

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of TRINITY NYMAN and DAIS  
NYMAN, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHANNA HARMON,

Respondent-Appellant.

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UNPUBLISHED

March 25, 2010

No. 293098

Genesee Circuit Court

Family Division

LC No. 07-122957-NA

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Respondent appeals by right the order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii); (c)(i) and (c)(ii); (g), and (j). We affirm.

Respondent first came into contact with Child Protective Services (CPS) in May 2007 following an April 2007 complaint of neglect and domestic violence. Respondent admitted that she was being evicted for non-payment of rent at the time. It was also believed that respondent abused prescription drugs. The CPS worker noted that the children “appeared to be fine” and she did not see an immediate need to remove the children. Respondent was offered services for housing, domestic violence counseling, substance abuse counseling, and Families First. However, respondent never availed herself of the services. She moved without leaving any contact information.

Respondent’s next contact with CPS occurred in June 2007 after two complaints were received regarding three-year-old, Trinity, wandering alone outside of their apartment while respondent slept. Trinity was discovered each time in close proximity to a pond or lake. Respondent admitted to the complaints and was willing to temporarily leave the children with their paternal grandparents until she could become stable. Respondent was offered IARC, drug screening, and parenting classes with Connections, but, again, respondent failed to avail herself of the services. She also changed her mind about a guardianship with the paternal grandparents.

A petition seeking temporary custody of the children was filed on July 20, 2007, and the trial court assumed jurisdiction over the children in August 2007. A dispositional hearing was

held in September 2007, at which time respondent was ordered to attend parenting classes, attend domestic violence counseling, seek mental health services for her anxiety, and attend substance abuse counseling.

Respondent was incarcerated in March of 2008, initially for filing a false police report against the children's father and, ultimately, she was sentenced to prison for illegal possession of a financial transaction device. Before her incarceration, however, respondent was partially compliant with the PAA. She completed a mental health assessment and a substance abuse assessment, and was initially actively engaged in treatment. However, her case was closed on March 10, 2008, for "continuing lack of attendance." Respondent never completed any parenting classes or domestic violence classes. She lived in several residences before her incarceration in March 2008. Between December 2007 and March 2008, respondent completed only two of 13 drug screens, and both were positive for marijuana. However, respondent did continually visit with the children. Once respondent was incarcerated, she actively sought treatment for drug abuse and mental health issues. She also completed courses in parenting and domestic violence. She started to attend court hearings via telephone, where she had failed to attend hearings prior to her incarceration.

An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 3.977(J). A finding is clearly erroneous if 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). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

The trial court clearly erred in terminating respondent's parental rights pursuant to subsection 19b(3)(a)(ii) where there was no evidence that respondent deserted the children. Although she may have failed to fully participate in services before her incarceration, it could not be said that she failed to seek custody of the children during that time. She was partially compliant with the PAA and consistently visited with the children. Even after she was imprisoned, respondent continuously contacted the caseworker to inquire about the children's wellbeing. Although the children were not taken to the prison to visit respondent, respondent consistently wrote to them and attempted to speak with them by phone. There was never a time during the case that respondent was not at least partially engaged in services and actively in contact with the children.

However, the trial court did not clearly err in finding that the remaining subsections had been proven by clear and convincing evidence. *Trejo*, 462 Mich at 355. Although respondent completed services in prison, there was no way to judge her ability to follow-through once she was released. She would still need to continue with substance abuse treatment and parenting classes. She would also have to secure housing and employment. Respondent expected to be released in September 2009, but it would have been a minimum of 90 days following her release before CPS could reassess respondent. Further, respondent agreed that she would not be in a position to immediately care for the children following her parole from prison. Respondent could not estimate how long it would take to get her life in order. Such a wait would not have provided stability and permanency to the children. Respondent had not seen the children since March 2008 and was not guaranteed to parole in September of 2009. The conditions leading to

adjudication continued to exist and new conditions also existed (respondent's incarceration). Respondent was simply not in a position to provide the children proper care or custody within a reasonable period of time.

Having found the foregoing subsections proven by clear and convincing evidence, the trial court then had to determine whether termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). Respondent interacted well with her children when she saw them. She also showed a genuine interest in their wellbeing and maintained constant contact with the caseworker throughout the proceedings to see how they fared. Respondent also wrote appropriate letters to the children from prison. However, as noted above, the children had been temporary wards for almost two years by the time the trial court terminated respondent's parental rights. The children did not have physical contact with respondent for 18 months. Because of her incarceration, respondent would have had to show her stability before having the children returned to her care. She needed housing and employment. She also needed to comply with drug services and prove herself drug-free. It would take her a substantial amount of time to establish the stability needed to have the children returned to her care. As the worker testified, such a wait would have been unfair to the children, who were entitled to permanence and stability.

Affirmed.

/s/ Deborah A. Servitto

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood