

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MTH, LQH and DLW, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TAMMY JEAN HINTON,

Respondent-Appellant,

and

PRINCE VERMADO, a/k/a PRINCE VERMADO
EL and DOUGLAS LESLIE WINTERS,

Respondents.

UNPUBLISHED

November 30, 2001

No. 229875

Wayne Circuit Court

Family Division

LC No. 98-369905

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Respondent-appellant Tammy Jean Hinton appeals as of right from the circuit court order terminating her parental rights to the minor children.¹ We decide this case without oral argument pursuant to MCR 7.214(E)(1)(b). We affirm.

I. Basic Facts And Procedural History

Hinton's oldest child, MTH is the son of Prince Vermado, who is currently incarcerated. LQH and DLW are the children of Douglas Winters. In August of 1998, MTH and LQH were brought to Children's Hospital for injuries inflicted by Winters during a beating with a belt. Following a hearing, the referee authorized the petition to make all three children temporary court wards and placed the children in foster care. During a second hearing, Hinton admitted that Winters had been living with her and her children, and had used a belt to discipline and beat them. Hinton also admitted that she was present for some of those beatings. She stated that after

¹ See MCL 712A.19b(3)(b)(ii), (c)(i), (g) and (j).

she saw the welts she got into an argument with Winters and asked him to leave, which he did. Hinton did not remember Winters ever shaking DLW.

Before DLW was born, Hinton had given her mother custody of MTH and LQH from May of 1996 to December of 1997.

The referee continued the temporary wardship following hearings in October of 1998, and January of 1999, and ordered follow-up evaluations as recommended by the psychiatric report. At an April 1999, dispositional review hearing, the referee inquired whether the follow-up evaluation had taken place. Lynn Crininton, foster care worker for the FIA, informed the referee that they were unable to conduct additional testing because Hinton's whereabouts were unknown. According to Crininton, Hinton was not available to her, and failed to follow through in making the appointment. As for why Hinton had previously placed her children with her mother, Crininton informed the referee that there had been no court order in that regard, but that it appeared to be a mutual agreement between Hinton and her mother. Apparently, Hinton had become homeless and the placement was voluntary.

Turning to the FIA report, Crininton expressed her concern that Hinton had not been in compliance with the treatment plan and that the evaluations indicated that even within a reasonable amount of time Hinton would not be able to care for the children. Accordingly, Crininton recommended going forward with a permanent custody petition. Crininton did note that the children were currently being well cared for at the home of Hinton's mother and that the maternal grandmother visited MTH regularly at the mental health hospital. Evidently, Hinton had completed her required parenting classes and was in therapy, but did not have housing suitable for her family. Although Hinton was not employed, she did receive Social Security benefits that provided a suitable income. Despite Crininton's request, the referee refused to order permanent custody until the psycho-diagnostic testing was completed to find out if Hinton needed medication.

By the next hearing date in July of 1999, the court-ordered psycho-diagnostic testing had been completed and the referee had a report regarding Hinton's progress. However, in the interim, the children had been removed from the maternal grandmother and placed in a foster home. The referee was then informed that LQH had begun sexually acting out in the foster home shortly after her arrival on in May of 1999. According to foster care worker Michelle Wells El, LQH had told her foster mother that her father and uncle had gotten on top of her. However, the doctor who had examined LQH within two weeks of her foster placement, found no physical evidence of any sexual penetration. Nevertheless, El immediately arranged for LQH to be assessed and to begin therapy.

In her report, El indicated that she suspected that Hinton was still in contact with Winters, who had abused the children. This suspicion arose from unverified comments made by the maternal grandmother and the children themselves indicating that they had seen their father. El did note, however, that Hinton had always denied being in contact with Winters, and that there was continuing conflict between Hinton and her mother.

El stated that Hinton appeared to have benefited greatly from her parenting classes and was doing well in therapy. Hinton had obtained a job and a one-bedroom apartment. El had no objection to unsupervised visitation at Hinton's apartment, provided it was closely monitored.

She also noted that MTH had progressed at Hawthorne to the point where he was allowed off the premises occasionally. Hinton had been visiting MTH consistently at Hawthorne, and Hawthorne had no problem allowing her to take him for visits. El noted that each child was doing reasonably well in their respective placement, and that, if Hinton continued to make progress, it was conceivable that she could get her children back.

By the next hearing date in October of 1999, the referee noted that the foster care worker was "quite resourceful" in getting into Hinton's home and discovering Winters hiding in the closet. The referee concluded that no progress had been made, Hinton had not separated from the perpetrator of the abuse, and the children would be at significant risk if returned to her care. Because the children had been in care for more than one year, the referee ordered the agency to file a permanent custody petition. Services were still to continue if Hinton wished, but the referee noted that Hinton was not even present at the hearing.² The referee rescinded its previous order allowing unsupervised visits because it could not be certain that Winters would stay away from Hinton's home.

In February of 2000, the termination hearing commenced. El testified that she had been the foster care worker on this case since April of 1999, about seven months after the children were made temporary wards. Hinton's parent/agency agreement required her to: (1) complete parenting classes, (2) participate in group therapy, (3) complete an evaluation at the Clinic for Child Study, (4) attend supervised visits, and (5) participate in domestic violence counseling. At the time El took over the case, Hinton had been participating in parenting classes at Families Services and had been seeing a therapist, Valerie Childs, since about June of 1998. It appeared to El that Hinton had benefited from parenting classes in terms of her interaction with the children during supervised visits at the agency and in conversations in which Hinton seemed very sincere about their care and well-being. Domestic violence counseling may have been incorporated to a small extent into the personal counseling; however El was unclear whether they had achieved this separate goal. Childs spoke very highly of Hinton and the progress that she had made. Hinton attended therapy sessions with Childs regularly and Childs felt that Hinton's self-esteem had improved.

El had continually inquired whether Hinton was in contact with Winters because of indications from Hinton's mother that Hinton was still involved with Winters. Hinton repeatedly denied any involvement with Winters. However, the discovery of Winters in Hinton's apartment in August of 1999 cast doubt about her sincerity regarding her children. Confronted with the discovery of Winters in her closet, Hinton indicated to El that Winters had just arrived the previous night. However, the condition of the apartment suggested that a man had been there for some time. Winters informed El that he was living with his mother, but his mother failed to respond to her inquiry. Both Hinton and Winters told El that they were planning to marry and were looking to purchase a home together. Hinton provided El with a document about a city program through which she was seeking a home and that Winters was going to do some repair work and refurbish it. This suggested to El that Hinton and Winters had been in contact with each other and had an established, ongoing relationship.

² According to El, Hinton did arrive at court after the conclusion of the hearing, and was upset at having missed the proceedings.

After the discovery of Winters in Hinton's closet, both Hinton and Winters made an appointment with El for the following Monday. El went over the parent/agency agreement, which they both signed. Winters appeared cooperative and El made a referral for parenting classes, but Winters did not pursue it.

While seeing therapist Childs, Hinton began working two jobs, but then disappeared for a period, losing contact with her. Hinton stopped attending therapy in September of 1999, indicating a conflict with her work schedule and that she felt she was improving. In October of 1999, El made another referral for Hinton to attend therapy through another agency that would be able to do home-based counseling. Hinton participated in only one home-based session and failed to respond to either of two letters sent to her thereafter. Hinton also quit her job and stopped visiting the children at the agency in October of 1999. According to the supervisor at Shield's, Hinton was a great worker and doing fine. However, when Winters was hired there in August of 1999, he and Hinton began riding the bus with each other and Hinton's performance began to change; she just stopped going to work.

Following the court hearing in January of 2000, El met Hinton in the hallway just as Hinton arrived at court. Hinton appeared very upset at having missed the hearing. El talked to Hinton about her previous apparent lack of concern. Hinton indicated that she had despaired somewhat, that she was frustrated with her mother, and that it seemed like her mother was going to have custody of the children anyway. Evidently, Hinton was at odds with her mother and did not like visiting her children when her mother was present. El tried to emphasize to Hinton that adults sometimes do not get along with other people, but that disputes could not stop her from parenting her children. Hinton indicated that she wanted to resume counseling, so El made another referral in February of 2000. Both El and the supervisor at the agency attempted to notify Hinton about the referral, but she had yet to set up an appointment for counseling services.

During supervised visitation, Hinton's interaction with her children was appropriate. Although at times Hinton would become tearful near the end of a visit, she did not demonstrate inappropriate actions or discipline during a visit. Before visitation ended when the FIA filed the termination petition in December of 1999, Hinton had last visited with her children in October of 1999. Hinton did not attempt to contact El or to send birthday gifts or Christmas gifts to the children.

Because of her involvement in this case for almost one year, El did not believe that Hinton could take the children home to an appropriate setting. She founded this conclusion in part on Hinton's continued denial of her relationship with Winters. El recommended terminating Hinton's parental rights, citing Hinton's failure to comply with her treatment plan despite numerous attempts to provide a variety of services to help her to meet these goals. El did not believe that Hinton was capable of caring for her children without assistance from many services. El noted that MTH had special needs, having previously demonstrated suicidal tendencies and psychotic behaviors. Although MTH had improved, he still required a residential setting with structure and was not ready for even specialized foster care. LQH also had special needs, having had disciplinary problems in the foster home even though she was receiving counseling. There were no special problems regarding DLW. El did not feel that Hinton would be able to balance a work schedule with the responsibilities of her family. El felt it was in the best interests of the children that Hinton's parental rights be terminated. El did not believe that additional services would benefit Hinton.

Hinton advised the referee that she believed she benefited from her two parenting courses and expressed her willingness to attend additional courses if the referee desired. She acknowledged that she stopped attending counseling in October of 1999, but explained that it was difficult to schedule appointments because of her work. As for the day Winters was found hiding in her closet, Hinton stated that he was only there to get the number for El so he could inquire about the children and that he had only recently arrived. Hinton stated she had no contact with Winters before that day; she had, however, been in contact with his family. Hinton denied telling El that she had planned to marry Winters. According to Hinton, Winters said that he was planning to buy a house and that she was planning to buy a house through the Nuisance Abandoned houses, which is how that discussion arose. Hinton did go with Winters that following week to see El, and both signed the parent/agency agreement. Hinton still believed Winters was a danger to her children and had no plans to marry him or to live with him. Hinton stated that if her children were returned she would not have contact with Winters, but might have contact with his family.

Hinton further explained that she stopped visiting her children in October of 1999, because she did not want those visits to occur with her mother, with whom she was having problems. No one at the agency made arrangements so that she could visit her children without her mother present. She acknowledged that El had discussed with her the need to “be an adult.” Hinton also acknowledged that she told El that she had despaired because it seemed as though everything was on her mother’s side. However, she noted that she had not really given up hope, noting that she was still present at court. Hinton was willing to participate in more parenting classes and requested that her parental rights not be terminated.

After hearing the above testimony, the trial court entered an order terminating Hinton’s parental rights.

II. Basis For Termination

A. Standard Of Review

Hinton argues that although the conditions leading to adjudication may have still existed at the time of the termination agreement, there was a reasonable likelihood that the conditions could be rectified within a reasonable time given the significant level of her compliance with the parent/agency agreement. 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.³ This Court reviews the trial court’s findings of fact under the clearly erroneous standard.⁴ A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on all of the evidence is left with a definite and firm conviction that a

³ *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

⁴ MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), citing *In re Irving*, 134 Mich App 678, 679-680; 352 NW2d 295 (1984).

mistake has been made.⁵ Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appear before it.⁶

B. Analysis

We conclude that the circuit court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.⁷ At minimum, there was clear and convincing evidence that the conditions leading to the adjudication, including Hinton's connection to abusive Winters, persisted and would not be cured in a reasonable time given the children's ages.⁸ Further, there was evidence that Hinton had failed to provide the children with proper custody in the past and would be unable to do so within a reasonable time in light of the children's ages.⁹ For instance, Hinton had not yet obtained suitable housing. Further, the evidence did not show that termination of Hinton's parental rights was clearly not in the children's best interests.¹⁰ Therefore, the circuit court did not err in terminating Hinton's parental rights to the minor children.

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

I concur in result only.

/s/ Janet T. Neff

⁵ *Id.*, quoting *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985) and *In re Cornet*, 422 Mich 274, 278; 373 NW2d 536 (1985).

⁶ *Id.*

⁷ MCR 5.974(I); *Miller, supra*.

⁸ MCL 712A.19b(3)(c)(i).

⁹ MCL 712A.19b(3)(g).

¹⁰ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).