

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANNALYCIA YEARY, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
July 20, 2006

Petitioner-Appellee,

v

THERESA YEARY,

Respondent-Appellant.

No. 266848
Oakland Circuit Court
Family Division
LC No. 03-686391-NA

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(i), (c)(i), (g), and (j). We affirm.

Respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993), citing *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); see also MCL 712A.19b(5). We review the trial court's determinations for clear error. *In re Trejo, supra* at 356-357.

The central issue in this case was whether respondent would be in a position, both physically and emotionally, to provide proper care and custody for the child and safely parent the child within a reasonable time. The evidence clearly and convincingly established that respondent would not be able to do so.

The child at issue in this case was removed from respondent's care as an infant after allegations that respondent spanked and improperly held the child during her violent outbursts, which put the child at a significant risk of harm. In addition, respondent, who was an adjudicated juvenile delinquent, had a longstanding history of mental instability and violent

behavior, including self-mutilation, suicide attempts, violent outbursts, assaults and threatened assaults. She was not capable of providing for the child's needs at the time of the child's removal from her care because of her own need for a placement where she could obtain psychiatric treatment. At the time of the termination trial, almost two years after the removal, respondent remained a court ward and had no means to physically support her child. Respondent had apparently made progress towards improving her mental stability in her most recent placement. However, the testimony showed that her emotional instability would likely put the child at a risk of future abuse or neglect, given her periods of "violent episodes" and "downward spirals," her "inconsistent progress" in her behavior management program during the 13 months following the child's removal, and her long history of unpredictable behavior and psychiatric problems. Most notably, in the 13 months following the child's removal from her care, respondent had 70 "incidents" at her placement, of which 39 involved either self-harm, threatened self-harm, harm or assault to others, or threatening to assault others. The evaluating psychologist opined that respondent was prone to "very unpredictable emotional storms" and low frustration tolerance that was not conducive to effectively raising a toddler. Moreover, the evidence showed that respondent had a poor prognosis for attaining emotional stability for any lasting period, and for being able to parent a child.

On this record, the evidence clearly established that respondent would likely not be able to achieve and maintain the mental or physical stability necessary to care for her child within a reasonable time considering the child's tender age and the significant length of time the child had already been outside of her care. Accordingly, the trial court did not clearly err in determining that the evidence clearly established that the conditions that led to the adjudication continued to exist and would likely not be rectified within a reasonable time. MCL 712A.19b(3)(c)(i). Nor did the court err in determining that the evidence clearly established that respondent would not likely be able to provide proper care and custody for the child within a reasonable time. MCL 712A.19b(3)(g).

We also find that the trial court did not err in determining that respondent had created a reasonable likelihood of physical harm to the child. Despite the fortunate lack of any lasting physical injury to the child, respondent's sporadic violent behavior towards the child, coupled with her sometime sheer neglect of the child, put the child at a serious risk of injury. Considering respondent's longstanding history of violent behavior and her proneness to anger and low frustration tolerance, we find no clear error in the trial court's determination that the child would likely be subjected to physical injury or abuse if returned to respondent's home. MCL 712A.19b(3)(b)(i). Likewise, the trial court did not clearly err in finding that there was a reasonable likelihood, based on respondent's violent behavior and past conduct, that the child would be harmed if returned to respondent's care. MCL 712A.19b(3)(j).

Respondent also challenges the trial court's decision concerning the child's best interests. MCL 712A.19b(5). We review the trial court's best interests determination for clear error. *In re Trejo, supra* at 356-357. The testimony indicated that, by the time of the trial on the best interests inquiry, respondent had made significant progress towards improving her stability. She had completed her treatment program, had maintained appropriate behavior, had actively participated in therapy, was no longer a court ward, and was determined to independently obtain employment, housing and mental health treatment. However, respondent admittedly still lacked the financial means or housing to care for her child, two years after the child's initial removal

from her care. Further, although testimony indicated that respondent loved and cared for her child and was appropriate and interacted with her child during their visits, the record contained no evidence of a significant bond between respondent and the child. On this record, we cannot conclude that respondent's improvement in her personal situation "clearly overwhelm[ed]" her longstanding history of mental instability and the lengthy period of time that the child had already been outside of respondent's care. *In re Trejo, supra* at 364. Although we commend respondent's recent progress towards improving her stability, continuing to delay the child's stability and permanency by allowing respondent more time to work towards reunification would be unreasonable. Giving due regard to the trial court's superior opportunity to weigh the evidence and judge the credibility of the witnesses, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), the evidence failed to show that termination of respondent's parental rights was clearly not in the child's best interests, MCL 712A.19b(5); *In re Trejo, supra* at 354. The trial court did not clearly err in determining that the evidence supported termination of respondent's parental rights.

To the extent that respondent argues that the trial court abused its discretion by failing to grant an adjournment of the trial on the best interests inquiry to allow her to undergo a more recent psychological evaluation, we decline to address the matter. Respondent failed to raise this issue in her statement of questions presented, and thus has failed to properly present the issue for our review. MCR 7.212(C)(5); *McGoldrick v Holiday Amusements Inc*, 242 Mich App 286, 298; 618 NW2d 98 (2000).

Affirmed.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Karen M. Fort Hood