in 2010 and again in January 2011. He did have a full-time job until January 2011. Respondents were very appropriate with the child, and she seemed well-cared for.

In March 2011, an emergency removal petition was filed and the child was removed again because respondents were using "bath salts" while caring for her. Although bath salts were not then illegal, the court found that their use constituted substance abuse, and the record supported this conclusion. Respondent father also was charged with armed robbery and respondent mother with receiving and concealing stolen property. She later pleaded guilty to this offense. Respondent father's trial had not taken place at the time the court ruled on the question of terminating parental rights. Because respondent father was incarcerated from March 2011 on, he was unable to visit the child.

Respondent mother also did not visit after dropping out of sight in late May 2011. She stated that she felt overwhelmed and later realized that moving away had been a mistake. The trial court found that respondent mother had used drugs while away, and that nothing in the record showed that she was "clean" while she was gone. On the final day of the termination hearing, respondent mother testified that she had recently lied to a physician about using morphine in order to obtain Suboxone, another controlled substance. She had also used bath salts in March 2011, abused prescription drugs, and was previously addicted to heroin. Her history did not inspire confidence that she could, within a reasonable time, be an adequate parent. A parent must benefit from services in order to provide a safe, nurturing home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). This did not occur sufficiently here, and the evidence clearly and convincingly supported termination of respondent mother's rights under subsections (c)(*i*), (g), and (j).

As for respondent father, he claims that the court relied solely on the fact of his incarceration in terminating his parental rights. The record does not bear this out. Respondent father was permitted to participate in the proceedings while in jail, and DHS provided and encouraged services and communication with the relative provider during this time. Compare *Mason*, 486 Mich at 153-163. Here, DHS's parent aide visited and provided parenting education to respondent father in jail. Respondent father also showed proof of attending AA some of the time. But he displayed extremely poor judgment in driving while under the influence of bath salts in March 2011. This behavior endangered the lives of the child and respondent mother. Even if respondent father was not convicted of armed robbery of the cab driver, as he claims, he had admitted not paying the fare he owed. He also stole items from Walmart while under the court's scrutiny, tested positive for drugs several times, and no-showed for screens. Although he clearly had a substance problem, he felt he did not need treatment. The evidence showed that the child would continue to be at risk of harm in respondent father's care. The trial court did not clearly err in finding clear and convincing evidence to terminate both respondents' rights under MCL 712A.19b(3)(c)(*i*), (g), and (j).

We also find no clear error in the trial court's finding that termination of respondents' parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). In assessing the child's best interests, the court utilized the factors in MCL 722.23. The court noted the child's young age and need for permanence and the reasonable expectation that it would be at least six months in respondent father's case, and a year in respondent mother's, before the child could be returned. The court found that both respondents loved their daughter immensely, she loved them, and there were significant bonds. However, these bonds were "beginning to dwindle" because the child was out of respondents' care for nearly half her life. While respondents had the capacity to give her love, they could not provide proper guidance because they could not keep their own lives straight. They were being evicted, using drugs, and committing crimes, and placed the child in great danger.

The court's analysis was sound and supported by much evidence. Respondents both wished to be good parents but failed to substantially comply with their PAAs and would be unable to give the child a stable, drug-free, and crime-free home. The court did not clearly err in its best-interest analysis.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Joel P. Hoekstra