

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 21, 2010

In the Matter of L.J.B., S.L.T., and J.J.T., Minors.

No. 297933
St. Clair Circuit Court
Family Division
LC No. 08-000426 NA

Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent pleaded no contest to allegations in the initial petition, allowing the trial court to take jurisdiction over the minor children in September 2008. The allegations included physical abuse and improper supervision of her two children and illegal drug dealing out of the home.

The trial court issued an Order of Disposition on October 6, 2008, that required respondent, among other directives, to: (1) provide safe, suitable independent housing for at least six months, subject to petitioner's approval; (2) participate and *show benefit* in the Parent Mentor Program; (3) submit to random drug/alcohol screens; (4) complete and *utilize skills* learned in intensive parenting classes; (5) maintain a legal source on income for at least 3 months; (6) participate in and *benefit from individual counseling*; and (7) "complete an anger management assessment and/or *domestic violence education and follow through with all recommendations* made by clinician if so requested by DHS caseworker." [Emphasis added]. Petitioner provided services to respondent, including individual counseling, couples counseling, parenting classes, parent mentoring, and supervised visitation.

The trial court determined that three statutory grounds existed for termination: (1) the conditions that led to adjudication continued to exist for more than 182 days following the initial dispositional order and there was no reasonable likelihood that the conditions would be rectified in a reasonable time considering the children's ages, MCL 712A.19b(3)(c)(i); (2). there was no reasonable expectation that respondent would be able to provide proper care or custody of the children within a reasonable time considering their ages, MCL 712A.19b(3)(g); and (3) there was a reasonable likelihood that the children would be harmed if returned to respondent, MCL 712A.19b(3)(j).

Respondent argues that the trial court clearly erred in finding that all three statutory grounds were proven. According to respondent, she has remedied the allegations of physical abuse, improper supervision, and drugs being sold from the home. Respondent contends the abuse was due to respondent's improper discipline of the oldest child, which has been corrected with parent skills training. Respondent further contends there was no evidence that she was using drugs. Respondent highlights testimony from petitioner's witnesses to support her contention that she now has proper parenting skills.

Respondent also asserts there was sufficient evidence showing she is able to properly care for her children. Respondent contends she has a safe and suitable home and requisite parenting skills. Respondent has maintained employment while this case has been pending. According to respondent, the only reasons given for the termination were that she was dating J. Turner,¹ who sold drugs and physically abused her, and a single unsubstantiated complaint of leaving one of the children unattended. Respondent claims she is no longer involved with Turner. Respondent asserts there is no evidence that the children will be harmed if left in her custody.

Respondent further argues that the trial court erred in its best interest determination. Respondent has bonded with her children and provides them with a clean, loving home. She has a job and is attending college. Respondent contends she has complied with all court orders, except for completing the parent mentor program.

This Court reviews parental termination cases for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 N2d 587 (2009). To warrant reversal, the trial court's decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286, 296 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). A trial court may consider evidence on the whole record in making its best interest determination. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000); MCR 3.977(K).

The evidence on the whole record does not support respondent's arguments. The first statutory ground was supported by sufficient evidence. The goal of the order of disposition was that respondent benefit from, and consistently use skills acquired from, the various support programs. Respondent had more than a year to improve her parenting and anger management skills. Participation and attendance alone did not suffice. The trial court heard persuasive testimony that, despite support services, respondent's problematic attitudes and behaviors remained unchanged. Given the scope and duration of services provided to respondent, there was ample proof that the harmful conditions that lead to the removal of the children would likely remain unchanged.

¹ J. Turner is the father of the two younger children. His parental rights were also terminated but he is not a party to this appeal.

These proofs similarly satisfied the second statutory basis for termination. Respondent was unable to provide proper care of the children because her parenting skills and attitudes largely remained unchanged. Also, the trial court properly considered respondent's part-time wages when determining whether she could adequately care for her children.

Finally, there was sufficient evidence of a reasonable likelihood that the children would be harmed if returned to respondent. It is laudable that she kept a neat home, held a job for over a year, attended college part time, and never failed a drug screen that she took. However, the testimony clearly and convincingly showed that respondent is incapable of consistently disciplining and supervising her children and managing her anger.

In addition to assessing respondent's parenting capabilities, the trial court properly considered the relationship between respondent and Turner. The evidence was clear that domestic abuse had been an issue since the original petition. Respondent was given more than a year and repeatedly offered support services to extricate herself from the verbally and physically abusive relationship with Turner. She refused to even attend domestic violence counseling as ordered by the court in the original order of disposition and as directed by petitioner. Importantly, respondent continually refused to accept the idea that it is not in a child's best interest to be in an environment of domestic violence.

Although respondent claimed to have broken off her relationship with Turner, the trial court found that the separation was not likely permanent. Evidence supporting this finding included respondent saying she separated from Turner only to appease petitioner. Respondent chose to be with him at least twice since their separation, and continued to use his cell phone to remain in contact with him. Also, she persistently denied or minimized the domestic abuse issues. Further, respondent previously used the income from Turner's illicit drug dealing out of their home. The trial court reasonably concluded that she would likely agree to this arrangement again, especially in light of her inadequate finances. Reviewing the whole record and assessing respondent's and Turner's credibility, the trial court did not clearly err in finding that respondent would continue her relationship with the Turner.

Respondent had the opportunity to develop appropriate parenting skills by participating in, and benefiting from, the many services provided by petitioner in an effort to reunite the family. Services included individual counseling, couples counseling, parent mentoring, and supervised visitation. Respondent failed to benefit from the provided services. There was no significant change in her harmful parenting behaviors after more than a year of services from petitioner. Also, respondent was unable or unwilling to extricate herself, even with petitioner's financial and services support, from an abusive live-in relationship with a drug dealer. Respondent remained incapable of providing a safe and stable environment for her children.

We conclude that the trial court did not clearly err in finding that §§ (3)(c)(i), (3)(g) and (3)(j) were established by clear and convincing evidence. Based on the same evidence, we also conclude that the court did not clearly err in its best interests determination. "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." MCL 712A.19b (5).

Affirmed.

/s/ Jane M. Beckering

/s/ Michael J. Talbot

/s/ Donald S. Owens