

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 14, 2012

In the Matter of SCHENCK, Minors.

No. 305114
Wayne Circuit Court
Family Division
LC No. 08-481470

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

PER CURIAM.

Respondent Schenck appeals as of right the trial court's order terminating her parental rights to the minor children, D. Schenck and T. Schenck, under MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (likelihood of harm). We affirm.

I. FACTS

Petitioner, the Department of Human Services (DHS), filed a petition in December 2010, requesting that the trial court remove the minor children from Schenck's home. DHS further requested that the trial court take jurisdiction over the children and terminate Schenck's parental rights. The petition alleged that the parental rights of the minor children's biological father were terminated in 2008, due to his sexual abuse of one of the minor children. The day before DHS filed the petition, City of Taylor police officers reported that Schenck had permitted the father into her home, with the children present. The trial court authorized the petition, approved the permanency plan of adoption for the minor children, and placed them under the care of DHS.

DHS subsequently filed two amended petitions stating additional facts in support of termination of Schenck's parental rights. Both petitions alleged that the father was convicted of fourth-degree criminal sexual conduct in 2008 for his sexual abuse of one of the minor children. The father became a registered sex offender and was placed on probation. The minor children were temporarily removed from Schenck's care in 2008 and 2009, while she participated in classes and therapy focused on parenting a victim of sexual abuse.

In April 2011, the trial court held a "tender years" hearing.¹ Leticia Madlock testified that she was a forensic investigator for the Guidance Center's "Kids Talk" program. She

¹ MCR 3.972(C)(2)(a) provides:

interviewed the minor children in January 2011. At that time, the oldest was almost six years old and the youngest was three years old. During the oldest minor child's interview, he said that he was not allowed to say why his father went to jail. The minor child explained that he no longer lived with his mother because her house was nasty and had two rats and because, according to what his mother had told him, he was sick.

Shano, the DHS worker assigned to the case, testified that she interviewed the oldest minor child in December 2010. The child volunteered that his father did not live with them, but later stated that his father sometimes spent the night. Shano testified that she spoke to the minor child again briefly on December 15, 2010. The minor child said that his father sometimes walked him to the bus stop and spent the night at their house. The minor child also said that he was glad his father was put in jail.

The trial court held that the statements made by the minor children to Madlock and Shano would be admissible at the termination hearing, as the circumstances surrounding the statements provided "adequate indicia of trustworthiness."² The trial court then held the termination hearing.

Shano testified that in October 2010, she received information that Schenck's house was dirty, that the children were allowed to roam freely in the neighborhood, and that Schenck used heroin. Shano conducted an investigation and was unable to substantiate the allegations. But at that time, Shano began to suspect that the children had contact with the father. Shano advised Schenck that if she permitted contact between the children and the father, DHS would consider petitioning to have the children permanently removed from her care. Schenck stated that she did not permit any contact and that she only had contact with the father because he gave her money for the children.

But in December 2010, Shano received information that the father was living in Schenck's home. Shano conducted an unannounced visit to the home. There was a red Dodge truck in the driveway, but no one answered the door. Schenck later telephoned Shano and stated that she had been in the shower at the time of the visit. Shano also discovered that the oldest

Child's Statement. Any statement made by a child under 10 years of age . . . regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(f), (j), (w), or, (x), performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement as provided in this subrule.

(a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.

² See MCR 3.972(C)(2)(a).

minor child's school had emergency contact cards for the 2010-2011 school year listing the father. The father's cellular telephone number was also listed. The cards indicated that there were no custody issues and that the minor child could be released to the father. Thereafter, the father's probation officer advised Shano that the father drove a Dodge truck, which was registered to the father's employer, and that it was a violation of the father's probation for him to have any contact with the children.

Officer Jeff Patterson of the City of Taylor Police Department testified that he was dispatched to Schenck's house to assist with a DHS investigation. He went to the house with another officer and two DHS workers. Schenck invited them inside. When Officer Patterson asked Schenck whether the father was in the house, she reluctantly answered, "Yes." The officers found the father attempting to hide under a pile of clothes in a bedroom closet. The father was wearing only boxer shorts. He was arrested and taken into custody. The three children were also in the house. Schenck told the officers that the father had slept in the house the previous three nights, and the father stated that the truck in the driveway belonged to his boss. Officer Patterson described the house as sloppy and untidy.

Shano testified that she had observed a bond between Schenck and the children, but recommended that Schenck's parental rights be terminated. Schenck continued to place the children at risk of sexual abuse by allowing the father to have contact with them, even after participating in services that educated her about victims of child sexual abuse. Shano also believed that Schenck had permitted the father to have contact with the minor children on more occasions than the three days leading up to the minor children's removal.

Schenck claimed that she did not let the father have any contact with the children before letting him into the house in December, nor did she leave the children alone with him while he was staying in the house. There was, however, one occasion when she had the father walk the oldest minor child to the bus stop.³ Schenck testified that she currently had no contact with the father, she believed that the sexual abuse he had inflicted on the oldest minor child was severe, and she would do anything possible to have her children returned to her care. But Schenck further testified that she did not believe the oldest minor child was emotionally damaged or traumatized by the father's sexual abuse.

At the conclusion of the termination hearing, the trial court held that the evidence supported termination of Schenck's parental rights to the minor children under MCL 712A.19b(3)(g) and (j), and that termination of her parental rights was in their best interests. The trial court specifically noted that although there was evidence of a bond between Schenck and the minor children and that there was nothing innately wrong with her accepting financial assistance from the father, Schenck allowed the father to stay in her home for at least three nights and there was evidence indicating that she permitted him to have additional contact with the minor children beginning in October 2010, if not before. The trial court found it particularly troubling that Schenck allowed such contact between the father and the minor children knowing

³ It is not clear in the record whether this event occurred before or during the time that Schenck allowed the father to stay in the house in December 2010.

the severity of the abuse inflicted on the oldest minor child by the father and that the minor children could be permanently removed from her care if she allowed the father to have contact with them. The trial court was also troubled by Schenck's history of relationships with violent and otherwise unstable men. Schenck now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.⁴ We review for clear error a trial court's decision terminating parental rights.⁵ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁶ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁷

B. ANALYSIS

Schenck's parental rights were terminated under MCL 712A.19b(3)(g) and (j), which provide:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

In 2008, a trial court terminated the father's parental rights due to his sexual abuse of the oldest minor child. Schenck was aware of the sexual abuse, she participated in services focused on parenting sexual abuse victims, and she had been warned that if she permitted the father to have contact with the children, they could be permanently removed from her care. Nonetheless, Schenck allowed the father to stay in her home with the minor children for three nights in

⁴ MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

⁵ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

⁶ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁷ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

December 2010, and there was evidence that she had allowed them to have ongoing contact beginning in October 2010, if not before that time.

As Schenck admits on appeal, she had not fully benefited from the services in which she previously participated. And there was no evidence that she would fully benefit from additional services. Given the fact that Schenck continued to allow the children to be exposed to the man who had sexually abused one of them, as well as other potentially harmful situations, the trial court did not clearly err by terminating her parental rights.⁸ “The inability of a parent to protect her children from sexual assault and the failure to support children who have been sexually assaulted by preventing further contact with their assailant are grounds for termination.”⁹

We conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Schenck’s parental rights under MCL 712A.19b(3)(g) and (j).

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child’s best interests, then the trial court is required to order termination of parental rights.¹⁰ There is no specific burden on either party to present evidence of the children’s best interests; rather, the trial court should weigh all evidence available.¹¹ We review for clear error the trial court’s decision regarding the child’s best interests.¹²

B. LEGAL STANDARDS

In determining the child’s best interests, a trial court may consider a variety of factors including the parent’s history, unfavorable psychological evaluations, the child’s age, inappropriate parenting techniques, and continued involvement in domestic violence.¹³ A trial court may also consider the strength of the bond between the parent and child, the visitation history, the parent’s engaging in questionable relationships, the parent’s compliance with

⁸ See *In re Miller*, 182 Mich App 70, 74; 451 NW2d 576 (1990) (stating that “termination of a parent’s rights is proper where the parent permits the continuance of an abusive environment”).

⁹ *In re Sprite*, 155 Mich App 531, 536; 400 NW2d 320 (1986).

¹⁰ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

¹¹ *In re Trejo Minors*, 462 Mich at 353.

¹² *Id.* at 356-357.

¹³ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

treatment plans, the child's well-being while in care, and the possibility of adoption.¹⁴ A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.¹⁵

C. ANALYSIS

The trial court noted that there was a bond between Schenck and the minor children. But, given the risk of harm she posed to the minor children by continually exposing them to a potentially abusive environment, as well as their young ages and need for permanence in a stable and safe home, termination was in the minor children's best interests. Accordingly, we conclude that the trial court did not clearly err in finding that termination of Schenck's parental rights was in the minor children's best interests.

We affirm.

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

¹⁴ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹⁵ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).