

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BISHOP A'KING RICHARD
SMITH, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARY A. BONNER,

Respondent-Appellant.

UNPUBLISHED

January 15, 2009

No. 286249

Ingham Circuit Court

Family Division

LC No. 07-001555-NA

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(l). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory ground for termination, MCL 712A.19b(3)(l), was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5).¹

The parties do not dispute the trial court's findings that a statutory ground for termination was established. Respondent argues that the trial court erred in its determination of the child's best interests.

The trial court did not err in concluding that termination of respondent's parental rights was not clearly contrary to the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612

¹ MCL 712A.19b(5) has been amended, effective July 11, 2008, to require that the trial court make an affirmative finding that termination of a parent's parental rights is in the best interest of the child. 2008 PA 199. The amended statute does not affect the instant case because the termination order was entered on June 11, 2008.

NW2d 407 (2000). The foster care worker, therapists, and psychologist who had worked with and evaluated respondent and Bishop testified that they had a very strong bond. In addition, the evidence was clear that Bishop wished to return to respondent's care. The witnesses believed that severing contact between Bishop and respondent would have a negative impact on Bishop because of their bond and Bishop's strong desire to return to her care. However, clear and convincing evidence existed that respondent was unable to meet Bishop's needs. The counselors and therapists agreed that respondent was unable to care for Bishop independently. Bishop had special needs and required structure, consistent consequences, firm limits, a nurturing environment, and considerable supervision.

Respondent's parental rights to seven other children had already been terminated. She and Bishop had been involved with petitioner for seven years in which they received numerous intensive services. Bishop was almost nine years old at the time of the termination trial and had only lived with respondent for about two years. A previous petition and court jurisdiction were dismissed just one year earlier. Despite all of these services and the recent dismissal, these proceedings were initiated when a police officer witnessed respondent screaming obscenities at Bishop and hitting him. Respondent was arrested for third-degree child abuse.

Both the family therapist and the psychological evaluator testified that Bishop exhibited aggressive behaviors. The therapist noted that Bishop had a predisposition to violence and swearing and that, if he were exposed to those behaviors on a regular basis, he would develop a disregard for the law and the safety of others. The psychologist found that Bishop was more than willing to engage with someone aggressively if he were provoked and testified that, if Bishop witnessed aggressive behavior on a regular basis, aggressive behavior would become normal for him. After performing psychological evaluations on both respondent and Bishop and observing respondent and Bishop interacting, the psychologist did not believe that respondent was capable of parenting Bishop alone and recommended that someone live with respondent and Bishop to help them. Another family counselor did not believe that respondent was capable of caring for Bishop on her own because she was unable to handle Bishop's behavior and maintain parental control. While the foster care worker was not sure that termination was in the child's best interests, she did not believe that Bishop should be returned to respondent's care. The foster care worker thought that termination would move Bishop toward the permanence and stability that he needed.

Although all of the witnesses agreed that Bishop was strongly attached to respondent and that termination would have a negative impact on him, both the family therapist and the foster care worker testified that Bishop was thriving in his aunt's care. Respondent did not put any limits or establish appropriate boundaries for Bishop. In addition, respondent failed to redirect Bishop when he misbehaved or started swearing. Bishop's aunt provided structure and limits, two requirements for adequately caring for Bishop. Despite the strong bond and the child's expressed wishes, Bishop was able to flourish under someone else's care.

Although respondent and Bishop shared a strong bond and Bishop expressed his wish to return to respondent's care, the evidence was clear and convincing that respondent was not able to properly care for Bishop. By all accounts, Bishop was a difficult child with specific, specialized needs and there were severe consequences if those needs were not met. More time spent in foster care or receiving services with respondent would not provide the child with the structure, stability, and permanence that he required, especially as he grows older. Considering

this evidence combined with the seven years of services and care that petitioner had already provided for respondent, the trial court did not clearly err in concluding that termination of respondent's parental rights was not clearly contrary to the best interests of the child.

Respondent also argues that the trial court erred in not appointing separate counsel for the child because the guardian ad litem's determination of the child's best interests was in conflict with the child's determination of his best interests. MCL 712A.17d(2) states that the trial court "may" appoint separate counsel if such a situation arises. The use of the term "may" in MCL 712A.17d(2) and MCR 3.915(B)(2)(b) signifies a discretionary provision. *Warda v Flushing City Council*, 472 Mich 326, 332; 696 NW2d 671 (2005). Therefore, this Court reviews the trial court's decision for an abuse of discretion. *Mollett v City of Taylor*, 197 Mich App 328, 339; 494 NW2d 832 (1992). If the trial court's decision results in an outcome within the range of principled outcomes, the court has not abused its discretion. *Woodward v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

In this case, the guardian ad litem informed the trial court immediately that her determination of the child's best interests was in conflict with the child's determination of his best interests. Although the guardian ad litem clearly articulated Bishop's opposition to the trial court on different occasions, she did not advocate his position opposing termination.

Given the facts of this case, the trial court did not abuse its discretion in not appointing separate counsel for Bishop. There was ample evidence elicited at trial regarding Bishop's desire to live with respondent, the strong bond he shared with respondent, and that Bishop did not want respondent's parental rights to be terminated. However, the witnesses also were in agreement that respondent was not capable of adequately parenting Bishop. The trial court had to determine what weight to give Bishop's expressed wishes in light of the child's considerable needs and difficulties. Given the circumstances of the case and the trial court's extensive knowledge and familiarity with respondent and Bishop, we find that the trial court's decision was not an abuse of discretion.

Affirmed.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher