STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
February 14, 2012

In the Matter of JOWERS/JOHNSON/MCGUIRE, Minors.

No. 304774
Macomb Circuit Court
Family Division
LC Nos. 2009-000472-NA
2009-000473-NA
2009-000474-NA

Before: STEPHENS, P.J., and WHITBECK and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right from the termination of her parental rights to the three minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

Termination of parental rights requires a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court reviews for clear error the trial court's factual findings as well as its ultimate decision that a statutory ground for termination of parental rights had been proved by clear and convincing evidence. MCR 3.977(K); *In re Mason*, 486 Mich at 152. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the basis of all evidence is left with the definite and firm conviction that a mistake has been made, giving due regard to the trial court's opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Turning first to MCL 712A.19b(3)(c)(*i*), the conditions that led to the adjudication were the physical abuse of the oldest child, the likelihood of substance abuse, respondent's domestic aggression, and her failure to address her mental health issues, all of which placed the children at a high risk of neglect and abuse. A parent agency agreement was put into effect and respondent did engage in services offered by petitioner. The trial court, however, concluded that respondent had "shown a superficial attempt to go through the motions of what she has to do, but has not shown that she has internalized her role in the abuse or has taken any meaningful steps to make sure that the pattern does not repeat." As this Court has previously stated, it is not sufficient that a parent participate in services, it is essential that the parent demonstrate that they have derived a benefit from services. See *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005),

superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 468 Mich 1037 (2010).

Evidence was presented that respondent's ability to benefit from services was compromised by her denial regarding the reason the children came into care and her inability to be fully truthful in treatment. The need for her to have benefited from services was especially important in this case because all three children had special emotional and psychological needs that required highly consistent parenting skills. We are aware that respondent had shown improvement in her parenting skills during visitations and had seemingly become drug-free. However, throughout the duration of this case respondent's actions failed to alleviate concerns about her ability to handle the stress that three special needs children would have on her ability to parent in the safe, nurturing and consistent manner that the children required. The trial court's conclusion that respondent merely went through the motions and did not benefit from services, and thus did not rectify the conditions that brought the children into care, is supported by evidence of the extensive amount of time it took for her to engage in services, her failure to attend scheduled appointments, drug screens, and visitations, her failure to provide documentation on a consistent and timely basis, and her lack of documented efforts to obtain employment and adequate housing for herself and three children. Respondent has failed to establish on appeal that the trial court clearly erred in finding that the conditions that led to adjudication continued to exist and that there was no reasonable likelihood that they could be rectified within a reasonable time given the ages of the children.

Next, the trial court found that MCL 712A.19b(3)(g) was satisfied by the evidence that respondent had no pattern of consistent income to support a home or of possessing any nurturing abilities to establish an emotionally sound home for the children. Throughout the 21 months before termination the only documentation of employment respondent provided was two letters attesting that she cleaned the writers' homes periodically. Her numerous claims of employment were unsubstantiated. There was nothing in the record to suggest to us with firm and definite conviction that a mistake had been made relative to her lack of income or efforts to obtain a legal source of income. There was also significant testimony that respondent had difficulty with appropriate discipline with her children. Accordingly, the trial court did not clearly err in finding that without regard to intent respondent failed to provide proper care or custody of her children and would be unable to do so within a reasonable time given the ages of the children.

The trial court relied again on the evidence that respondent had merely "gone through the motions" and did not recognize that what she did to the children was wrong, and noted that past behavior was a predictor of future behavior, in finding that MCL 712A.19b(3)(j) had been established by clear and convincing evidence. Respondent contends on appeal that this finding was clearly erroneous because she had completed her parenting classes and Alternatives to Domestic Aggression and participated in visitation. Section 19b(3)(j) is directed to the "conduct or capacity" of the parent and the likelihood of harm that could befall a child if returned to the parent's care. We are cognizant of the effort put forth by respondent to participate in numerous services designed to address her issues of mental instability, parenting skills, and domestic aggression particularly that aimed against her children. However, as previously mentioned, evidence was presented that critical to the success of those services was accountability and honesty. The only time there was even a hint of accountability was at the onset of the case when respondent admitted to Children's Protective Services and the Warren Police Department that

she had slapped her oldest child on one occasion and pushed him into a fan on another. Subsequent to that she claimed that the child was hurt while she was at work and he was in the care of her boyfriend, or that he had fallen at school while chasing a little girl. Respondent's failure to acknowledge and accept responsibility for the serious physical abuse inflicted by her upon her son and the psychological harm appearing in all three children arising from neglect and abuse in the home support the trial court's conclusion that she did not benefit from services and that there was a reasonable likelihood that the children would be harmed if returned to her care.

Lastly, respondent contends that the trial court clearly erred in finding that termination of her parental rights was in the best interests of the children because it would be detrimental to their well-being. We disagree. Evidence was uncontroverted that reunification with respondent and her oldest child was not a "realistic goal" and that extreme caution would be needed even to have visitation. With regard to the two younger children, there was no indication that termination would be detrimental to their well-being. Respondent's daughter referred to respondent by her first name, which demonstrated a lack of bonding and was a symptom of the child's reactive attachment disorder. Respondent's younger son, who was less than a year old when he came into care, had never shown a strong bond with respondent during visitations. Respondent has failed to convince us that the trial court's determination that termination of her parental rights would be in the best interests of the children was clearly erroneous.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ William C. Whitbeck
/s/ Jane M. Beckering