

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 10, 2010

In the Matter of FOX, Minors.

No. 296344

Ingham Circuit Court

Family Division

LC Nos. 08-002297-NA

08-002298-NA

08-002299-NA

08-002300-NA

Before: M.J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Respondent mother appeals as of right from the trial court order terminating her parental rights to her four children under MCL 712A.19b(3)(b)(ii), (b)(iii), (g), and (j).¹ We affirm.

Respondent mother argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(J). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the best interests determination are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We agree with respondent mother that the trial court clearly erred in finding that MCL 712A.19b(3)(b)(ii) and (iii) were established. Section (b)(ii) was not established where there was no evidence that respondent mother had the opportunity to prevent the injuries. The children lived with respondent father and, although respondent mother exercised every-other-weekend visitation, the children did not tell her that they were being abused and it was not established that she should have known of the abuse. Regarding section (b)(iii), there was no

¹ Although the trial court also cited section (3)(n), respondent mother had never been convicted of a crime, and that section plainly applied only to respondent father.

evidence that a nonparent adult's act caused the injury or abuse. The testimony was that there was some physical abuse by respondent father (a parent), and the girls were sexually abused by their half-brother and by their brothers. The brothers were children, and there was no testimony regarding the half-brother's age. Therefore, the trial court clearly erred in finding that sections (b)(ii) and (iii) were established by clear and convincing evidence. However, the error was harmless because other statutory grounds were established by clear and convincing evidence, and only one section need be established to support termination. MCL 712A.19b(3).

The trial court did not clearly err in finding that sections (g) and (j) were established by clear and convincing evidence. Respondent mother had failed to provide proper care and custody for the children, and the evidence established that she would not be able to do so within a reasonable time. Although respondent mother contends that the trial court placed too much emphasis on her past protective services history, her past history was relevant where it was indicative of her parenting skills when the children were in her custody full time. Further, the evidence was bolstered by respondent mother's initial admission that she could not take the children because they did not listen to her and by respondent mother's minimal efforts at visitation and therapy. Respondent mother also argues that the trial court improperly considered a psychological evaluation from 1994. However, the psychologist who performed a recent evaluation stated that the prior evaluation was relevant because respondent mother's test results were so similar. The children had extremely high needs, and respondent mother was unable to provide the mental, emotional, and physical support the children needed. Psychological test results showed an unwillingness to change, and respondent mother told the girls' case manager as much when she refused to meet with counselors before her visitation with the girls. Therefore, the trial court did not clearly err in finding that section (g) was established by clear and convincing evidence.

The same evidence establishes section (j). All of the children required therapy. The eldest son was considered at high risk to reoffend. Respondent mother redirected the girls in conversation in a harmful way. For some period of time, respondent mother refused to give permission for the girls to have prescribed psychiatric medication. Respondent mother did not visit the children regularly and did not fully understand the trauma the girls endured. Respondent mother did not follow through with services she was supposed to complete for herself. The trial court did not clearly err in finding that there was a reasonable likelihood that the children would be harmed if returned to respondent mother's home.

Furthermore, the trial court did not clearly err in its best interests determination where the children had extremely high needs due to the physical and sexual abuse they endured, respondent mother was not able to provide for these needs and would not be able to do so within a reasonable time, and respondent mother had a history of poor parenting skills when she had physical custody of the children.

Affirmed.

/s/ Michael J. Kelly
/s/ Jane E. Markey
/s/ Donald S. Owens