STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 12, 2010

In the Matter of MARCOTTE, Minors.

No. 295995
Wayne Circuit Court
Family Division
LC No. 09-489953-NA

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Before: WILDER, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(*ii*), (g), and (j). We affirm.

I. JURISDICTION

Respondent-mother argues that the trial court clearly erred when it exercised jurisdiction over the minor children. In child protection proceedings, the trial court must determine whether it may exercise jurisdiction over the child. *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). "To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2." *Id*. Jurisdiction is to be established by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *Id*.

The initial petition requested termination of parental rights, and respondents' rights were terminated immediately after the assumption of jurisdiction. Therefore, this is not a collateral attack on the court's assumption of jurisdiction. However, as petitioner points out, in closing arguments respondent-mother's attorney "advocated" for the assumption of jurisdiction, but she did so in asking the court not to terminate respondents' parental rights at this step and allow the family to participate in services. Therefore, we find that the issue was not waived.

The trial court did not clearly err when it exercised jurisdiction over the minor children pursuant to MCL 712A.2(b)(1) and (2). The allegations in the petition included (1) respondent-mother's boyfriend (the "perpetrator"), was substantiated for sexual abuse with TM, one of the minor children, and placed on the Central Registry regarding a complaint made on December 6, 2008, (2) respondent-mother was substantiated for failure to protect because she admitted that TM had informed her the perpetrator sexually fondled her and respondent-mother still allowed the minor children to spend the night with the perpetrator, (3) Children's Protective Services ("CPS") serviced the family with in-home services and informed respondents that the perpetrator was not to have any contact with the minor children, (4) on September 23, 2009, it was discovered by CPS that the perpetrator was living in respondents' home and paying $600 a month in rent, (5) TM was interviewed and reported that she was not happy residing in the home with the perpetrator and shut down and became visibly shaken when questioned about possible sexual abuse, (6) respondents failed to protect their children, and (7) respondents did not feel the minor children were at risk with the perpetrator and needed DNA proof that he did something to TM. Each of these allegations was shown to be true by a preponderance of the evidence. The trial court also had the opportunity to hear and observe respondents' and the perpetrator's testimony, and the trial court expressed dismay at respondents' choice to believe the perpetrator over TM. There is no question that the allegations supported by the testimony show, by a preponderance of the evidence, that the minor children were without proper care or custody and the home was an unfit environment for them to live.

II. TERMINATION OF PARENTAL RIGHTS

The trial court did not clearly err when it found the evidence clear and convincing to terminate respondents' parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(*ii*), (g), and (j). In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). In applying the clearly erroneous standard, the Court should recognize the special opportunity the trial court has to assess the credibility of the witness. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." The court's best interests determination is reviewed for clear error. MCR 3.977(J).

Respondent-mother testified that she never allowed the perpetrator to be alone with the minor children while she was in a relationship with him but that, after they broke up and she moved out, she allowed the minor children to spend the night at the perpetrator's house. After moving out of the perpetrator's home, respondent-mother and the minor children lived with respondent-father, from whom she was divorced. On December 6, 2008, respondent-mother received a call at approximately 2:00 a.m. from the perpetrator's brother informing her that he observed the perpetrator touching TM. Respondent-mother took TM to the hospital, and hospital staff observed redness in the area of TM's vagina. TM stated that the perpetrator touched her but would not expand on this. In addition, TM had experienced blood in her underpants since the

age of eight, at approximately the same time the perpetrator was brought into her life, but she had not started menstruating. Petitioner became involved and provided services to respondents, including group and individual counseling along with parenting assistance in the home for four or five months. At that point, it appeared that respondents had benefited from the services. Petitioner developed a safety plan for the minor children that prohibited the perpetrator from contact with the minor children, and the case was closed.

Five or six months later, respondents invited the perpetrator to live in their home. Respondents stated it was for the $600 that he would pay in rent. The perpetrator stated that he and respondent-mother were again involved in a romantic relationship. Respondents refused to believe TM and the perpetrator's brother without DNA evidence, even though the alleged abuse involved digital penetration and DNA evidence could not be retrieved. They disregarded petitioner's substantiation of TM being sexually abused by the perpetrator as well as the placement of the perpetrator on the Central Registry. The minor children's half-sister testified that, although TM had emotional outbursts, she never lied. In addition, the foster parent testified that TM had been having nightmares about a man coming after her. When the minor children were taken into care, they had strong body odor and dirty underwear. TM's underwear had blood in it. She reacted violently when touched and exhibited emotional trauma. In spite of all of these circumstances, respondents refused to believe that their daughter had been sexually molested. It was clear that they would not protect her in the future. Based on all of these facts, there is no question that the trial court did not clearly err when it found the evidence clear and convincing to terminate respondents' parental rights pursuant to MCL 712A.19b(3)(b)(*ii*), (g), and (j).[1]

The trial court also did not clearly err in its best interests determination. There is no question that any bond respondents had with the children was outweighed by their inability to provide a safe and stable environment.

III. REASONABLENESS OF PETITIONER'S EFFORTS

Respondent-father did not raise the issue of the reasonableness of the efforts of petitioner or the services provided to him to the trial court, but he raises it on appeal. Unpreserved nonconstitutional issues are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

However, the trial court's termination at the initial disposition was proper, and therefore no error occurred. MCL 712A.19b(4) provides that a trial court may enter an order terminating parental rights at an initial disposition hearing. MCR 3.977(E) sets forth the procedural requirements and provides:

> **(E) Termination of Parental Rights at the Initial Disposition.** The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if:

[1] Although respondent-father argues that termination was improper under subsections (b)(*i*) and (c)(*i*), the trial court did not rely on these statutory subsections.

(1) the original, or amended, petition contains a request for termination;

(2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;

(3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:

(a) are true, and

(b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), or (n);

(4) termination of parental rights is in the child's best interests.

All of the requirements of MCR 3.977(E) were met. The amended petition requested termination at initial disposition, the trial court properly exercised jurisdiction pursuant to MCL 712A.2(1) and (2), the trial court properly found the evidence clear and convincing that the facts in the petition were true and established grounds for termination pursuant to MCL 712A.19(b)(3)(b)(*ii*), (g), and (j), and the trial court properly found that termination of respondents' parental rights was in the best interests of the minor children. Furthermore, before the filing of the petition, petitioner provided services to respondents for four to five months and established a safety plan that the perpetrator not have contact with the minor children. Five or six months after services were discontinued and the safety plan was put in place, respondents had the perpetrator move into the family home.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Henry William Saad