

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RASHAWN MARTELL
WALKER, JOHN ERIC GOODIN, JR., KRISTAL
SHAVON GOODIN, JA'VON LEM GOODIN,
JOSEPH LEON GOODIN, and JERMIAH MARK
GOODIN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHAMEKA DENEVA WALKER,

Respondent-Appellant,

and

SHAWN WHITE and JOHN ERIC GOODIN,

Respondents.

Before: Murray, P.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

Respondent Shameka Walker appeals as of right from the trial court's order terminating her parental rights to her six minor children.^{1,2} We affirm.

¹ MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days without seeking custody), (c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if child is returned to parent).

² A seventh child was involved in the proceedings below but was not included in the termination order because he was a delinquent ward under guardianship. The trial court also terminated the parental rights of the children's fathers, Shawn White and John Eric Goodin, but they are not parties to this appeal.

I. Basic Facts And Procedural History

The present case began with a referral in February 2000, regarding Walker's four oldest children. However, Walker had a history with child protective services dating back to 1996. Walker spoke to a prevention worker in 2000 about getting assistance because, according to the prevention worker, the "children were undisciplined and out of control," and Walker "was overwhelmed and quite stressed." Protective services worker, Kateshia Davis, explained that there had been an incident in February 2000, when the minor child John set his sister Kristal's hair on fire with a cigarette lighter. Walker explained that she was asleep and had thought that the children were sleeping too. The incident occurred during the daytime.

Five-year-old Rashawn had a speech impediment, and ten-year-old Loring had been a patient at Havenwyck, a children's mental health hospital. The prevention worker arranged for the children to go to a daycare center nearby and suggested that Walker go to the mental health clinic. Before any services could be put into place, Walker was detained at the Canadian border, and the children were placed with their maternal grandmother in Oakland County, Michigan. In May 2000, the grandmother was evicted from her house and Oakland County Protective Services removed the children from her custody. Walker visited the children and was employed. But Walker informed Davis that she was living in a homeless shelter and did not have appropriate housing for the children.

Foster care worker Gail Babb explained that Loring had been diagnosed with ADHD and oppositional defiant disorder. He acted out and was "pretty hostile and aggressive" toward the other children, and there was some concern that he was sexually abusing Rashawn, so the foster home initiated a "safety plan" to keep the boys away from one another. Rashawn was a loving but "very difficult" child, who was "very hyper," was acting out in kindergarten, and was difficult to understand because of his speech impediment. John also acted out, but seemed "to be kind of imitating the other boys' behavior," and neither he nor Kristal appeared to have special needs. Babb explained that visitations were difficult for the parents because "the children's behavior problems show up," and Walker admitted to Babb "that it was difficult." Babb wanted to be sure services were in place, but hoped to return the children to Walker, explaining, "I believe she loves her kids. She's worked very hard to keep her kids together for nine years."

Ja'Von was born in June 2001, and he was not immediately removed from the home or made a court ward because Walker appeared to be caring for him appropriately. She was complying with all the terms of her parent-agency agreement. And in September 2001, the four older children were returned home with "intensive in-home" services. The trial court advised Walker: "don't mess it up." In January 2002, the wardship was terminated, and the case was dismissed.

The family next came to the trial court's attention in March 2004, after eight-year-old Rashawn set Walker's bed on fire while she and her "LTP"³ were sleeping in it. Rashawn alleged that his "stepfather" beat him, but the other children said he was crazy. There was also a

³ Although not specifically stated on the record, it appears that the "LTP" was Goodin.

report that the children had been left in the home without supervision. Protective services worker Marie Giles-Bey explained that Rashawn had been hospitalized at Havenwyck and Walker had to attend an appointment with his caretakers there, so she left the younger children home under the supervision of 13-year-old Loring. Loring, however, left the house, leaving the younger children unsupervised. Giles explained that Walker had no history of inappropriate supervision, and the children denied that they had ever before been left alone. Giles recommended that the petition be dismissed, but the case remain open and services be provided. Giles believed that Walker understood that she could not leave the younger children with Loring again.

Two months later, Walker was back in court in May 2004, when a petition alleging inappropriate supervision was authorized, after the younger children were reportedly left home alone again and were removed by the police. Walker's attorney suggested that respondent's absence was, again, caused by her need to attend to Rashawn's care.

In June 2004, the trial court was informed that Rashawn had been released from psychiatric care. Walker pleaded no contest to the allegations of improper supervision, and the trial court took jurisdiction over the children. Walker was employed and had already completed parenting classes. She was involved in individual counseling and her visits with the children went well, although transportation was a problem. Walker was apparently no longer living with Goodin, but was living with her mother and did not have appropriate housing for the children.

Rashawn had another psychiatric hospitalization in November 2004 because of a psychotic episode. John had been identified as having special needs and was receiving counseling and psychological services. The younger children required medical treatment for lead poisoning. Walker was progressing on her parenting plan; unsupervised day visits were going well and were appropriate. Walker still needed to secure independent housing.

In March 2005, Rashawn was treated on an emergency basis at the Hawthorne Center, and was transferred to Vista Maria for psychiatric evaluation and specialized care. Walker secured Section 8 housing and was in the process of getting furniture; she had a plan for childcare with a local day care center.

By June 2005, Walker had complied with all the terms of her parent-agency agreement. The children were in several different placements, but all of them went home on the weekends. Goodin was living with Walker again, and the caseworker was concerned that he was her new child-care plan. Goodin had not participated in these proceedings and had not completed any aspect of his parent-agency agreement. Walker explained that she did, in fact, have other child-care arrangements.

Because Loring was 14 years old and did not require childcare, he was returned to the home after the June 2005 hearing. But by September 2005, he had been removed again and was charged with criminal sexual conduct after assaulting Kristal in the basement of Walker's home. According to the case manager, Walker did not believe Kristal and denied that the incident ever happened. The case manager explained that the incident "did arise because of once again inadequate child care in the home." Unsupervised home visits were suspended.

Jermiah was born in February 2006; Walker stipulated that she had an existing case, and the infant was not removed from the home. Jermiah thrived in Walker's care, and the trial court ordered wrap-around services and gave petitioner the discretion to return one of the older children to the home. Petitioner had some concern that Goodin was living in the home, but Walker denied it. The attorney for the children explained that all of them had "tremendous needs," and that it would be "almost impossible for any parent to handle this." John was returned to Walker's care. Things continued to go well, and in September 2006, the trial court returned Joseph to the home. All three children did well in Walker's care and, in October 2006, the trial court returned Rashawn to the home and ordered extended visits for Ja'Von.

In December 2006, a supplemental Change of Plan petition was authorized, and the children were again removed from the home. Although Walker denied to the foster care worker that Goodin ever visited the children, he was sometimes present when in-home agency workers visited the home, and he was in the home at the time of the children's removal. The removal resulted in part from a protective services complaint that Walker "left the children with improper supervision and with no provisions left there in the home for the children." Walker was gone for four days.

The foster care worker reported that Walker was no longer in compliance with the trial court's orders, had not attended a case conference even though transportation was provided, and had refused family reunification plan services for approximately two months before the children's removal. Walker had not obtained a court-ordered psychological examination, and was not cooperating with the children's mental health treatment. Since the children's removal, Walker had discontinued her therapy, and her supervised visits had sometimes been inappropriate, in that she told the children not to obey the foster parents and that the agency workers were devils. She was often disruptive at visits, to the point that she was asked to leave.

In January 2007, shortly after the children were removed, Walker was evicted for non-payment of rent and no longer had appropriate housing. By June 2007, she had found a job, participated in the psychological evaluation (which indicated that her intellectual functioning was extremely low), and was participating in counseling, but was still living with her mother.

Petition filed for permanent custody in February 2007. A termination hearing was held in October 2007. Foster care worker Evelyn McPhearson explained that this case had a long history, noting that the preliminary hearing was held in March 2004. Walker visited the children until March or April 2007, when her visits were suspended, but the suspension was conditional, and McPhearson explained that she could have regained visitation by complying with her parenting plan. According to McPhearson, Walker had not called to see how the children were doing since they were returned to foster care. Walker had not submitted recent proof of employment, and she had stopped seeing her therapist in September 2007. McPhearson did not believe that Walker had benefited from parenting classes, and explained that there had been three instances when Walker left the children without appropriate supervision: (1) when Kristal was sexually assaulted by her brother; (2) when she left ten-day-old Jermiah with "somebody named Ray-Ray" who was "very disheveled" and smelled of alcohol; and (3) when she left the home for at least four days, resulting in the children's removal.

All of the children except Jermiah had special needs. (Kristal's special needs arose because of the sexual assault, and Ja'Von's special needs were the result of lead poisoning.)

Because of those special needs, Walker was required to participate in weekly sessions with Rashawn and have family counseling sessions with John. Once the children returned to Walker's care, she was required to enroll them in counseling to continue their therapy, but she failed to do so. Walker suggested to McPhearson that foster care was causing the problems and that they would just disappear once the children were home. According to McPhearson, Walker had "very limited insight onto [sic] her children's ongoing mental health and other types of services." In addition, when the children were removed in December 2006, Walker was already close to eviction and her utilities were being shut off. Although Walker was not present when the children were removed, there were more than 15 people in the home when the writ was executed. The children were not regularly attending school, and they sometimes "came to school smelling." McPhearson did not believe Walker could provide the children with permanency and stability, explaining:

[T]he mother has a history of neglecting the children, the mother continued even in her care to neglect the children, even with the court and the agency being involved, since that time, the mother has shown, just to me, a limited interest in her children; these children have special needs, they need someone to be involved with them, to look out for them, to be available for medication, to make sure they are not over-medicated or under-medicated and that they are getting what they need, I don't have a parent that seems to understand the importance of what is going on here with parenting.

Walker did not appear at the final hearing, and McPhearson did not know where she was.⁴ McPhearson had tried without success to contact Walker, and Walker's mother did not know where she was.

The trial court issued its findings from the bench and entered an order terminating Walker's parental rights. The trial court explained that Walker "has just quit" and had not benefited from services. Walker now appeals.

II. Statutory Grounds For Termination

A. Standard Of Review

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.⁵ We review for clear error a trial court's decision terminating parental rights.⁶ A finding is clearly erroneous

⁴ Respondent's attorney explained that her absence might be his fault, because he sent her a letter with a typographical error in the date of the hearing. Respondent had been present at the previous hearing where the date was set, and the trial court continued the proceeding in her absence.

⁵ MCL 712A.19b(3); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

⁶ MCR 3.977(J); *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *In re Sours*, *supra* at 633.

if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁷ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁸

B. Analysis

The trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g), and (j) were each established by clear and convincing evidence. Walker had a long history with protective services. There were several instances when Walker left her children either without supervision or with improper supervision. On one occasion, one of the children was sexually assaulted. On other occasions, the children started fires. Despite attending parenting classes and receiving intensive in-home services, Walker was unable to manage her children and continued to leave them unsupervised. When placed with Walker, the children did not regularly attend school, did not have proper hygiene, and Walker did not fully participate in her children's mental health treatment. Walker was also unable to consistently provide proper care or secure stable housing.

Because only one statutory ground is needed to support an order terminating parental rights, any error in the trial court's reliance on § 19b(3)(a)(ii) as an additional ground for termination was harmless.

In sum, we conclude that the trial court did not clearly err in finding that statutory grounds for termination of Walker's parental rights were established by clear and convincing evidence.

III. Best Interests Determination

A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the trial court finds from evidence on the whole record that termination is clearly not in the child's best interests.⁹ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹⁰ We review the trial court's decision regarding the child's best interests for clear error.¹¹

⁷ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁸ MCR 2.613(c); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

⁹ MCL 712A.19b(5); *In re Trejo*, *supra* at 350.

¹⁰ *In re Trejo*, *supra* at 354.

¹¹ *Id.* at 356-357.

B. Analysis

Walker contends that the trial court erred in its best interests analysis because she and the children were bonded. However, the evidence did not clearly show that termination of Walker's parental rights was not in the children's best interests. Although Walker loved the children, they had special needs, and Walker was unable to attend to those needs and provide the care and stability they required.

Affirmed.

/s/ Christopher M. Murray

/s/ William C. Whitbeck

/s/ Michael J. Talbot