

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PETER DAVID GRIFFIN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RHONDA DENISE GRIFFIN,

Respondent-Appellant.

UNPUBLISHED

January 17, 2008

No. 277705

Wayne Circuit Court

Family Division

LC No. 05-443197-NA

Before: Schuette, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Respondent, the mother of the involved minor child, appeals as of right from a circuit court order terminating her parental rights to the child under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure and inability to provide proper care and custody, irrespective of intent) and (j) (given parent's conduct or capacity, reasonable likelihood of harm to child exists if returned to parent's home). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case began when the man with whom respondent was living abandoned the six-week-old child on the porch of a Westland residence, in which the man believed respondent was consuming cocaine.¹ The circuit court exercised jurisdiction over the child in light of respondent's admissions that she had a continuing problem with cocaine, dating from when she was 16-years-old, and that she had suffered domestic violence in her current relationship.

¹ Testing of the man's DNA eliminated him as a potential father of the child, and respondent could not identify any other possible father. The trial court eventually terminated the unknown father's parental rights, on the ground of abandonment.

During the early months of the proceedings, between July 2005 and early October 2005, respondent missed two hearings and failed to maintain contact with the caseworker. In October 2005, however, respondent agreed to participate in a treatment plan calling for drug counseling and screens, parenting classes, maintenance of a legal source of income, and the acquisition of suitable housing. She entered an inpatient drug abuse treatment program on November 15, 2005.

Between November 2005 and July 13, 2006, respondent's frequent random drug screens yielded several positive results for cocaine. Respondent's difficulty in entirely abstaining from cocaine prompted the referee in September 2006 to instruct petitioner to file a permanent custody petition seeking termination of her parental rights.

But from July 13, 2006 through the end of 2006, all of respondent's drug screens were negative. Furthermore, the record reveals that by the end of 2006, respondent made substantial efforts toward satisfaction of her other treatment plan obligations. Respondent completed parenting classes and a course in domestic violence education, located and secured suitable housing, obtained and maintained part-time employment, and regularly visited the child in foster care. The case worker progress reports and witness testimony demonstrated that respondent consistently visited the child at least once a week, that she always interacted appropriately with the child, and that respondent and the child shared a bond. Respondent successfully completed the inpatient drug treatment program, and actively participated in outpatient follow up.²

On January 23, 2007, the first day of the termination hearing, respondent tested positive for cocaine, but when the hearing continued on March 6, 2007, all of her weekly screens in the interim returned negative results. On the hearing's first day, the foster care worker testified that respondent's single positive screen that day caused her to alter her recommendation from dismissal of the permanent custody petition to termination of respondent's parental rights. The child's guardian ad litem argued against termination, in light of respondent's overall progress. The referee concluded that termination was appropriate, explaining, "You can't raise a child while you're on drugs, it's that simple We all know that." The order of termination followed.³

² The record reflects that respondent attended individual therapy, including for drug treatment purposes, between one and three times a week, at least through late 2006. Testimony at the termination hearing agreed that an interruption in respondent's regular drug therapy occurred in late 2006 because petitioner failed to provide respondent bus tickets. At the March 2007 continuation of the termination hearing, respondent and her significant other testified that he currently drove respondent twice a week to her regular counseling sessions, in addition to Narcotics Anonymous meetings. The foster care worker agreed that respondent reportedly recommenced her regular individual counseling and drug therapy, although the worker had yet to "follow up with" the therapist.

³ The circuit court adopted the referee's analysis without additional explanation. Neither the referee nor the circuit court supplied conclusions of law that explained how respondent's substantial efforts and achievements impacted their analyses of subsections (c)(i), (g) or (j).

To terminate parental rights, the circuit court must find that the petitioner has proved at least one statutory ground for termination by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). An appellate court “review[s] for clear error both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(J). A finding qualifies as 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).

One statutory ground on which the referee and circuit court relied in ordering termination, MCL 712A.19b(3)(c)(i), authorizes termination where clear and convincing evidence shows that 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.” Another statutory ground invoked by the referee and circuit court, subsection (g), authorizes termination where 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.” The last statutory ground on which the referee and circuit court relied, subsection (j), contemplates 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.”

Concerning subsection (c)(i), the circuit court erred in concluding that the conditions that led to the initial adjudication continued to exist, without any reasonable likelihood of timely rectification. When this case began, respondent was unemployed, cohabited with an abusive man, and regularly used cocaine. By the time of the termination hearing, however, it was not in dispute that respondent lived alone in a residence that the foster care worker deemed suitable, had completed parenting and domestic violence classes, and obtained suitable employment. Respondent otherwise complied with every provision of her treatment plan, perfectly or substantially, and exercised significant control over her longstanding cocaine addiction.

In stark contrast with respondent’s situation at the beginning of this case, respondent came to the termination hearing as one who had completed extensive treatments, and who, if not yet totally abstinent, undisputedly no longer regularly resorted to using cocaine. The referee reasonably observed that respondent’s positive test for cocaine on the day the termination hearing commenced aroused grave concerns. But in our view, the referee presumed too much from the positive January 23, 2007 drug screen, apparently concluding from that isolated instance that a full relapse into regular cocaine abuse loomed. The referee’s conclusion that “[y]ou can’t raise a child while you’re on drugs” is accurate, but does not fully resolve the factual and legal issues presented. The record does not contain clear and convincing evidence that respondent regularly used drugs in March 2007, when the referee rendered his decision. Instead, the evidence revealed the respondent had succeeded, for the most part, in overcoming her drug addiction, and had not been “on drugs” for a considerable period of time. Additionally, the referee concentrated his analysis solely on respondent’s past drug abuse, and ignored the many dramatic, positive transformations respondent had achieved. This narrow focus firmly and definitely convinces us that the referee and the circuit court clearly erred in terminating respondent’s parental rights.

Our review of the entire record reflects that early in the proceedings respondent resorted to old habits, submitting a series of positive drug screens, but that respondent thereafter completed her inpatient treatment plan, and substantially complied with recommended outpatient treatment. From July 2006 through the end of that year respondent had only negative drug screens. After the positive screen on the first day of the January 2007 termination hearing, respondent recommenced a series of negative screens through the second stage of the termination hearing, in March 2007. In our view, the single positive drug test, an isolated relapse during an eight-month period, did not defeat the otherwise remarkable progress respondent demonstrated in getting her problems under control.

In summary, based on the well-documented gains respondent achieved with regard to employment, housing, visitation, counseling and drug treatment, our review of the record leaves us with the definite and firm conviction that the referee and the circuit court made a mistake in finding termination warranted on the ground that the conditions leading to the adjudication continued to exist, with no reasonable likelihood of rectification within a reasonable time.

The analysis for subsections (g) and (j) parallels that for subsection (c)(i). The record plainly reflects that respondent initially failed to provide proper care or custody for the child, largely because of her cocaine habit, but subsequently participated in extensive drug treatment and achieved long periods of abstinence. The foster care worker's testimony at the termination hearing confirmed that a single fact, the January 2007 instance of cocaine usage, caused her to change course from recommending dismissal of the permanent custody petition to recommending termination. This revised recommendation apparently caused the referee likewise to recommend termination, despite respondent's substantial compliance with every other aspect of her treatment plan. Respondent's single positive screen from January 2007 was disturbing. However, the record contains no evidence that a single, isolated use of cocaine negatively impacted respondent's hard work toward gaining and maintaining a home, productive employment, or her loving relationship with the child.

Although we do not excuse any instance of cocaine consumption, we observe that respondent's sole and isolated transgression occurred in a setting of real and substantial recovery from a drug habit. This single act does not necessarily render her an unfit parent. Because the entire record amply establishes respondent's overall consistent and substantial participation in proffered services, and substantially demonstrates her fitness, we conclude that the referee and the circuit court clearly erred by invoking subsection (g) as a basis for terminating respondent's parental rights. Furthermore, in light of respondent's extensive participation in substance abuse treatment, her completion of parenting classes and a domestic violence education program, her maintenance of stable employment and a suitable home for the child, and her development of a positive bond with the child during consistently frequent visitations, we lastly conclude that the referee and the circuit court clearly erred to the extent their order of termination relied on subsection (j).

We reverse the order of termination, and remand this case to the circuit court for further proceedings. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher