

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JESSICA MARINA GONZALEZ
and JOSE ADOLFO GONZALEZ-BARCENA
JR., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ESTRELLITA GONZALEZ,

Respondent-Appellant,

and

GILBERT GONZALEZ and JOSE GONZALEZ-
BARCENA,

Respondents.

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Respondent Estrellita Gonzalez appeals as of right the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interest of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 632-633. 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. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller*, 433 Mich at 337.

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Termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(i) and (g). At the time of the adjudication respondent had mental health issues that interfered with her ability to properly care for her children. By the time of the permanent custody hearing, respondent continued to have a borderline personality disorder, depression, and mental impairment. Moreover, respondent had not demonstrated the necessary commitment to continue working to overcome her personal concerns so that she could provide her children with appropriate support and a stable home environment. Respondent stopped participating in therapy in March 2009 when she lost her insurance coverage, and she never sought assistance from the caseworker.

At the time of the adjudication respondent also demonstrated poor parenting skills that did not sufficiently improve during the case to the point where she could provide proper care and custody of her children. The parenting class homework logs she provided to the caseworker were vague, and respondent failed to show that she understood the concepts taught in the class. Respondent's parenting class instructor identified problems with her thinking. Also, respondent appeared more concerned with meeting her own needs than Jose's. She was not able to follow redirection, and she repeatedly spoke to him about inappropriate adult matters. She never demonstrated the capacity to give the children appropriate guidance. A parent must benefit from the services offered so that she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009).

There was also evidence that respondent had a substance abuse problem that interfered with her ability to care for her children. Although respondent had been under the care and supervision of a physician who prescribed her Vicodin to treat tarsal tunnel in her ankle, her drug screens showed that she was positive for the opiate metabolite hydromorphone. Respondent's doctor believed that a drug other than the Vicodin she prescribed was causing these positive drug screens. Respondent failed to report to her primary care physician when her urologist prescribed her Vicodin as required by the pain contract she had with the primary care physician. Respondent also was unable to verify her Vicodin prescription and pill count with the caseworker, showing pill amounts that were inconsistent with the number of pills she claimed to have. Thus, termination of parental rights was proper under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(g).

The children would also be at risk of harm if returned to respondent's care under MCL 712A.19b(3)(j). Respondent attempted to commit suicide in Jose's presence and provided alcohol to Jessica when she was a minor. Since respondent continued to suffer from mental health issues and her parental judgment had not improved, the children would be at similar risk of emotional and physical harm if returned to her care. If returned to respondent's care, the children would also be at risk of exposure to respondent's substance abuse. Respondent's casual attitude about substance use, her failure to recognize Vicodin as a "serious" drug given her history of Vicodin dependence, and the unexplained metabolites appearing in her urine drug screens, posed a risk of harm to the children. Thus, termination of respondent's parental rights was proper under MCL 712A.19b(3)(j).

Respondent further argues that under MCR 3.976(E)(4) she was entitled to an explanation of the trial court's decision at the permanency planning hearing on May 28, 2009.

She contends that the trial court did not articulate a factual basis for adopting the permanency plan, which had changed to termination of parental rights. She also argues that the trial court did not articulate its reasons for terminating visitation.

MCR 3.976(E)(4) requires the trial court to articulate a factual basis for its determination in the court order, but it did not take effect until July 1, 2009, after the permanency planning hearing referenced by respondent. At the time of the May 28, 2009 hearing, where the petitioner's plan was to seek termination of parental rights, the trial court was not required to articulate a factual basis for its determinations regarding visitation or the permanency plan for the children. Moreover, even though the trial court was not obligated to do so, its order from the May 28, 2009 permanency planning hearing indicates that returning the children to the parent would cause a substantial risk of harm to the children's life, physical health, or mental well being. Although the trial court's order does not give a detailed factual basis for its decision, there is no evidence that respondent did not understand why the court decided to pursue termination of parental rights and suspend respondent's visitation.

Moreover, if respondent was dissatisfied with the trial court's findings, the proper action would have been to object to the trial court's ruling at the permanency planning hearing on May 28, 2009, or file a motion for rehearing under MCR 3.992. Respondent had the opportunity to raise the issue in a direct appeal from the permanency planning hearing order. She cannot show plain error because her argument constitutes an improper collateral attack on a prior judgment. Orders and judgments issued by a court having jurisdiction are "final when not appealed and cannot be collaterally attacked" in subsequent litigation. *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). Thus, under MCR 3.976, there was no error requiring reversal in the trial court's order following the permanency planning hearing.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Pat M. Donofrio