

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 23, 2010

In the Matter of PLEIMLING, Minors.

No. 297239
Muskegon Circuit Court
Family Division
LC No. 09-038727-NA

Before: STEPHENS, P.J., AND MARKEY AND WILDER, JJ.

PER CURIAM.

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

Respondent does not challenge the trial court's finding that the statutory grounds for termination were established by clear and convincing evidence. Instead, she argues only that the trial court clearly erred by finding that termination of her parental rights was in the best interests of the children. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to affirmatively find that termination is in a child's best interests before ordering termination. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000).

In this case, the record supports the trial court's finding that termination of respondent's parental rights was in the children's best interests. Respondent first argues that the trial court committed clear error when it failed to account for her substantial progress in its analysis regarding the children's best interests. She also contends that the implementation of services to address her substance abuse issues was in the best interest of her children. Respondent's arguments are without merit because she failed to show how her limited efforts to participate in services undermined the trial court's finding that termination of parental rights was in the best interests of the children.

Respondent correctly notes that the record contains evidence that she made some progress during the pendency of the case. However the progress was, at best, modest. She was employed for a single day, began but never completed parenting classes, and sporadically attended counseling sessions. Her use of illegal drugs continued throughout the history of this case. Ultimately, respondent has not demonstrated that the children would no longer be at risk in her care.

Respondent argues that she loves her children and is bonded to them, and we do not doubt this. However, she has proven unable to protect them or meet their needs. Respondent has a history of medical neglect of her children. Respondent did not recognize that her youngest child had severe motor delays or timely treat the cyst on her oldest child's face. Each of these three children needs additional medical treatment or services, which will require extra attention from their caregiver. One needs tubes put in her ears because of a hearing loss. Another has behavioral and emotional concerns. The youngest was diagnosed with spinal muscular atrophy, type 2, and has limited muscle movement and strength. The disease affects the child's breathing and requires daily use of cough assist and suction machines. She is more vulnerable to getting sick, and when she does, she requires additional breathing treatments and the use of a nebulizer to help with her breathing. This child's condition is debilitating and will eventually cause her to be on feeding tubes and use a wheelchair. Given these medical issues, her caregiver will need to be extensively involved in managing her medical care, and it is not clear that respondent would be able to handle the level of commitment required. The evidence shows that respondent has not shown appropriate levels of concern for her children's well being, and her untreated drug issues would interfere with her ability to meet their medical needs.

It is in the children's best interests to be with a caregiver who can provide for their medical, physical, and emotional needs. It is also in the children's best interest to be with a caregiver who can prioritize their care and well being over substance use, and respondent has not demonstrated an ability to refrain from using illegal drugs. During the time the parent/agency agreement was in effect, respondent continued to abuse controlled substances to the point where she was incarcerated and her probation revoked. Respondent used drugs while the children were in foster care and was arrested for possession of a controlled substance. She tested positive for illegal drugs as recently as nine days before the termination hearing.. Ample evidence on the record therefore supports the trial court's finding that termination was in the best interests of the children.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Jane E. Markey

/s/ Kurtis T. Wilder