

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANGELICA T'ELLA DILLARD,
ALEXANDER ANTHONY WRIGHT, TONY
WRIGHT, and TONI WRIGHT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TYWANDA DILLARD,

Respondent-Appellant,

and

ANTHONY ALEXANDER WRIGHT,

Respondent.

UNPUBLISHED
February 24, 2009

No. 286590
Wayne Circuit Court
Family Division
LC No. 07-466220

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

Respondent Tywanda Dillard appeals as of right from a June 20, 2008 circuit court order terminating her parental rights to her minor children under MCL 712A.19b(3)(b)(ii) (failure to prevent sexual or physical abuse and reasonable likelihood of future abuse) and (g) (failure to provide proper care and custody).¹ We affirm.

I. Basic Facts And Procedural History

Dillard is the mother of 13-year-old Tervion Dillard, ten-year-old Angelica T'ella Dillard, three-year-old Alexander Anthony Wright, two-year-old Tony Wright, and two-year-old Toni Wright. Dillard is married to Anthony Alexander Wright; she moved in with Wright in December 2003, and they got married on March 10, 2006. Wright is the father of Alexander,

¹ Contrary to Dillard's assertion on appeal, the lower court did not terminate Dillard's rights under MCL 712A.19b(3)(a)(ii), (j), or (k).

Tony, and Toni, and his parental rights to all three have been terminated. The Department of Human Services (DHS) sought termination of Dillard's parental rights to all her children, with the exception of Tervion,² after Angelica reported that Wright touched her private areas and that she told Dillard but the abuse did not stop. Wright pleaded guilty to criminal sexual conduct and was sentenced to four to 15 years' incarceration.

Terri Redd-Buchanan, Dillard's second cousin, testified that Angelica told her that Wright made her take off her clothes when he spanked her. Angelica then told her that Wright bothered her, when she asked what that meant, Angelica said Wright touched her private parts. Angelica also told her that she told Dillard that Wright pulled the covers off of her and put Vick's Vapor Rub on her thighs and private parts. Angelica told her that Dillard said she would do something about it several times, but Wright did not stop. When confronted, Dillard told Redd-Buchanan that Angelica was not telling the truth and that she took Angelica to the doctor two days before and there was nothing wrong.

The children's maternal grandmother, Mattie Bell-Dillard, also testified that Angelica told her that Wright messed with her. Angelica claimed that it had been going on for a long time and that she told her mother, but Dillard did not do anything about it except promise to talk to Wright's mother. Bell-Dillard testified that she told Dillard it was not right and that she should not let that happen to Angelica, but Dillard said nothing.

Monique Wallace, a protective services worker, testified that she received a complaint of sexual abuse and talked to Dillard and Wright individually in her office the next day. Dillard claimed she knew nothing about the sexual abuse allegations, Angelica never told her, and the child told lots of stories and was lying. Wallace said Dillard admitted that there was domestic violence in the home and that she allowed Wright to physically discipline the children in excess. Wallace testified that she also interviewed Angelica and that Angelica told her the reason she was being interviewed was because Wright was messing with her. Angelica explained that Wright put Vick's Vapor rub on his fingers and then inserted his fingers into her vagina. Angelica told Wallace the first time it happened Dillard was asleep on the couch and Angelica woke her up and told her. According to Wallace, Dillard told Angelica that she would take care of it and tell Wright to stop.

Kate Oleksiak-Anton, a Kids Talk forensic interviewer, interviewed Angelica and testified that Angelica said she lived with her grandmother because of something her mother's boyfriend did, and that Angelica told Dillard about the incidents and Dillard responded she would take care of it. Angelica also told Oleksiak-Anton that Wright treated his biological children differently than her and Tervion; his children did not get whipped and they got better food.

Angelica was removed from her mother's custody and placed with her maternal cousin, Ashley Jackson in April 2007. The trial court did not grant Dillard visits with her children. The

² Although Dillard states in her appellate brief that her rights to Tervion were terminated, his name is not included in the order terminating her parental rights.

trial court adjourned the trial scheduled for August 2007, because Angelica's putative father, David Boyd, had not been notified by publication. In February 2008, the attorneys waived any appealable defects from the delay and agreed to adjourn to allow Wright to release his parental rights and order Clinic of Child Study evaluations for Dillard and the children. The trial court ordered DHS to refer Dillard to parenting classes and held that it would not grant Dillard visits until it saw the Clinic report.

Dillard testified at trial that she never saw Wright behave sexually inappropriately with Angelica or Tervion and never gave him permission to physically punish them. Dillard said she asked Angelica what it meant when she said Wright was bothering her, and Angelica told her it meant favoritism. Dillard emphasized that she believed bothering and messing meant being strict, being evil, and having rules. Dillard did not think it was something serious, or she would have taken Angelica to the doctor, filed a police report, and got a personal protection order against Wright. Dillard testified that she took all the children to the doctor regularly. She took Angelica to her doctor and then the Children's Hospital shortly before Angelica was removed but Dillard did not have a doctor examine Angelica for sexual assault because she had no reason to believe Angelica was assaulted.

Dillard testified that, when she first heard about the allegations, she asked Wright, who denied it, and asked his mother and siblings if they ever saw him do anything to a child. She also asked Tervion, and he did not back up Angelica's allegations. Dillard said she knew Wright whooped the children but she told him not to and he did not do it in her eyesight. She knew Tervion was whooped one time, and she confronted Wright and told him not to put his hands on her children. Dillard also admitted that she used marijuana while pregnant to help her appetite. She stopped smoking marijuana after the twins were born.

Dillard testified that she was in the process of getting divorced. She explained that she was getting divorced because she wanted her children home. When asked if she believed Wright sexually abused Angelica, Dillard said that she did now. Dillard said that when she was evaluated at the Clinic she was in denial. Dillard said she would have done anything to protect her children, but she did not because she was in denial and had never been through this before.

The trial court said that it was sure Dillard knew very quickly what was happening, even if the words "sexual abuse" were not used, and she had a duty to act even if she did not want to believe her daughter. The trial court found statutory grounds to terminate her parental rights under MCL 712A.19b(3)(b)(ii) and (g) and terminated Dillard's parental rights. Dillard 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.³ We review

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

for clear error a trial court's decision terminating parental rights.⁴ 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.⁵ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁶

B. Analysis

Dillard argues that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence because there was no evidence that Dillard abandoned or surrendered her children, she did not demonstrate she was unwilling or unable to care for her children, there was no evidence Angelica would be harmed if returned, and there was no evidence that Dillard knew Angelica was being sexually abused. We disagree.

The trial court did not err because clear and convincing evidence established that one child was sexually abused, Dillard had an opportunity to stop the abuse and failed, and it was reasonably likely the children would be injured or abused if returned to Dillard's care. Several witnesses testified that Angelica told them she informed Dillard about the abuse, and Dillard did not follow through with her promise to do something. Although Dillard claimed she did not understand what the child was telling her, we defer to the trial court's better position to judge credibility.⁷ Dillard also had a duty to question Angelica further, rather than ignore her complaints. Dillard's testimony was filled with inconsistencies that suggested she was not being honest and would likely turn away from evidence of abuse in the future as well. Dillard admitted she knew Wright beat the children at least once.

Dillard argues that she deserved additional hearings and services before her rights were terminated. However, DHS may seek termination at the initial disposition hearing and was required to here when an adult in the home subjected Angelica to criminal sexual conduct involving penetration or attempted penetration and Dillard failed to take reasonable steps to protect her.⁸ Dillard demonstrated she was not likely to timely benefit from services when she continued to deny the abuse and protect Wright. She eventually claimed to recognize that abuse occurred and announced an intent to divorce at the termination hearing but was unable to explain what changed her mind.

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

⁴ MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

⁵ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁶ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁷ MCR 2.613(C); *In re Miller*, *supra* at 337.

⁸ MCL 722.638(1)(a)(i); (2); MCL 712A.19b(4).

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

B. Analysis

Dillard contends that the trial court erred in its best interests analysis because the children expressed desire not to have her rights terminated, the children were all bonded but placed in separate foster homes, and she was bonded with the children. We disagree.

The strength of the children's bond with Dillard, the time they spent in Dillard's care, and their ages are relevant to the best interests analysis.¹² Although there was little in the trial court record, it could be assumed from the time they spent in Dillard's care that the children were bonded to her. However, she was unable to keep them safe from harm. The trial court was also permitted to consider the children's need for permanency when determining whether termination was in their best interests.¹³ The trial court did not err when it did not find that termination was clearly against the children's best interests.

We conclude that the evidence did not show that the children's best interests precluded termination of Dillard's parental rights.

In sum, we conclude that the trial court properly terminated Dillard's parental rights.

Affirmed.

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Donald S. Owens

⁹ MCL 712A.19b(5); *Trejo, supra* at 350. We note that MCL 712A.19b(5) was recently amended such that the trial court must now find that termination of parental rights is in the child's best interests. 2008 PA 199, effective July 11, 2008. However, here we use the prior standard under which the trial court made its original disposition.

¹⁰ *Trejo, supra* at 354.

¹¹ *Id.* at 356-357.

¹² *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

¹³ See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).