STATE OF MICHIGAN

COURT OF APPEALS

In re LAROSA/RUSSELL, Minors.

UNPUBLISHED
March 15, 2016

No. 326789
St. Clair Circuit Court
Family Division
LC No. 15-000012-NA

Before: STEPHENS, P.J., and CAVANAGH and MURRAY, JJ.

Stephens, J. (*dissenting*)

I respectfully dissent from the majority opinion. I find that the trial court clearly erred in terminating respondent's rights to the minor children under MCL 712A.19b(3)(b)(*ii*), (g), and (j). The essence of my dissent is that each of the trial court's findings was built on the erroneous conclusion that respondent knew the degree of harm posed by her step-father. It is on that basis that the trial court found respondent had willingly failed to protect her children. Then, based upon respondent's failure to acknowledge that she willingly exposed her children to a known likely risk, the court found that she had poor judgment such that she was likely to expose the children to further harm. Finally, the best interests finding was supported based upon the children's need to be free from predatory behavior and the respondent's inability to protect them from it.

Regrettably, the underlying facts are that respondent's daughter was sexually abused by respondent's stepfather, Hernandez, over the course of four years. There is no dispute that this abuse took place while the minor visited at least monthly at the home of her maternal grandmother. It is also, undisputed that Hernandez abused respondent when she was a child. However, I am left with the impression that a definite mistake was made when the court found that respondent knew or had reason to know that Hernandez was a danger to her child and chose to intentionally expose her child to that danger.

Respondent was a child when assaulted and a young mother when her rights were terminated. Her information base regarding recidivist behavior by perpetrators of child abuse was negligible. The record shows that Hernandez presented himself as a man who offended once and had reformed. He maintained steady employment and appeared to be engaged in an active life of faith. While respondent asked her mother to supervise the children's visits, this does not equate to essentially guilty knowledge that Hernandez was likely to re-offend. Hernandez was never incarcerated for his abuse of respondent and was allowed to interact in the public without any restrictions regarding children that were known to respondent. Respondent trusted her

mother much in the way that many trust their mothers to provide primary care and an extended family grounding for the minors. While she had reservations about Hernandez, they did not amount to knowledge that abuse was likely.

Even if the court correctly found that respondent's behavior in allowing her children to be in the home with their grandmother and Hernandez permitted an environment in which the child would likely be abused, the record does not support a finding that respondent was likely to place her children at risk in the future. Subsections 19b(3)(b)(*ii*), and (j) each require clear and convincing evidence that there is a "reasonable likelihood" that the children will be harmed, injured, or abused within the foreseeable future if placed in *respondent's home*, while subsection (g) requires that there be "no reasonable expectation" that respondent could provide proper care or custody within a reasonable time considering the children's age. The trial court only found that this former victim's failure to immediately take complete responsibility for her child's torment equated to poor judgment. While not minimizing the abuse and trauma inflicted, it is understandable that respondent would be confused about taking complete responsibility when she was not the perpetrator of the sexual abuse against her daughter. With guidance and counseling, I believe respondent would likely gain greater insight into both her role and the children's needs for healing and protection. Indeed, her testimony at the termination hearing was fraught with angst and regret regarding her part in exposure of her children to Hernandez.

Outside of respondent's lapse of poor judgment, there was no other evidence that respondent's children were not well cared for or abused. Respondent did not have a history with Children's Protective Services and again, was not the perpetrator of abuse. There is however, no question that whatever respondent's confidence level was in Hernandez's reformation, she was horribly wrong yet, because no efforts toward reunification were made during the short time the children were in placement, there was no evidence from which to gauge respondent's ability to parent in the future. " 'Reasonable efforts to reunify the child and family must be made in *all* cases' except those involving aggravated circumstances. MCL 712A.19a(2)." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Petitioner's reason for seeking termination at the initial disposition was undoubtedly based on aggravated circumstances of sexual abuse. Under MCL 722.638(2), if a parent "is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing." In this case, respondent took steps to ensure that her daughter was not left alone with Hernandez. Respondent told her mother not to leave her daughter alone with Hernandez and respondent questioned both her mother and her daughter to ensure her mother was complying. Further, because Hernandez's sexual abuse of respondent involved exposure and not penetration, it is likely that as an untrained lay person she thought her efforts were reasonable, albeit ineffective to eliminate the risk she experienced. In any case, respondent acted responsibly once she became aware of the abuse. She contacted the authorities and sought medical care. Afterwards too, she had an expected emotional response. She was immediately enraged at the perpetrator as well as her mother. She was perplexed at why the authorities were taking action against her and admittedly acted out.

These children and this mother are deeply bonded. The children and their mother are, also, deeply wounded. To permanently separate them because of a single albeit horrible incident that is not likely to reoccur, is not in the best interests of the children. The court's finding that

the children's best interests were served by termination is rooted in the intellectually correct assertion that the children need an environment free from abuse. The error here is in determining that this mother, with counseling and training, could not provide such an environment for the children. There is no record evidence that she previously neglected, abused, or failed to provide for and nurture her children. It is a fact that this perpetrator will not be present to wreak havoc on respondent's children or any others due to his long and appropriate sentence. It is in the best interests of the children for this family to heal together, not apart. Accordingly, I would reverse the termination.

/s/ Cynthia Diane Stephens