

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NOAH MCHENRY, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GARNET MCHENRY,

Respondent-Appellant,

and

MARVIN TABOR,

Respondent.

UNPUBLISHED

November 22, 2005

No. 259812

Allegan Circuit Court

Family Division

LC No. 02-031534-NA

Before: Bandstra, PJ, and Neff and Markey, JJ.

PER CURIAM.

Respondent-appellant appeals by right from the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(g), (i), and (j). We affirm.

Respondent-appellant has a lengthy history of involvement with petitioner dating back to 1993. In 2001 her parental rights to her four older children were involuntarily terminated. The issues surrounding the termination included neglect, drug abuse and, significantly, respondent-appellant's failure to protect her children from Marvin Tabor, who posed a risk of harm to her children because of his extensive criminal history, drug abuse and domestic violence. In May 2002, after the birth of the child at issue in this case, petitioner initiated proceedings because of respondent-appellant's prior terminations. The court assumed jurisdiction over the child based on her stipulations to an extensive protective services history, an unhealthy and emotionally abusive relationship with Tabor, and her stated concern about the risk to the child if Tabor had unsupervised contact with him. During those proceedings, respondent-appellant was repeatedly instructed to have no contact with Tabor because of the risk of harm he posed to her and the child. In January 2003, after respondent-appellant successfully completed services, the first case was closed because respondent-appellant had had no contact with Tabor and had demonstrated an ability to protect the child from him. In October 2003 respondent-appellant became involved

with Tabor again and allowed him to reside with her and the child. In March 2004, after petitioner became aware that Tabor was residing with respondent-appellant and the child and that there were ongoing substance abuse and domestic violence issues in the home, the child was removed from her care, and petitioner filed a petition requesting termination of her parental rights. Throughout the proceedings in the current case, respondent-appellant maintained contact with Tabor and did not believe that he posed a risk of harm to her child, despite his alleged drug use in their home, alleged domestic violence, and extensive criminal history. The court, finding “significant” respondent-appellant’s continued relationship with Tabor which put the child in a situation that could subject him to emotional abuse, drug exposure and physical injury, then terminated respondent-appellant’s parental rights to the child.

Respondent-appellant’s sole claim on appeal is that the trial court clearly erred in terminating her parental rights. 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 Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000); MCL 712A.19b(5). “Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child’s best interests.” *Id.* at 354. This Court reviews the trial court’s determination for clear error. *Id.* at 356-357.

Initially, we note that respondent-appellant incorrectly addressed subsections (3)(c)(i) and (g) on appeal as the statutory grounds for termination. In fact, the trial court relied on subsections (g), (i) and (j) in terminating respondent-appellant’s parental rights. Because respondent-appellant did not challenge the trial court’s decision to terminate her parental rights under subsections (i) or (j), affirmation of the termination order is appropriate. *Id.* at 350. Regardless, we find that termination was proper under the statutory grounds relied on by the court.

Respondent-appellant’s repeated inability to protect her children from a risk of harm by failing to refrain from involvement with Tabor, despite extensive services and repeated instruction to do so, clearly established that the child would likely be subjected to a risk of harm if she regained custody of the child. Most troubling was testimony alleging that Tabor used drugs with his teenaged daughter and physically abused respondent-appellant while he was residing with the child. This conduct showed that he posed a current risk of harm to the child. Although Tabor denied using drugs in the home, and respondent-appellant denied any physical abuse or knowledge of the drug use, we must give regard to the special opportunity of the trial court to assess the credibility of the witnesses who appear before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent-appellant remained unable to protect the child from a potentially harmful environment by involving herself with and allowing Tabor to reside with them despite his extensive criminal history, his negative involvement in the prior case concerning her older children, and his alleged current drug use and domestic violence.

Although by the time of the termination trial respondent-appellant was trying to avoid Tabor, her prognosis for long-standing change was “guarded,” and the testimony suggested that she would likely become involved with him in the future. We find it particularly ominous given Tabor’s unfavorable history and the caseworker’s repeated concerns about respondent-appellant’s involvement with him throughout the prior proceedings, that only ten months after the prior case closed, she renewed her relationship with Tabor and allowed him to live with her

and the child, exposing the child to a potentially harmful environment. Furthermore, respondent-appellant continued to have contact with Tabor throughout these proceedings and desired to maintain a relationship with him by the time of the termination trial, although she realized it was not possible. Respondent-appellant's likely future involvement with Tabor would pose a significant risk of harm to the child given Tabor's ongoing drug use and the alleged domestic abuse and supports termination of her parental rights under MCL 712A.19b(3)(g) and (j).¹ The evidence also supported termination under MCL 712A.19b(3)(i) because respondent-appellant's parental rights to her older children were previously terminated due to neglect and attempts to rehabilitate her have been unsuccessful, as evidenced by her continued inability to protect her child from a risk of harm.

Given respondent-appellant's repeated failures to protect her children from the risk of harm posed by her involvement with Tabor, we also find no clear error in the trial court's conclusion that termination was in the child's best interests.² Accordingly, the trial court did not clearly err in terminating respondent-appellant's parental rights.

We affirm.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Jane E. Markey

¹ We note, however, that respondent-appellant did make significant progress towards improving herself since the prior proceedings involving her older children by maintaining employment and housing, attending and making progress in regular counseling throughout these proceedings to address her ongoing issues with domestic and emotional abuse, and submitting negative drug screens.

² We note that the trial court went beyond the best interests inquiry under MCL 712A.19b(5). The statute does not require that the court affirmatively find that termination is in the child's best interests. *In re Trejo*, *supra* at 364 n 19.