

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of JAYDEN NICHOLE KELLY,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LISA NALEVAYKO, a/k/a MICHELLE  
NALEVAYKO, a/k/a MICHELLE KELLY,

Respondent-Appellant.

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UNPUBLISHED

August 9, 2007

No. 277223

Saginaw Circuit Court

Family Division

LC No. 04-029048-NA

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In the Matter of CIARA ROSE KELLY, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LISA NALEVAYKO, a/k/a MICHELLE  
NALEVAYKO, a/k/a MICHELLE KELLY,

Respondent-Appellant.

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No. 277224

Saginaw Circuit Court

Family Division

LC No. 07-030823-NA

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

In these consolidated cases, respondent appeals as of right from an order terminating her parental rights to her children under MCL 712A.19b(3)(i) and (l). We affirm in each case.

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when we are left with the firm and definite conviction that a mistake was made. *In re JK*, 468

Mich 202, 209-210; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours, supra*. If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.* at 356-357.

We hold that clear and convincing evidence supported the trial court's decision to terminate respondent's parental rights. It was undisputed that respondent's parental rights to another child had been terminated in proceedings brought under MCL 712A.2(b). This evidence adequately supported the trial court's decision to terminate respondent's parental rights under MCL 712A.19b(3)(1).<sup>1</sup> The decision to terminate respondent's parental rights in the previous case was based largely on respondent's failure to address her longstanding substance abuse problem. Respondent's abuse of drugs was a principal reason that petitioner sought termination of her parental rights in the present cases. The evidence showed that respondent used cocaine when she was pregnant, left an inpatient substance abuse program without permission, and missed substance abuse counseling sessions. The trial court's finding that prior attempts to rehabilitate respondent were unsuccessful was not clearly erroneous. Thus, there was proper evidentiary support for the trial court's conclusion that termination of respondent's parental rights under MCL 712A.19b(3)(i) was also warranted.<sup>2</sup>

Finally, the trial court did not clearly err when it determined that no evidence showed that termination of respondent's parental rights clearly was not in the children's best interests. *In re Trejo, supra* at 356-357.

Affirmed.

/s/ Michael R. Smolenski  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly

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<sup>1</sup> This subsection provides that termination is warranted if “[t]he parent’s rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.”

<sup>2</sup> This subsection provides that termination is warranted if “[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.”