STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CHAZEMINE ZAKARIUS SWEENEY, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CRYSTAL L. PALMER,

Respondent-Appellant,

and

FATE A. SWEENEY,

Respondent.

UNPUBLISHED
October 11, 2007

No. 275766
Wayne Circuit Court
Family Division
LC No. 03-424312-NA

Before: Murphy, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

Respondent Crystal Palmer appeals as of right the order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), (j), and (l).[1] Respondent father did not appeal the termination order. We affirm.

The trial court may terminate a parent's parental rights to a child if the court finds that the petitioner has proven one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000).

[1] The order terminating parental rights indicates that termination was based on § 19b(3)(c), (g), (j), and (l). However, petitioner never argued subsection (3)(c), nor did the trial court cite subsection (3)(c) when ruling from the bench, and the court did cite subsection (3)(i) on the record despite its lack of inclusion in the order. Subsection (3)(c) does not fit the facts of this case. Clearly, there was a typographical error. Regardless, the discrepancy does not effect our ruling.

"If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights . . ., unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5); see also *Trejo, supra* at 350.

"The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights." MCR 3.977(J). The review for clear error applies to both the trial court's decision that a ground for termination of parental rights was proven by clear and convincing evidence and the court's ruling regarding the child's best interests. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). The trial court's determination to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake had been made on consideration of all the evidence. *Id.* at 209-210.

MCL 712A.19b(3)(g) provides for termination when "[t]he 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."

MCL 712A.19b(3)(i) provides for termination when "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful."

MCL 712A.19b(3)(j) provides for termination when "[t]here 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."

MCL 712A.19b(3)(l) provides for termination when "[t]he parent's rights to another child were terminated as a result of proceedings under [MCL 712A.2(b)] . . . ."

Respondent's parental rights to four other children, Yazmine, Jasmine, Desmine, and Charisma, were previously terminated under MCL 712A.19b(3)(c)(i), (g), and (j), and this Court affirmed the termination order. *In re Sweeney Minors*, unpublished opinion per curiam of the Court of Appeals, issued October 24, 2006 (Docket No. 267072). That panel ruled as follows:

> The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. Yazmine and Jasmine became court wards in January 2004 based on environmental neglect and drug use. The father had been arrested for selling drugs out of the home, and the home was in deplorable condition, with no running water and a foul odor. The conditions of Palmer's treatment plan included weekly family visits, safe and suitable housing, a legal source of income, weekly random drug screens, substance abuse treatment, parenting classes, a Clinic for Child Study assessment, and individual therapy. The parents were substantially in compliance with their treatment plan when Desmine was born on March 6, 2004. Continued efforts resulted in Jasmine and Yazmine being returned to their care in August 2004, and the trial court continued jurisdiction and ordered intensive in-home services in addition to the previous orders. By November 2004 the parents became noncompliant. They did not submit to random drug screens as ordered, and they

were not participating in the in-home services. Despite several warnings that their children would be taken away again, the parents continued to fail to comply with drug screens and in-home counseling. The two older children were removed once again in January 2005. Desmine was made a ward in May 2005, based on the parents' failure to comply with their treatment plan. Charisma was made a ward in July 2005 after she tested positive for cocaine at birth. A termination petition was not immediately filed. The court and workers continued to offer the parents services and were hoping for reunification. Still, the parents remained noncompliant.

On our review of the record, and even assuming that housing and income were no longer issues in the case, the trial court properly terminated Palmer's parental rights based on her continued noncompliance with the parent-agency agreement and continued drug use. Palmer was required to submit to 34 drug screens in 2004, but she actually submitted only 16. One of these screens was positive for marijuana. In 2005, Palmer was required to submit to 39 drug screens but submitted only 13, six of which were positive for marijuana. In addition, Charisma was born testing positive for cocaine in 2005. Thus, it is plain that Palmer did not benefit from the drug program she completed in 2003, and the trial court did not clearly err in concluding that Palmer's drug use warranted termination . . . . [*Id,* slip op at 1-2 (citations omitted).]

The child at issue here, Chazemine, was born May 14, 2006, after the termination trial relative to the four other children had concluded. The minor child was taken from respondent on the child's birth, and an original petition for termination was submitted, authorized, and filed, referencing her troubled drug and parenting history. Testimony from the termination trial,[2] which was held approximately seven months after the child's birth, and medical records admitted into evidence established that the child tested positive for opiates and marijuana at birth. Respondent tested positive for opiates at the time she gave birth.

The protective services worker who prepared the permanent custody petition testified that respondent admitted to using drugs, knowing that she was pregnant, but respondent claimed that the drug use occurred only after she found out that she had lost her appeal with respect to her four other children. The protective services worker further testified that respondent sought very little prenatal care, that respondent had adequate provisions to care for the child, that respondent had no job when the child was born, but later had produced one pay stub showing employment, that respondent had housing, and that respondent would be entitled to welfare benefits if given custody. No details regarding housing and employment were presented. The worker additionally stated that, despite drugs being in the child's system, the child was essentially born healthy, with no special needs. Finally, the worker testified that no treatment referrals or

[2] Respondent failed to show up at the termination trial, and the record reveals that the court had adjourned trial for a few hours to give her an opportunity to appear, but to no avail. Respondent's counsel, who did appear at trial, indicated that she had not heard from her client.

services were provided to respondent, although she indicated that respondent was amenable to treatment. The trial court took judicial notice of the file in the prior termination proceedings.

Respondent argues on appeal that termination of her parental rights was premature, "where the record did not support a finding that reasonable efforts were made to reunite her with the minor child." Respondent complains that there was no referral to treatment, nor services provided. Respondent also contends that termination was clearly not in the child's best interests. She maintains that she never had an opportunity to care for the child, given that the child was taken from her at birth, and that she had planned to obtain employment, which apparently later occurred, and would have been eligible for public assistance if the child had been left in her custody.

We first find, on the basis of the record in both termination proceedings, including the evidence in this case of continuing drug use in total disregard of the child's health and welfare, that the trial court did not clearly err in finding that there was clear and convincing evidence supporting termination under the relevant statutory provisions. Further, given the circumstances and facts underlying the earlier termination proceedings as set forth above and the evidence of continuing drug use presented at trial here, petitioner was not obligated to render services and make treatment referrals when respondent was previously provided such assistance without benefit and without compliance with the requirements of the past service plans. Exhausting efforts at reunification were made by way of extensive services being provided to respondent in the prior termination proceedings. Services are not mandated where, as here, the petitioner is justified in not providing services to a particular family. *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000), citing MCL 712A.18f(1)(b). Furthermore, because the petition sought termination or permanent custody, petitioner was not obligated to provide a case service plan as reunification was not the goal. See MCL 712A.18f(1)(b) and (3); MCL 712A.19b(4); MCR 3.977(E). Finally, the record does not support a conclusion that the trial court clearly erred in failing to find that termination of parental rights to the child was clearly not in the child's best interests. Respondent's failure to appear at trial without excuse belies her claim that the child's best interests are not served by termination.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Bill Schuette