

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DOMINIC FOSTER KENT and
KAITLYN MARIE KENT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARY E. KENT,

Respondent-Appellant.

UNPUBLISHED
November 6, 2008

No. 285608
St. Clair Circuit Court
Family Division
LC No. 07-000032-NA

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), and (j).¹ For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

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 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); *Trejo, supra* at 355-357; *Sours, supra* at 632-633. 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). 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.

¹ The parental rights of the children's father, Thomas Kent, were voluntarily released and thus, he is not a party to this appeal.

There was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(b)(ii) because respondent was notified of the danger her husband, Thomas Kent, posed to the children when four of her adult daughters disclosed that Kent had sexually abused them. Respondent acknowledged the disclosure but insisted that it could not have happened because Kent denied it and was never criminally charged. She failed to make any efforts to protect her children from Kent. In refusing to consider the legitimacy of her older daughters' allegations, and taking steps to verify whether her minor children were also victims of sexual abuse by Kent, she failed to protect her daughter from sexual abuse perpetrated by Kent.

Also, respondent failed to protect the children by permitting contact between them and her nephew, Bartaway, a convicted sex offender who had sexually abused her son when he was two years old. Had respondent prohibited contact between them, she could have prevented the sexual abuse Bartaway perpetrated on her daughter. Instead, in June 2007, respondent allowed Bartaway to move into her home and continued to permit him to have contact with her children after they were removed from her. Respondent even invited Bartaway to one of the children's birthday parties in July 2007. Shortly thereafter, respondent learned that Bartaway had been molesting her daughter and forcing her to have intercourse with him. This was happening during and after the time the daughter had been molested by Kent.

Throughout the case, respondent never demonstrated the ability to protect the children. During parenting classes, respondent insisted that she had done nothing wrong and did not understand petitioner's concern with her failure to protect. After the individual counseling sessions ended in May 2007, respondent was unable to assimilate information regarding the signs and symptoms of a child who has been sexually abused or the signs of a perpetrator. Because there is a reasonable likelihood the children will suffer sexual abuse in the future if returned to respondent's care, termination of parental rights under MCL 712A.19b(3)(b)(ii) was proper.

Termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(j) was also appropriate.² At the time of the adjudication, respondent failed to protect the children from sexual abusers. By the time of the permanent custody hearing, respondent had not demonstrated an ability to protect the children from sexual predators, thereby subjecting them to the prospect of future harm. Respondent never accepted responsibility for her role in protecting the children.

She also never demonstrated a protective instinct to avoid Bartaway or Kent and to end her ties with them. Although respondent filed for divorce, she repeatedly stated that she hoped to be reunited with Kent, who was incarcerated at the time for criminal sexual conduct against her daughter and her niece. Following a visit with the children, when respondent walked them out of the building and saw Bartaway in his car, she asked them to greet him. She also believed she could spend time with Bartaway as long as her children were not present. Respondent's statements and actions demonstrated that she had not developed insight about the sexual abuse suffered by the children.

² The evidence supporting termination of respondent's parental rights under MCL 712A.19b(3)(c)(i) also supported termination of her parental rights under MCL 712A.19b(3)(j).

By her own admission, respondent did not gain insight until the last family session (in November 2007) when she claimed to finally realize how hard it had been for the children. It was only when respondent was faced with the suspension of visitation and the immediate prospect of losing the children that she finally began to reach her therapeutic goals. As respondent's first therapist pointed out, at the onset of the case, respondent may have experienced a period of denial but later, after all the information and facts had been presented to her, denial was no longer possible. Respondent was simply unable or unwilling to take the necessary steps to safeguard the children from sexual abuse and emotional harm. Respondent had a history of ignoring and minimizing the threat posed by sexual predators and both respondent's caseworker and first counselor agreed that respondent did not have the necessary insight to identify a sexual predator and protect her children from harm. Thus, termination under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(j) was also proper.

Finally, the trial court did not clearly err in its best interests determination. Respondent had a strained relationship with her daughter who was very standoffish during visits, withdrew from respondent, and had to be coached to interact with respondent. Respondent expressed no emotion or remorse for the abuse inflicted on the children. She continued using accusatory language when talking to her daughter even though she was warned that it re-victimized the child. However, it is more than just the way respondent related to the children that shows that termination of her parental rights was not contrary to the children's best interests. It is not in their best interest to be with a parent who could not or would not protect them from sexual predators and sexual abuse. Since respondent was unable to demonstrate the insight needed to protect the children from harm, the trial court did not err in its best interest finding.

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis