

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KANE WICKS, JOSEPH
SCHOONMAKER, SHALYN SCHOONMAKER,
and ZOEY BURK, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KRISTY BURK,

Respondent-Appellant.

UNPUBLISHED

June 3, 2010

No. 294894

Clinton Circuit Court

Juvenile Division

LC No. 08-020705-NA

Before: BANDSTRA, P.J., and FORT HOOD and DAVIS, JJ.

PER CURIAM.

Respondent appeals as of right from an order that terminated her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err by finding that at least one of the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). The three older children, Kane, Joseph, and Shalyn, came to the court's attention after Shalyn tested positive for marijuana at birth, and respondent tested positive for marijuana, Ultram and Vicodin that same day. Respondent's use of marijuana and prescription drugs during her pregnancy with Shalyn resulted in her premature birth and numerous ongoing and persistent health problems.

An emergency preliminary hearing was held on August 21, 2008; respondent tested positive for marijuana at that hearing. The hearing was continued to August 28, 2008; at the conclusion of that hearing, the children were made temporary wards based on respondent's admission that both she and Shalyn tested positive for marijuana after Shalyn's birth. Respondent also admitted that she tested positive for the prescription drugs Ultram and Valium, but she claimed to have a valid prescription for those medications. Respondent admitted that there were warrants out for her arrest for not paying court fines and costs. At the time, respondent did not have a job, and she was living with her father and his girlfriend.

A dispositional hearing was held in September 2008, at which time respondent was ordered to attending parenting classes and individual counseling. She had already completed a

psychological evaluation, which revealed that she was emotionally unstable. Respondent consistently tested positive for benzodiazepines; she reported that she took prescription medication for pain related to a 2004 car accident.

At the next review hearing, on December 18, 2008, respondent was pregnant, had tested positive for benzodiazepines and cocaine, had missed numerous drug screens and had recently been sentenced to jail for retail fraud. Before her incarceration, respondent missed numerous appointments, failed to follow-up on referrals and frequently tested positive for benzodiazepines and opiates, and on one occasion, cocaine. She also missed nine drug screens.

Respondent remained incarcerated until February 2009. Upon release, respondent failed to keep numerous appointments or to attend two different sessions with Outreach Parenting. She had one session of individual counseling in March 2009, but failed to meet with her parenting class instructor. She tested positive for benzodiazepines twice, and failed to appear for five other drug screens after her release. She tested positive for cocaine and prescription medications at a March 2009 review hearing. In April 2009, the counselor recommended that respondent receive inpatient treatment. The worker arranged for respondent to attend an intake evaluation and even arranged transportation, but respondent was nowhere to be found.

Zoey was born on April 15, 2009. She was premature and possibly suffered from cerebral palsy due to some unknown in utero trauma. A dispositional hearing regarding Zoey was held in May 2009. Respondent was re-arrested and jailed in May 2009, where she remained until the termination hearing in October 2009. She was awaiting sentencing for retail fraud and was facing a possible five-year sentence, in light of her extensive history of shoplifting dating back to 2005.

The evidence presented at the termination trial clearly established that respondent had a serious and chronic substance abuse problem that was not properly addressed. Although she completed a drug program in jail during her stay from December 2008 to February 2009, it was obvious that the treatment did not help, as respondent continued to test positive for cocaine and other substances through March 2009. The fact that respondent had been in jail for the five months before the termination hearing did not mean that her substance abuse issues were being properly addressed. It was clear that respondent needed intensive, inpatient treatment. However, she failed to avail herself of those services when they were made available to her in April 2009. In addition to respondent's substance abuse issues, she also had unaddressed emotional problems, and she had no housing and no income. Indeed, it was obvious from the evidence presented at the termination trial that respondent's position had actually worsened since the original dispositional hearing in September 2008. Therefore, the trial court did not clearly err by concluding that the conditions leading to adjudication continued to exist without a reasonable likelihood that the conditions would be rectified within a reasonable time, considering the children's ages.

Additionally, respondent could not provide the children with proper care or custody. She had been in jail during most of the case and could not work toward her service agreement. She failed to avail herself of services that were offered to her when she was briefly out of jail. Respondent had no housing or income and continued to struggle with substance abuse and emotional problems. Finally, there was a substantial likelihood that the children would have been harmed if returned to respondent's care. She had an extensive unaddressed substance abuse

problem. She also had an extensive criminal history and re-offended during the pendency of this case. Her drug use and criminality placed the children in jeopardy.

Having found statutory grounds for termination established by clear and convincing evidence, the trial court then had to decide whether termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). Respondent never independently cared for Shalyn or Zoey, who were immediately made temporary wards after their births. The girls did not share a bond with respondent. Shalyn had extensive medical needs, including numerous appointments with specialists and numerous medications. While respondent shared a bond with Joseph and Kane, she had not seen any of the children in five months because she was incarcerated. Respondent could not take care of herself, let alone four children. She had no housing and no income, and she continued to struggle with unaddressed substance abuse and emotional issues. Three of the children had been in care for over a year and respondent was no closer to being reunified with them. They were entitled to permanence and stability.

Respondent next argues that the trial court abused its discretion when it failed to appoint separate counsel for Kane after his guardian ad litem indicated that her position differed from that of Kane's, who did not want his mother's parental rights terminated. Respondent does not have standing to raise the issue because the guardian ad litem's statutory obligation is to the child, not the parent. See MCL 712A.17d(1); *In re Foster*, 226 Mich app 348, 358; 573 NW2d 324 (1997). Even assuming that respondent has standing to raise the issue, however, it cannot be argued that the trial court abused its discretion in failing to appoint separate counsel for Kane when it was never asked to exercise that discretion. Additionally, use of the term "may" in both the statute and court rule signifies that such a decision is discretionary, not mandatory. *Warda v Flushing City Council*, 472 Mich 326, 332; 696 NW2d 671 (2005). The evidence clearly demonstrated that respondent was not in a position to provide for her children. Kane, being over ten years old at the time of the termination, undoubtedly wanted to maintain contact with his mother, but the evidence supported a finding that continued contact with her was not in his best interests. The trial court did not abuse its discretion by failing to appoint separate counsel for Kane.

We affirm.

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood

/s/ Alton T. Davis