

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of WILLIAM DUNN, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JENNIFER JONES,

Respondent-Appellant,

and

ALVIN DUNN, JR.,

Respondent.

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UNPUBLISHED

April 24, 2007

No. 272841

Washtenaw Circuit Court

Family Division

LC No. 03-000135-NA

Before: Saad, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Respondent Jennifer Jones appeals from an order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. Facts and Procedural History

The trial court obtained jurisdiction over the child after respondent admitted that the child suffered brain injuries associated with shaken baby syndrome when he was eight months old. The injuries apparently occurred when the child was in the care of an acquaintance of respondent. The child was placed with his paternal grandfather, Alvin Dunn, Sr., and his wife Edna, who temporarily moved from Indiana to Michigan to care for the child. Several months after this placement was arranged, petitioner permitted the Dunns to take the child to their home in Indiana pursuant to an interstate placement arrangement.

Pursuant to the court-ordered treatment plan, respondent completed parenting classes and attended an anger management class and therapy sessions. She also worked with a Michigan State University Extension counselor on budgeting issues, but never consistently presented accurate and complete monthly budgets. Respondent was required to make diligent efforts to

attend the child's physical therapy sessions while the child was in Michigan, but she quit attending them because she was not comfortable with Edna's presence.

After the child was relocated to Indiana, petitioner arranged for respondent to visit him once a month in the Dunns' home. Edna reported that respondent spent the visits crying and talking on the telephone instead of caring for the child. Respondent complained that the Indiana visits were disadvantageous because she was exhausted from the 24-hour bus ride and Edna was hostile to her and did not allow her to feed or bathe the child. Respondent's caseworker, Anjanetta Cates, believed that Edna was supportive of respondent.

The parent-agency agreement required respondent to make diligent efforts to obtain safe and suitable housing, but she never complied with this requirement. Respondent was unable to afford her trailer rent and utilities after she and Alvin Dunn, Jr., separated. She moved in with her mother, but respondent's caseworker believed that this arrangement was not stable because respondent and her mother had a contentious history and fought constantly. Respondent later left her mother's home and moved in with a new boyfriend, whom she had known only a few weeks. Respondent often indicated that she would utilize petitioner's resources to find her own home, but never followed through with this plan.

Nearly two years after the court initially assumed jurisdiction over the child, petitioner filed a petition to terminate respondent's parental rights. Petitioner alleged that respondent failed to resolve her mental health issues in counseling, failed to establish safe and suitable housing, and failed to learn how to understand and manage the child's special needs. Following a lengthy hearing, the trial court terminated respondent's parental rights.

## II. Analysis

### A. Statutory Grounds for Termination

Respondent argues that there was insufficient evidence of a statutory ground to terminate her parental rights. 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 McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). We review the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Here, the trial court found grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide for termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The 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.

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(g) The 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.

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(j) There 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.

With respect to § 19b(3)(c)(i), the child was adjudicated a temporary court ward because he suffered a serious brain injury while in respondent's care and his parents endangered him with their domestic violence. The trial court did not clearly err in finding that respondent's propensity to expose the child to harm by leaving him with unsuitable caregivers or exposing him to unsuitable domestic partners continued to exist, and was not reasonably likely to be rectified within a reasonable period of time.

Respondent's failure to establish a stable, self-sufficient lifestyle was indicative of a continued propensity to expose the child to dangerous home situations. Respondent never established her own housing, and the three individuals on whom she relied for housing, the child's father, her mother, and a recent boyfriend, were not safe and suitable persons. At the time of the termination hearing, respondent was living with her boyfriend, whom she intended to marry, but knew little about him. She knew that his mother and brother were convicted of child sexual abuse offenses, but did not know any details, and simply assumed that her boyfriend would prevent these persons from having contact with the child. Respondent also testified that she planned to rely on the child's paternal grandmother for daycare. Respondent admitted that the paternal grandmother had a history of substance abuse and a prior protective services involvement, but believed that these problems were resolved. Respondent did not explain the basis for her belief.

Additionally, respondent made inadequate efforts to utilize petitioner's assistance to find her own housing. This evidence supports the trial court's finding that the conditions that led to adjudication continued to exist and were not likely to be rectified within a reasonable period of time.

With respect to § 19b(3)(g), there was ample evidence that respondent would not be able to properly care for the child. Respondent's inability to manage budgeting, and her failure to make consistent efforts at budgeting, cast more doubt on her ability to find and maintain suitable housing in the foreseeable future without relying on unsuitable or questionable persons. Respondent often indicated that she intended to apply for government assistance, but failed to complete all the necessary steps.

The evidence also supported a finding that respondent would not be able to address the child's special needs. When the child was in Michigan, respondent was unwilling to set aside her feelings about Edna in order to attend the child's physical therapy sessions. She did not know what purpose was served by occupational therapy. Respondent acknowledged that the child needed sign language to communicate, but had done nothing toward this goal other than learning two signs and formulating an intent to buy a book on the subject. Respondent's lethargic approach to learning about the child's special needs evinced her lack of capacity to provide the care that he requires. Indeed, respondent's inability to establish a stable lifestyle without depending on unsuitable persons for housing and support would create a risk of neglect for a child with normal needs, but this risk was greatly heightened for the child here because his special needs require intensive therapies. Respondent's inability to manage matters such as housing, medical insurance, and budgeting raised serious doubt about her ability to manage a complicated schedule of physical therapy, occupational therapy, and speech therapy, or to keep up with the child's changing developmental needs. Respondent's propensity to let interpersonal conflicts take precedence over the child's needs also portends neglect.

With respect to § 19b(3)(j), there was sufficient evidence to support the trial court's finding that the child was likely to suffer harm if returned to respondent's care. Respondent continued to depend on questionable persons for housing. She acknowledged at the hearing that she did not know if she could trust her fiancé with the child. Given respondent's history of relationships with abusive men, and her irresponsible childcare choices, there was a reasonable likelihood the child would be harmed if returned to respondent's care.

Respondent's reliance on *In re JK*, 468 Mich 202; 661 NW2d 216 (2003), to argue that termination of her parental rights was not warranted because she satisfied the requirements of her parent-agency agreement is misplaced. Unlike *In re JK*, where the respondent offered positive evidence that she satisfied her treatment plan requirements of stable housing, self-sufficiency, employment, and sobriety, the evidence here showed that respondent made insubstantial progress in counseling and budgeting, that she remained dependent on unsuitable individuals for housing instead of utilizing petitioner's assistance to establish independent housing, and that she failed to learn about the child's developmental needs. Respondent's own testimony revealed her inability to grasp adult and parental responsibilities and how to fulfill them.

We therefore conclude that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

#### B. Best Interests of the Child

Respondent also argues that the trial court erred by failing to hold a separate hearing on the question of the child's best interests. Once a statutory ground for termination is established, the trial court must terminate parental rights unless it finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); MCR 3.977(G)(3); *In re Trejo*, *supra* at 350; *In re Gazella*, 264 Mich App 668, 672-673; 692 NW2d 708 (2005). A determination of the child's best interests may be based on evidence introduced by any party and based on the whole record presented in establishing a ground for termination. *In re Trejo*, *supra* at 353. The parties must be given an opportunity to present evidence of the child's best interest, but if no evidence is offered that termination of parental rights is clearly not in the child's best interest, the court is not

required to render findings that termination is in the child's best interests. *In re Gazella, supra* at 678.

Respondent cites no authority for her contention that the trial court was required to hold a separate best interest hearing. The record discloses that respondent was not denied an opportunity to present evidence of the child's best interests and that the trial court properly considered evidence on the whole record in its best interest analysis. Although respondent asserts that termination of her parental rights was contrary to the child's best interests because the caseworker and Edna were biased against her, any alleged bias is irrelevant to the issue of the child's best interests. In light of the evidence of the child's special needs and respondent's inability to sufficiently meet those needs, the trial court did not clearly err in declining to find that termination was contrary to the child's best interests.<sup>1</sup>

Affirmed.

/s/ Henry William Saad  
/s/ Joel P. Hoekstra  
/s/ Michael R. Smolenski

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<sup>1</sup> Respondent also contends that the trial court erred in taking "judicial notice" of the periodic progress reports that petitioner prepared throughout the proceedings. Respondent argues that the reports do not meet the requirements for judicially noticed facts set forth in MRE 201(b). Because respondent did not object to this evidence in the trial court, this issue is not preserved. Therefore, our review is limited to plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 606; 603 NW2d 824 (1999).

The progress reports are admissible pursuant to MCR 3.977(G)(2), which provides that the rules of evidence do not apply at hearings on supplemental petitions to terminate parental rights. Rather, the only requirement is that the evidence be relevant and material and, with respect to reports, that the parties be afforded an opportunity to examine and controvert written reports and allowed to cross-examine individuals who made the reports. Here, the record discloses that respondent had the opportunity to cross-examine the caseworker regarding her periodic progress reports. Accordingly, we find no plain error.