

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NEVAEH SKY MONARCH,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NICOLE LOUISE ELDRED,

Respondent-Appellant.

and

DEAN MONARCH,

Respondent.

UNPUBLISHED
December 27, 2007

No. 278424
Calhoun Circuit Court
Family Division
LC No. 05-000644-NA

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Respondent mother appeals as of right from the trial court order terminating her parental rights to the minor child, Nevaeh Sky Monarch, pursuant to MCL 712A.19b(3)(c)(i), (j) and (l). We affirm.

Respondent gave birth to Nevaeh in December 2005. One day after the child's birth, petitioner obtained an order to place Nevaeh in protective custody. At the time of Nevaeh's removal, Dean Monarch,¹ respondent's live-in partner and father of her children, Nevaeh and Mistearya, had been accused of sexually abusing respondent's eldest daughter, Alysse. In June 2005, a jury found clear and convincing evidence that Monarch molested Alysse and the court asserted jurisdiction over Alysse and Mistearya. Respondent was given a court-ordered treatment plan that required her to take parenting classes and participate in the Connections counseling program for non-offending parents of sexually abused children. Respondent made

¹ Monarch did not participate in the termination proceedings and is not a party to this appeal.

little progress in the program as she continued to deny that Monarch molested Alysse. Respondent never completed parenting classes.

In April 2006, respondent made pleas of admission before the trial court and Navaeh became a temporary court ward. The court found that respondent failed to protect her child and that her home environment was unfit. Respondent was again ordered to participate in the Connections counseling program and to retake parenting classes. Petitioner filed for permanent custody of Nevaeh in March 2007, due to respondent's lack of progress on her treatment plan. In September 2006, respondent's parental rights were terminated to Alysse and Mistearya. Monarch's parental rights were also terminated to Mistearya. The court terminated respondent's and Monarch's rights to Nevaeh in May 2007.

On appeal, respondent first argues that there was not clear and convincing evidence to support termination of her parental rights under MCL 712A.19b(3)(c)(i). We disagree.

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 proven 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 Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); see also *Trejo*, *supra* at 356-357. 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). 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*.

Respondent failed to benefit from services and improve her parenting skills to the point where Nevaeh would be safe in her care. See *In re Gazella*, 264 Mich App 668, 675-676; 692 NW2d 708 (2005). Respondent was in denial regarding the sexual abuse perpetrated by Monarch and was stuck in an irrational, distorted thinking process, just as she had been in her first attempt in the Connections program.² Neither her thought process nor her insight regarding Alysse's sexual abuse had improved since Nevaeh was placed in protective care. By the time of the termination proceedings respondent was, at best, only willing to concede that Monarch *could* have molested Alysse. Respondent's Connections counselor did not believe she could apply the material from their sessions and protect her child. Thus, termination pursuant to MCL 712A.19b(3)(c)(i) was not in error.

² Respondent was ordered by the court to participate in Connections after the adjudication of Alysse and Mistearya. She was again ordered to participate in Connections following the adjudication of Navaeh because she had not progressed or benefited after her first time with the program. Petitioner assigned her a new therapist, per her request, because she believed the original service providers were biased against her.

Further, the lower court found two additional grounds for terminating respondent's rights, both of which are supported by the evidence. Respondent's parental rights to two of Nevaeh's siblings had been terminated in September 2006. MCL 712A.19b(3)(l). Further, Nevaeh would likely be harmed if returned to respondent's care because she lacked the ability to identify the characteristics of sexual predators. MCL 712A.19b(3)(j). Respondent denied Alysse's statements regarding her sexual abuse. She believed someone coerced Alysse into stating that she had been molested. Respondent did not believe her daughter was exhibiting signs of trauma despite the therapists' indications. Respondent's continuing connection to Monarch, her statements that it did not matter whether she believed Monarch molested Alysse, and her belief that Monarch deserved a relationship with Nevaeh revealed her lack of insight regarding the danger a sexual predator like Monarch posed, and her inability to protect Nevaeh from future harm.

Finally, we reject respondent's claim that she was denied her fundamental right to bond with Navaeh. Respondent's contention that she was entitled to bond with Nevaeh is erroneous. Citing *In re JK, supra*, respondent argues that there is a "fundamental right" of a parent and child to maintain a family relationship. In *In re JK, supra* at 210-212, the lower court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(ii), erroneously relying on lack of bonding between respondent and child as the "other condition" causing the child to come within the court's jurisdiction and the basis to terminate rights. Unlike in this case, the respondent in *In re JK, supra* at 208, 214, was compliant with and benefited from her treatment plan, which negated the statutory basis for termination. Further, there was evidence that the respondent had established a bond with the child. *Id.* at 202, 212-213. In this case, there was no evidence of a strong bond between respondent and Nevaeh, nor was there proof that eliminating bonding opportunities between Nevaeh and respondent in terminating parental rights would compromise the child's best interests. Respondent did have a right to continued companionship and custody of her child—a protected liberty interest under the Due Process clause. *Id.* at 210. However, there is a substantial societal interest in the protection and welfare of children. In this case, proof of parental unfitness was based on MCL 712A.19b(3)(c)(i), respondent's lack of progress in therapy and her inability to protect her child from sexual abusers like Monarch. Respondent had not rectified the conditions that brought Nevaeh into care.

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder