

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARC COTTER, JR.,
SHANNON ELIZABETH SWANSON, and
VIRGINIA SWANSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

APRIL MAIRE DIEHL,

Respondent-Appellant,

and

MARC ANDREW COTTER, JAMIE AUSTIN
HUNTER, and GARY JACOBY,

Respondents.

UNPUBLISHED
December 6, 2005

No. 262729
Calhoun Circuit Court
Family Division
LC No. 04-000449-NA

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

PER CURIAM.

Respondent mother appeals as of right from the trial court order terminating her parental rights pursuant to MCL 712A.19b(3)(b)(ii), (g), (i), and (j). We affirm.

I. FACTS

This case involves a temporary custody petition for three children, Marc Cotter, Jr., Elizabeth Swanson, and Virginia Swanson. The petition alleged that respondent and her live-in boyfriend Michael Diehl had caused bruises on Marc by spanking him with a belt and kicking him and caused bruises on Shannon by dragging her down the stairs by her hair. It was also alleged in the initial petition that respondent and Diehl were frequent marijuana users. The petition also alleged that Diehl had an anger management problem. On February 25th, 2004, a preliminary hearing was held in which respondent mother waived probable cause. Marc and Virginia were placed with their respective fathers and Shannon was placed in foster care. On March 17th, 2004, respondent mother and Diehl admitted to the allegations contained in the petition and admitted that he had an anger management problem.

Respondent mother and Diehl were married on May 12th, 2004, purchased a home, held jobs, and both began to receive counseling. Substance abuse and housing were no longer issues for respondent mother. However, the emotional stability of the children was a reason for termination in this case. The children's emotional stability was extremely low, and the children all stated to the caseworker on numerous occasions that they were afraid of respondent and Diehl. Respondent mother's psychological evaluation in April 2004 had a poor prognosis. The caseworker believed that if the children were returned home, they would be at risk of physical abuse from either respondent mother or Diehl. A psychologist stated that returning the children to respondent mother would cause them substantial risk of harm because they had been exposed to an enormous amount of trauma that they verbalized in sessions regarding physical abuse, sexual abuse, and parental neglect. The children were all very angry towards their mother and fearful of returning to that environment. The psychologist believed that only termination would be positive for the children.

II. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *Sours, supra* at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours, supra* at 633. Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613 (C); *Miller, supra* at 337.

III. ANALYSIS

A. Termination of Parental Rights

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence, with the exception of section (i) regarding which no evidence was presented. However, this error is harmless where only one ground for termination need be established to support termination. MCL 712A.19b(3).

The trial court did not clearly err in finding that section (b)(ii), (g), and (j) were established by clear and convincing evidence. Respondent mother admitted that her living-together partner, and later husband, severely physically abused the children and that she had the opportunity to prevent the abuse. There was also a reasonable probability that the children would be physically abused by respondent mother in the foreseeable future if returned to her care. Respondent mother was diagnosed by Dr. Haugen with personality disorder and found to be at risk for physically abusing her children. Although respondent mother attended therapy and had made some progress, she did not pass her first parenting class and had not completed another

class. She admitted physically abusing the children in the past and to not protecting the children from their stepfather's abuse and did not understand the trauma that the children experienced as a result. Returning the children to respondent mother would have emotionally harmed them and would have caused them to regress emotionally. The children did not wish to return to her or even to see her at visitation.

B. Best Interests of Child

The evidence did not show that termination of respondent-appellant's parental rights was not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. There is nothing in the record to suggest that the trial court erred in terminating the rights of the respondent-appellant. The children were emotionally stable in their new placements and their behavior improved significantly after visitation with respondent mother ceased. Several witnesses testified that the children's placements were appropriate and long term and the children expressed a desire to stay in their placements

Affirmed.

/s/ Michael R. Smolenski

/s/ Bill Schuette

/s/ Stephen L. Borrello