

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of N. E. and N. E., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NICALA EDWARDS,

Respondent-Appellant,

and

JAMIE MILLER,

Respondent.

UNPUBLISHED
February 11, 2010

No. 293117
Berrien Circuit Court
Family Division
LC No. 2007-000045-NA

In the Matter of D. P., N. E., and N. E., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMIE MILLER,

Respondent-Appellant,

and

NICALA EDWARDS and DONTRELL PIERCE,

Respondents.

No. 293132
Berrien Circuit Court
Family Division
LC No. 2007-000045-NA

In the Matter of J. M., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMIE MILLER,

Respondent-Appellant,

and

KYLE CORZINE,

Respondent.

No. 293133
Berrien Circuit Court
Family Division
LC No. 2007-000084-NA

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

PER CURIAM.

In Docket No. 293117, respondent Nicala Edwards (hereinafter “respondent-father”) appeals as of right from the trial court’s order terminating his parental rights to his twin children, pursuant to MCL 712A.19b(3)(a)(ii) [desertion of minor child for over 91 days]. In Docket Nos. 293132 and 293133, respondent Jamie Miller (hereinafter “respondent-mother”) appeals as of right from the trial court’s orders terminating her parental rights to her four children pursuant to MCL 712A.19b(3)(c)(i) [conditions leading to adjudication continue to exist] and (g) [failure to provide proper care and custody]. We affirm.

Respondents both argue that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence, and in finding that termination was in the children’s best interests. We disagree.

Petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review the trial court’s findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Trejo*, *supra* at 356. A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court’s assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). Once a statutory ground for termination is established, the court shall order termination of parental rights if termination is in the child’s best interests. MCL 712A.19b(5). The trial court’s best interests decision is also reviewed for clear error. *In re Trejo*, *supra* at 356-357.

The trial court terminated respondent-father's parental rights under § 19b(3)(a)(ii), which permits termination where "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." After the children were removed from respondent-mother's custody and placed in foster care in April 2007, respondent-father was informed that he would need to contact petitioner to arrange for visitation and to establish a case service plan if he intended to seek custody of the children. There was evidence that he participated in some unauthorized visits during the early stages of the case, when the children were in placement with a relative. However, that placement ended in late 2007 or early 2008, and respondent-father did not thereafter attempt to visit the children or contact petitioner to either arrange for visitation, inquire about the children's welfare, or participate in services until after the termination petition was filed in November 2008. In light of this evidence, the trial court did not clearly err in finding that respondent-father deserted the children for 91 or more days without seeking custody.

Although respondent-father argues that he should have been afforded more time to work on a case service plan, the trial court did not err in finding that the grounds for termination under § 19b(3)(a)(ii) had already been established before respondent-father belatedly came forward to attempt to gain custody of the children. Thus, the trial court appropriately limited its consideration of respondent-father's belated efforts to comply with services to its evaluation of the children's best interests. Contrary to what respondent-father argues, it was his failure to seek custody of the children for a several month period in 2008, not anything that petitioner did, that created the circumstances that led to the termination of respondent-father's parental rights.

Furthermore, considering the length of time that respondent-father had been absent from the children, and that the children did not view him as a father, the trial court did not clearly err in finding that termination of his parental rights was in the children's best interests.

The trial court terminated respondent-mother's parental rights under MCL 712A.19b(3)(c)(i) and (g), which permit termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Respondent-mother argues that she substantially complied with the terms of her case service plan and should not have had her parental rights terminated. A parent's compliance with

a parent-agency agreement is evidence of the ability to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). In contrast, the failure to comply with the requirements of a parent-agency agreement is also evidence of the parent's failure to provide proper care and custody for the child. *Id.* The trial court found that the conditions that caused the court to assume jurisdiction continued to exist.

Although respondent-mother participated in some services, she did not benefit from them. In particular, she made little progress in addressing her emotional instability or depression, and she continued to test positive for marijuana and other illegal substances. Indeed, she was unwilling to acknowledge a substance abuse problem or need for psychological help, and stated that she participated in services only because they were required to get her children back, not because she needed them. Considering respondent-mother's failure to benefit from services and her resistance to treatment, the trial court did not clearly err in finding that the conditions that led to the adjudication were not reasonably likely to be rectified, and that there was no reasonable expectation that respondent would be able to provide proper care and custody, within a reasonable time.

Finally, considering the length of time the children had been in care, respondent-mother's lack of progress during that time, and that the three youngest children had no apparent bond with respondent-mother and that respondent-mother's relationship with her oldest child was poor, the trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Donald S. Owens