

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAMUEL THOMAS
GOSZULAK and HUNTER GOSZULAK,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KATHRYN NICOLE MOOREHEAD,

Respondent-Appellant,

and

DAVID WAYNE GOSZULAK,

Respondent.

UNPUBLISHED
December 1, 2009

No. 291940
Calhoun Circuit Court
Family Division
LC No. 2007-000366-NA

Before: Borrello, P.J., and Whitbeck and K. F. Kelly, JJ.

PER CURIUM.

Respondent Kathryn Moorehead appeals as of right from the trial court's order terminating her parental rights to the minor children, Samuel Goszulak and Hunter Goszulak.¹ We affirm.

I. Basic Facts And Procedural History

In February 2009, the Department of Human Services ("DHS") filed a petition to terminate Moorehead's parental rights under §§ 19b(3)(g) and (j). The petition alleged that

¹ MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood that the children will be harmed if returned to the parent's home).

Moorehead and the children's father, respondent David Goszulak,² were abusing drugs and had brought the children with them when they went to other homes to use drugs and that the children were not supervised or cared for during those times. Both parents had received services in the past when the children were previously under the trial court's jurisdiction.

During a March 2009 adjudicative hearing, Kimberly Hughes, a Protective Services worker, testified that she was assigned to this case following a referral in January 2009. The basis for the referral was that Moorehead and Goszulak were using marijuana and cocaine, and taking the children with them to drug houses.

Hughes reviewed the family's Protective Services file, which indicated that the children had been under the court's jurisdiction in January 2007; they were returned home in June 2007, but the case remained open. The children were removed again in July 2007 for only one day, after Goszulak tested positive for cocaine and missed three parenting classes and counseling appointments, but a new petition was denied. That case was eventually closed in November 2007. During that case, both parents were required to address their illegal drug use. Moorehead was offered parenting classes, intensive in-home therapy to work on domestic relations, substance abuse treatment, psychological evaluations, housing assistance, and drug testing.

In June 2008, another complaint was filed against Moorehead and Goszulak, which was substantiated, but a petition was not authorized. Nonetheless, ongoing services were offered to the family, including random drug testing and Families First. The parents' use of illegal substances remained an issue. During that time, Moorehead tested positive for drugs, including cocaine, three times in May 2008, but her test results were negative thereafter; both parents complied with the Families First program. Ongoing services were ended and the case was closed in November 2008.

During the present case, Moorehead and Goszulak were offered voluntary services after the children were removed, and they were encouraged to participate. Moorehead voluntarily participated in some services and tested positive for marijuana in February and March 2009. Moorehead did not miss any drug tests. Hughes believed that both parents still had an issue with controlled substances.

Lisa Groat, the children's maternal grandmother and custodian, testified that Moorehead had a drug problem when she was pregnant. Groat believed that Moorehead was again using cocaine based on Moorehead's demeanor and because her face was very flushed and red, but Moorehead denied using it. Groat also believed that Moorehead was using marijuana because Moorehead told Groat that she had tested positive for marijuana. Groat offered to help Moorehead get drug treatment, but Moorehead denied having a problem.

² The trial court terminated Goszulak's parental rights, and an appeal is pending in Docket No. 291864. The two appeals were originally consolidated, but the consolidation order was later vacated after Goszulak's original appointed attorney failed to file a brief, and the case had to be remanded for the appointment of a new attorney.

Moorehead testified that she had a substance abuse problem in 2007, and that she had used cocaine while pregnant with Hunter, but not Samuel. According to Moorehead, after she was offered services, she was able to remain clean from drugs from 2007 to May 2008. In May 2008, she used cocaine just one time. When she was offered services again beginning in June 2008, she only submitted to testing and did not receive substance abuse counseling. Moorehead also admitted to using marijuana once in a while, but denied that she had recently used cocaine. Moorehead admitted to taking the children to see Renee Goszulak, Goszulak's relative, but denied that they smoked marijuana there. She was aware that Renee Goszulak had a conviction for using cocaine, but was not aware that Renee Goszulak had outstanding warrants. Moorehead last smoked marijuana in February 2009, but believed that she later tested positive because the drug remained in her system for testing purposes for up to 44 days. She admitted that she had used marijuana in the past due to stress and that it was difficult for her to control her substance abuse at those times. Moorehead claimed that the children never observed the use of controlled substances. She admitted that her use of drugs had a hold over her, which was something for which she wanted to seek treatment.

At the conclusion of the hearing, the trial court found that it was "quite clear that both parents have a serious and significant history of substance abuse" Therefore, the trial court found it appropriate to take jurisdiction over the children. The trial court stressed, "The Court cannot and will not ignore the history of Department of Human Services and court interventions all of which featured significant substance abuse issues in both parents." The trial court then scheduled a dispositional hearing on the request to terminate parental rights.

The trial court held the dispositional hearing over two days in April and May 2009. Hughes recounted that the parents' drug usage was the reason for the latest referral and that they had a substantial history of drug abuse and five previous referrals to Protective Services since 2006. Both parents had used cocaine and marijuana. In 2006, substantial services were offered to the family between April and September. Services were again offered in 2007 and 2008. During each of those interventions, substance abuse was a major issue, and it continued to be an issue. In the past, Moorehead was offered random drug testing, substance abuse assessments, in-home counseling, and parenting classes. Moorehead has also been through substance abuse treatment, apparently outpatient treatment, three times.

Hughes further testified that she met with Samuel twice in January 2009. Samuel told Hughes that his parents would go to Renee Goszulak's house where they would smoke marijuana in the basement while the children stayed in an upstairs bedroom. Samuel had seen his father smoking marijuana on a porch, and mentioned a red and blue pipe. Samuel told Hughes that Moorehead smoked "weed," but did not offer any other information about her use.

Hughes also talked to Renee Goszulak, who told Hughes that Moorehead and Goszulak came over several times and "they have done drugs in the basement." She also confirmed that the children were upstairs during those visits.

Hughes met with the parents at a team decision meeting in late January or early February 2009, at which time Moorehead was receptive to participating in services. However, Moorehead had been receptive to receiving services in the past, but had not benefited from them. Hughes did not see any benefit from services in treating Moorehead's addiction because she would

abstain from drug use for periods of time, but then relapse every time. She also did not show any improvement in her parenting skills.

In early February 2009, visits were started and Hughes supervised the first two. Hughes was concerned because the children acted “very hyper” at the visits and Moorehead could not keep Samuel in timeouts. He would continually get out of the chair and she would put him back in until she just stopped trying to use timeouts. The children were sometimes a “handful” to care for and did not always listen, but Moorehead’s conduct was otherwise appropriate. The children seemed happy to see Moorehead and missed her. Hughes believed that there was a pretty strong bond between them. Nonetheless, Hughes believed that it was in the children’s best interests to terminate both parents’ rights and that the children were at a substantial risk of harm if they remained in their parents’ care.

Stephanie Haslick, the foster care caseworker assigned to this case, was permitted to testify as an expert witness in the area of social work. Haslick began working on this case in February 2009, and prepared an initial service plan in March 2009. Haslick testified that Moorehead voluntarily agreed to participate in services.

According to Haslick, Moorehead was required to submit to twice weekly drug tests and she participated in all scheduled tests. The tests began on February 2, 2009, and the first 14 tests were positive for THC. Since March 25, 2009, her test results had been negative. Moorehead told Haslick that she did not know why she tested positive after March 11, because she thought that the marijuana would have been out of her system by then.

Based on the results of Moorehead’s psychological evaluation, Haslick believed that it would take her a long time to address her substance abuse. Psychologist Dr. Randall Haugen believed that Moorehead would benefit from long-term therapy and that it would take at least a year for her to address her substance abuse. Haslick was also concerned that Moorehead would never recover from her substance abuse.

Haslick believed that termination of Moorehead’s parental rights was in the children’s best interests so that they could obtain some permanency. She also agreed, however, that the children seemed to be bonded to Moorehead and had a pretty close relationship with her. Haslick believed that the substantial amount of time Moorehead would need before she would benefit from services would not be reasonable for the children. In his report, Dr. Haugen also believed that Moorehead would require services for a significant period to time, and that her prognosis for improvement was poor.

Moorehead admitted that she had a long history of substance abuse. In 2005, she incurred a charge involving marijuana and was sentenced to probation. In 2006, she relapsed when she was pregnant with Hunter by using cocaine and was offered drug rehabilitation or jail, so she went into an inpatient program until the end of May. After she was discharged successfully from the inpatient program in 2006, she stayed clean until January 2007, when she again used cocaine. The trial court assumed jurisdiction over the children then and Moorehead participated in services. She remained substance free, and the children were returned after she successfully completed services. However, she relapsed in May 2008, by using cocaine again; at that time, she also started using marijuana again, which she had not used since 2006. In 2008, there was no court involvement, but she successfully completed services. However, she admitted

that she used marijuana again in November 2008, because she was stressed out about her job from working 12 hours a day and not seeing her children; also at about that time, their home was destroyed by fire.

More recently, Moorehead had only used marijuana and had not gone back to using cocaine. She could not explain why she used marijuana. She stopped using it in February 2009, and understood that she could not have custody of her children and use drugs. She was willing to do anything and everything DHS required of her. Moorehead explained that things would be different this time because she was working on herself to be a better person and mother. In the past, she had not focused on herself, but was focused on trying to keep her job. She admitted that there were problems in her relationship with Goszulak and she did not know where that relationship was going. While their drug use was one of their problems, she denied that being with him promoted her drug use. She did not know why she relapsed time after time, but believed that she could kick her drug habit once and for all. She had benefited from counseling and was a stronger person now. Moorehead knew that her drug use could result in termination of her parental rights, but she could not control it. This was her fourth time going through outpatient treatment.

Moorehead denied ever using drugs in front of her children. However, she admitted using marijuana at Renee Goszulak's home once or twice. When she used marijuana with Renee, the children were outside playing in a fenced-in yard and they watched the children through a window. She also smoked marijuana in the basement, where they could hear the children as they played upstairs in the living room and were able to periodically check on them.

At the conclusion of the hearing, the trial court found that Moorehead's parental rights should be terminated under §§ 19b(3)(g) and (j). The trial court also found that termination of Moorehead's parental rights was in the children's best interests.

II. Statutory Grounds For Termination

A. Standard Of Review

Moorehead argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. 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 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

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

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).

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

Although Moorehead contends that she was working to address her housing and employment situations, she does not address her substance abuse history, which was the critical issue in this case. The evidence showed that Moorehead has a long history of substance abuse involving marijuana and cocaine and that she continued to use illegal drugs despite participating in at least three treatment programs in the past. Her drug use had led to previous removals of her children, and her continuing relapses prevented her from consistently providing a proper home for the children. Further, she had received services in the past, but did not benefit from those services. A psychological evaluation also revealed that her prognosis for improvement was poor and that any likelihood of successful recovery would take a significant period of time. Considering Moorehead's past history and poor prognosis, the trial court did not clearly err in finding that there was no reasonable expectation that Moorehead would be able to provide proper care and custody within a reasonable time considering the ages of the children. Accordingly, we conclude that the trial court did not clearly err in finding that termination was justified under § 19b(3)(g).

The trial court also did not clearly err in finding that termination was justified under § 19b(3)(j). Although Moorehead denied using drugs in the presence of the children, the evidence showed that the children were aware of her drug use and that she used drugs while the children were in her custody. Moreover, Moorehead lacked insight into the effect of her drug abuse on the children, and Moorehead's drug abuse had already caused emotional harm to the children because of the multiple prior removals. Therefore, we conclude that the trial court did not clearly err in finding that the children were reasonably likely to be harmed if returned to Moorehead's home.

III. Best Interests Determination

A. Standard Of Review

Moorehead contends that the trial court erred in its best interests analysis because the children's need for permanency is outweighed by Moorehead's realistic opportunity to be reunited with the children. Once a petitioner has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the children's best interests, then the trial court shall order termination of parental rights.⁷ There is no specific burden on either party to present evidence of

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

⁷ MCL 712A.19b(5); *Trejo*, *supra* at 350.

the children's best interests; rather, the trial court should weigh all evidence available.⁸ We review for clear error the trial court's decision regarding the children's best interests.⁹

B. Analysis

Considering the length and degree of instability the children had already experienced, Moorehead's failure to benefit from prior services and prior attempts at substance abuse treatment, and Moorehead's poor prognosis for future improvement, the trial court did not clearly err in finding that termination of Moorehead's parental rights was in the children's best interests.

In sum, we conclude that the trial court did not err in terminating Moorehead's parental rights to the children.

Affirmed.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly

⁸ *Trejo, supra* at 354.

⁹ *Id.* at 356-357.