

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHALYN KOON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHELLE VERSTRATE,

Respondent-Appellant,

and

RANDALL KOON,

Respondent.

UNPUBLISHED

January 11, 2007

No. 270926

Allegan Circuit Court

Family Division

LC No. 04-036046-NA

Before: Markey, P.J., and Saad and Wilder, JJ.

MEMORANDUM.

Respondent Michelle VerStrate appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).¹ We affirm.

Respondent argues that the statutory grounds for termination were not proven by clear and convincing evidence. We review the trial court's findings of fact for clear error. MCR 3.977(J); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). Due regard is given to the trial court's special opportunity to judge the credibility of witnesses. *Id.* at 337.

We conclude that termination of respondent's parental rights was improper under § 19b(3)(c)(i). The condition that led to the initial adjudication was the father's placing of duct tape on the child. That condition did not continue to exist. Respondent obtained a divorce from the father, whose parental rights were terminated several months earlier. Moreover, the trial

¹ The trial court previously terminated the parental rights of the child's father, and this Court affirmed that decision in an unpublished opinion per curiam, issued March 30, 2006 (Docket No. 264775).

court found that petitioner failed to prove that respondent had an opportunity to prevent that abuse. Thus, the trial court clearly erred in finding that termination was warranted under § 19b(3)(c)(i).

But the trial court did not clearly err in finding that the remaining statutory grounds for termination were each established by clear and convincing evidence. With regard to § 19b(3)(c)(ii), there was clear and convincing evidence that respondent was still wavering concerning the truth of the allegations of sexual abuse by the father, despite her testimony to the contrary. Respondent testified that she believed the child's allegations when she saw the videotaped forensic interview in January 2005. At a hearing in February 2005, however, she testified in court that she did not believe the child's sexual abuse allegations. During joint therapy with Leslie Bolt, respondent made it clear that she did not believe the allegations and did not want to send the father to prison. Respondent questioned the child until she finally denied the allegations. In October 2005, respondent stated in court both that she believed that the father had duct taped the child, and that she did not believe any allegations because the child had denied them. Even respondent's own counselors noted respondent's ambivalence. Candace Ziemba testified that, on December 29, 2005, respondent still wavered whether to believe the child's allegations. James Mitchell saw respondent beginning on February 21, 2006, and testified that she still doubted the allegations of sexual abuse. At the termination hearing, respondent refused to admit that the father's conduct of lying on top of the child while naked could be considered "sexual abuse."

While respondent professed to now believe the child's allegations, her high level of denial and defensiveness never diminished. Wanda Hendrickson saw her between February and April 2006, and noted continued high levels of denial. Respondent denied that the father assaulted her former neighbor. She also denied that there were problems in her relationship with the child. Additionally, she denied that she and the father were caught stealing from the VerStrates, and denied all of the incidents of neglect described by the VerStrates. She also denied whispering to the child during visits, denied that she needed to take medication, denied being told that the father had been sexually and physically abused as a child, and even maintained that there was nothing wrong with the child's placement with Sandra Larabel.

Respondent also continued to place her needs above the child's needs. For example, after the father's parental rights were terminated, respondent gave him permission to enter her property. When the child's placement was changed, the child's nice clothes and toys remained with Larabel. Respondent told the child that Larabel cried every day because she missed her. She asked the child to sign a paper saying that she wanted to live with respondent. Respondent continually discussed the case in front of the child, and she argued with the caseworker Brad Wetzel, the child's custodian Patricia VerStrate, and others in front of the child. Respondent sent the child to the bathroom so she could talk to Wetzel, and she brought Patricia Gessler to videotape the visits, causing a disagreement that upset the child, even though she had been previously told that videotaping would not be permitted. Respondent also refused to regularly take her medication even though it might help her to become a better parent.

Contrary to what respondent argues, there was clear and convincing evidence that the child was affected by respondent's disbelief and lack of support. The child's mother/daughter play themes were full of anger and distrust, and the child routinely had headaches and stomach aches before visits, even after respondent claimed to believe the allegations.

Respondent's testimony also showed a distorted view of her relationship with the child. She stated that she and the child did not want to date, and that the child was her best friend. She stated that the child was perfect. Respondent took at least four parenting classes, but could not explain what she had learned in the classes without looking at her notes.

Bolt, Amy Brace, and Wetzel all believed that respondent could not rectify these conditions within a reasonable time. Even respondent's own therapists believed it would take significant time for her to make progress. Ziemba believed that respondent needed many months, if not years, of therapy, and was at risk of having a breakdown. Steven DeGroot found that respondent suffered from an adjustment disorder and needed therapy for a year. Although Robert Spratt testified that he believed respondent could parent the child immediately, even he agreed that she would need services, might need help making judgments, and he hoped she would have enough sense not to expose the child to any potential dangers. In sum, there was clear and convincing evidence that other conditions existed that would bring the child within the court's jurisdiction, that respondent was not able to rectify those conditions during the two years that the child was in care, and that respondent would not be able to do so within a reasonable time considering the age of the child. Thus, termination was proper under § 19b(3)(c)(ii).

This same evidence also supports the trial court's determination that §§ 19b(3)(g) and (j) were each established by clear and convincing evidence, especially considering that respondent was still wavering concerning whether to believe the child's allegations of abuse, that respondent was still using denial as a coping mechanism, and that respondent was still placing her own needs above the needs of the child. Respondent's inattentiveness, doubts, and selfishness had already had a negative effect on the child, and she was unlikely to be able to protect the child from potential predators if she did not believe her.

Respondent also argues that the trial court erred in finding that termination of her parental rights would not be clearly contrary to the child's best interests. We disagree.

Once a statutory ground for termination is established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). We review the trial court's best interest decision for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000).

The evidence showed that the child was affected by respondent's disbelief and lack of support. The child's mother/daughter play themes were full of anger and distrust, and she experienced headaches and stomach aches before visits, even after respondent claimed to believe the allegations. According to Brace, the child's bond with respondent was chaotic, conflictual, traumatic, and unhealthy. The evidence did not clearly show that termination of respondent's parental rights was not in the child's best interests. Thus, the trial court did not err in terminating respondent's parental rights to the child.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder