

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SLL, LKL and HB, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANDREW LEE LASHAWAY,

Respondent-Appellant,

and

KELLY IDORA BIRD,

Respondent.

In the Matter of SLL, LKL and HB, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KELLY IDORA BIRD,

Respondent-Appellant,

and

ANDREW LEE LASHAWAY,

Respondent.

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

UNPUBLISHED
December 22, 2009

No. 292343
Shiawassee Circuit Court
Family Division
LC No. 07-011983-NA

No. 292355
Shiawassee Circuit Court
Family Division
LC No. 07-011983-NA

PER CURIAM.

Respondents Andrew Lashaway and Kelly Bird appeal as of right from a circuit court order terminating respondent Bird's parental rights to all three children, and respondent Lashaway's parental rights to the Lashaway children, pursuant to MCL 712A.19b(3)(a)(ii) and (c)(i). We affirm.

This child protective proceeding commenced on July 16, 2007, when the Oscoda County Department of Human Services (DHS) filed a petition seeking temporary custody of LKL. The petition averred that respondent Lashaway was residing in jail for using marijuana while caring for LKL, and that respondent Bird currently lived outside Michigan and could not "provide care for her child." Two days later, the Shiawassee County DHS filed a separate, more detailed temporary custody petition concerning SLL. The petition regarding SLL asserted that (1) respondent Lashaway had a criminal history, which included a 1997 "count" of "felony in a building" and November 1999 misdemeanor and felony charges that resulted in a guilty plea to "larceny in a building," (2) Children's Protective Services (CPS) had investigated complaints about respondents in 1999¹ and 2006,² (3) after avoiding "repeated [CPS] attempts to make contact with the family" in early February 2007, respondents later that month reported that they had ceased smoking marijuana and that neither respondent had employment, although respondent Lashaway attended college, (4) respondent Bird later tested positive for marijuana in June 2007 and both respondents declined a July 17, 2007 drug screen on the basis that "they would be positive and they wanted to wait a week before they would test," and (5) in July 2007, CPS learned that SLL "was without proper care and placement" and that respondents currently lacked housing, "a recurring problem in this family."

In August 2007, the Shiawassee County DHS filed a supplemental temporary custody petition with respect to both SLL and LKL. The supplemental petition primarily mirrored the detailed July 2007 petition regarding SLL, but added the details that (1) when CPS took LKL into custody on July 16, 2007, officers found her and respondent Lashaway inside a house that did not belong to respondent Lashaway, and to which he "admitted[] gaining entrance through a window and screen," and (2) when CPS learned of SLL on July 16, 2007, respondent Bird had "left her with a non-relative babysitter, and had then gone to Indiana." In September 2007, the circuit court entered an order of adjudication with regard to SLL and LKL premised on respondents' no contest pleas to the August 2007 supplemental petition.

Respondents entered parent-agency agreements requiring them to undergo psychological evaluations, pursue substance abuse assessments and related counseling, submit to random drug

¹ The 1999 complaints involved assertions that respondents abused drugs or alcohol and lacked appropriate housing, and that respondent Bird had engaged in domestic violence.

² The 2006 complaints concerned LKL's positive test for marijuana at her birth in November 2006, respondent Bird's acknowledgment that she had smoked marijuana throughout her pregnancy, respondent Lashaway's admission that he also daily smoked marijuana, and respondent Bird's refusal of proffered mother-infant health services.

screens, complete parenting classes, maintain employment and suitable housing, and attend weekly supervised parenting times. By March 2008, respondents had completed most of their treatment plan obligations, but for regular submission to drug screens, to the extent that DHS had authorized an initial period of unsupervised parenting time in April 2008. However, respondents' progress ceased shortly after respondent Bird in March 2008 gave birth to HB, whom respondent Lashaway had not fathered. Respondents stopped visiting the children between June 2008 and January 2009, and did not maintain regular contact with their case worker. Respondents resumed their parenting time with all three children in January 2009, but DHS filed a permanent custody petition regarding all three children in February 2009. The permanent custody petition sought termination of respondents' parental rights under MCL 712A.19b(3)(a)(ii) and (c)(i), both of which the circuit court found substantiated after conducting a termination hearing in March 2009 and April 2009.

Respondents now contest the circuit court's termination ruling. The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once a statutory ground for termination is established by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). We review for clear error a circuit court's findings of fact. MCR 3.977(J); *In re Trejo*, 462 Mich at 356-357. "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (internal quotation omitted).

We first address respondents' challenge to the circuit court's reliance on MCL 712A.19b(3)(c)(i) as a ground warranting termination. The conditions that led to the circuit court's September 2007 adjudication of SLL and LKL included respondents' environmental neglect of the children, fueled in part by their marijuana usage and their lack of employment or proper housing. Clear and convincing evidence demonstrated that although respondents achieved commendable progress by early 2008, they subsequently and for an extended period discontinued virtually all progress after HB's birth. The evidence at the termination hearing agreed that respondents availed themselves of no parenting times with their children for six months, they substantiated no employment by respondent Lashaway since July 2008 or any employment by respondent Bird, and after the children's placements in foster care respondents resided in five different locations in Owosso and Lansing. The evidence also clearly and convincingly established that respondents disregarded their responsibility to timely report for drug screens, and thus failed to consistently exhibit their freedom from marijuana use. Given the approximately 20-month duration of SLL's and LKL's foster care placements by the time of the termination hearing, the young ages of all three girls, and the well-documented, ongoing natures of respondents' lack of investment in remaining substance free, lack of employment and lack of stable housing, the evidence also clearly and convincingly reflected the unlikelihood that respondents could rectify their problems "within a reasonable time considering the child[ren]'s

age[s].” MCL 712A.19b(3)(c)(i). Consequently, the circuit court did not clearly err by invoking subsection 3(c)(i) as a ground for termination of respondents’ parental rights.³

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder

³ Because only one statutory ground need exist to support a circuit court’s order terminating parental rights, MCL 712A.19b(3), we need not consider respondents’ additional challenge to the court’s reliance on subsection 3(a)(ii). Additionally, although respondents offer no specific appellate challenge to the circuit court’s finding that “termination of parental rights is in the child[ren]’s best interests,” MCL 712A.19b(5), in light of the evidence discussed above the circuit court did not clearly err in finding that termination of respondents’ parental rights served the children’s best interests.