

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

June 29, 2010

In the Matter of THOMSON, Minors.

No. 295808
Van Buren Circuit Court
Family Division
LC No. 08-016224-NA

Before: METER, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Respondent L. Hewitt appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). This appeal has been decided without oral argument pursuant to MCR 7.214(E). Because respondent has not established a due process violation and the trial court did not clearly err in terminating respondent's parental rights, we affirm.

The children in this matter initially came under the jurisdiction of the trial court due to allegations that respondent was arrested for stealing while the children were present; that a methamphetamine lab was being run from the porch of the family home; that respondent was currently on felony probation; and, that the children had been previously removed from respondent's care on at least two other occasions. Respondent admitted the allegations in the amended petition. At the termination trial, it was established that during the pendency of this case, respondent tested positive for opiates; had been sentenced to serve 17 months in prison for criminal charges; and was, at the time of the termination hearing, incarcerated in boot camp. Respondent had been in and out of the criminal court system for several years. At the conclusion of the termination hearing, the trial court found that clear and convincing evidence supported the termination of respondent's parental rights.

On appeal, respondent argues that her due process rights were violated because the trial court did not have clear and convincing evidence upon which to terminate her parental rights. Respondent, however, has failed to show a due process violation. Although respondent does have a right to the continued companionship and custody of her children, a protected liberty interest under the Due Process clause, *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003), there is also a substantial societal interest in the protection and welfare of children. Thus, respondent's right to parent is not absolute. Once clear and convincing evidence establishes a ground for termination of parental rights under MCL 712A.19b(3), the liberty interest of the parent no longer includes the right to custody and control of the children. *In re Trejo*, 462 Mich

341, 355; 612 NW2d 407 (2000), citing *In re LaFlure*, 48 Mich App 377, 387; 210 NW2d 482 (1973). Respondent has a fundamental right to parent her children, but has abrogated that right by choosing a lifestyle that includes the use of illegal drugs, which has repeatedly placed her outside the law and has resulted in incarceration for her choices.

In this case, proof of parental unfitness was based upon MCL 712A.19b(3)(g) and (j). Due to respondent's drug use, criminal history, and boot camp sentence, respondent failed to provide proper care and custody of the minor children. Respondent had been in and out of prison since 2006 for crimes related to her drug use. She tested positive for alcohol twice and for Vicodin while in drug court, after the children were removed from her care in July 2008. Her inability to resolve her drug use, in a timely fashion, posed a risk of harm to the children. Likewise, her history of repeated probation violations showed that she was not fully committed to reunification with her children.

Once again, at the time of the termination hearing respondent was still in boot camp and unable to care for her children. Upon her release from boot camp, respondent was subject to the requirements of parole. Given the reporting requirements, mobility restrictions, and conditions of parole, the quick establishment of a normal home for the children was hardly assured. Thus, termination of respondent's parental rights did not violate due process and the trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. *In re Trejo*, 462 Mich at 355.

Respondent next argues that termination of her parental rights was not in the best interests of the children. Once a trial court has found that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence, it must then order termination of parental rights if it finds that termination is in the children's best interests. MCL 712A.19b(5).

Here, the evidence clearly and convincingly established that termination was in the children's best interest. It is in the children's best interest to be raised in a drug-free environment devoid of criminality. Respondent has not demonstrated the ability to remain drug free outside of a structured, supervised environment. At the time of the termination hearing, respondent was unable to provide the children with a safe and stable home environment, and there was no way to determine whether or when she would be able to do so. There is no evidence to support respondent's assertion that the court clearly erred in its best interest determination.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Jane M. Beckering