

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 14, 2012

In the Matter of E. J. HART, Minor.

No. 305417
Oakland Circuit Court
Family Division
LC No. 10-778931-NA

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

PER CURIAM.

Respondent L. Zinn appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (m) (parental rights to another child voluntarily terminated). We affirm.

I. FACTS

In 2009, Zinn voluntarily terminated her parental rights to two other children after the initiation of child protection proceedings based on domestic violence and neglect. In July 2010, the Department of Human Services (DHS) provided services to Zinn after the minor child's birth. However, Zinn did not benefit from those services and was convicted of domestic violence for the third time in November 2010. During that incident, Zinn also threatened to kill herself with a knife. Zinn had previously been diagnosed with bipolar disorder and depression, for which she was prescribed medication.

The DHS filed a petition requesting that Zinn's parental rights to the minor child be terminated at the initial dispositional hearing. In January 2011, Zinn pleaded no-contest to allegations in the petition to establish both jurisdiction and a statutory basis for termination under §§ 19b(3)(g) and (m). Thus, the trial court was only required to decide if termination of Zinn's parental rights was in the minor child's best interests.

At the best interests hearing, Dr. Julie Kwon testified that she performed a psychological evaluation of Zinn. Dr. Kwon found that Zinn continued to have problems with depression, anger, and anxiety. Zinn had previously been hospitalized at a psychiatric facility and also had completed an inpatient substance abuse program. However, Zinn did not acknowledge having a substance abuse problem. Dr. Kwon also believed that Zinn had a borderline personality disorder, which meant that she could be manipulative and engage in attention-seeking behaviors. Dr. Kwon also explained that depression can affect one's ability to parent because if the person

cannot manage his or her symptoms or lacks motivation, they will not be able to meet the child's needs.

Indeed, according to Dr. Kwon, Zinn had difficulty dealing with negative emotions; she lacked coping skills to deal with her negative emotions, so she often resorted to physically assaulting the minor child's father, T. Hart, whenever she became upset with him. Zinn blamed Hart for their altercations and did not have the insight to realize how she may have contributed to the conflicts. Dr. Kwon believed that Zinn's relationship with Hart was a barrier to her mental well-being because it was very chaotic and unstable. On one occasion, Zinn was hospitalized after she was found passed out outside a church after an altercation with Hart.

Dr. Kwon recommended that the minor child not be returned to Zinn's custody because the problems that existed with the other children in 2009 continued to exist. Zinn still did not have employment or housing and, therefore, was unable to meet the minor child's basic needs. She also continued to engage in unhealthy relationships and had untreated mental health issues. Dr. Kwon believed that Zinn's prognosis for successfully completing mental health treatment was poor. The length of time it would take for Zinn to address her issues was too long for the minor child to wait. Given her lack of insight, Dr. Kwon was not sure Zinn could even benefit from treatment.

Dr. Kwon believed that termination would likely have little impact on the minor child because of the minor child's young age and limited contact with Zinn. There had not been much time to form a bond with the minor child. In observing Zinn's interactions with the minor child, Dr. Kwon did not see her paying much attention to her initially, but later saw Zinn behave affectionately. But even if a strong bond existed between them, it would not affect Dr. Kwon's recommendation because Zinn could not care for the minor child.

Mark Reed, a Protective Services investigator, was familiar with Zinn from her prior case, in which Reed served as the caseworker. In his opinion, returning the minor child to Zinn was not in the minor child's best interests because Zinn had not benefited from services. Since entering her no-contest plea to the petition in this matter, Zinn had not done anything to improve her situation. Indeed, Reed saw Zinn at Hart's home when the minor child was present even though Zinn was not supposed to have unsupervised visits. Further, Zinn had not made a significant effort to attend counseling, and she failed to attend drug testing. He also stated that it was not likely Zinn could address her issues within a reasonable time considering the minor child's age.

Zinn admitted that she was homeless; she would go back and forth between friends because she did not have any family members who would allow her to stay with them. Zinn had contacted homeless shelters about obtaining assistance, but most of the time was told that the shelters were full. She had previously lived with Hart and admitted that she sometimes stayed with him when she did not have anywhere else to go. Zinn admitted that she sometimes got along well with Hart, but they would argue when they were under stress. Zinn did not believe that the minor child was at risk of harm during the altercations between her and Hart; she would never allow the minor child to be close enough to them so that she could be hurt.

Zinn conceded that she allowed Hart to dominate her and that she has had other abusive relationships in the past. Despite this, Zinn planned to continue to work with Hart to raise the minor child because she felt that was the only way she would be able to see the minor child. Zinn believed that they could parent the minor child together because they were great friends. Although, Zinn conceded that their arguments usually involved Hart telling her that she was not a good mother or throwing her loss of her two older children in her face.

Zinn admitted that her parental rights to her other children were terminated because she had not complied with services, but she believed that she could comply with the services in this case. Zinn stated that she did not have a job and knew that she needed a job and housing to care for the minor child. Anytime she saw a sign asking for help, she submitted a job application; she also went to the library almost every day to search for work. She had only completed the ninth grade. She had given birth to three children by the age of 19 years.

Zinn admitted that she violated a court order that prohibited her from having contact with the minor child because Hart said it would be all right. She saw the minor child almost every day because she continued to reside with Hart most of the time. When Reed visited the home, she either left before he arrived or she told him that she was just visiting, which was accurate on most occasions. Zinn admitted that it would be difficult for the DHS or the trial court to trust Zinn to do what she said she would do.

Following the best interests hearing, although the trial court believed that Zinn was bonded to the minor child, it did not believe that the bond outweighed the other benefits to the minor child from terminating Zinn's parental rights. Therefore, the trial court found that termination of Zinn's parental rights was in the minor child's best interests. Zinn now appeals.

II. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Zinn argues that the trial court erred in finding that termination of her parental rights was in the minor child's best interests because she had changed her circumstances for the better since the termination of her rights to her two older children. 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.¹ 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.² We review for clear error the trial court's decision regarding the child's best interests.³

¹ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 351; 612 NW2d 407 (2000).

² *In re Trejo Minors*, 462 Mich at 353.

³ *Id.* at 356-357.

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.⁴ 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 treatment plans, the child's well-being while in care, and the possibility of adoption.⁵ 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.⁶

C. ANALYSIS

Zinn has a history of mental health issues involving depression, anxiety, and bipolar disorder, and she did not consistently take her prescribed medication. A psychological evaluation indicated that she has poor coping skills, lacked insight, and was unwilling to fully acknowledge her conditions. The examining psychologist concluded that her condition was chronic and that her prognosis for improvement was poor.

Contrary to Zinn's argument that she was participating in and benefitting from services, the evidence showed that after DHS provided services, Zinn continued to be involved in domestic violence with Hart, resulting in her third conviction for domestic violence in November 2010. Further, Zinn was involved in at least two additional domestic violence incidents with Hart during the two months before the trial court terminated her parental rights. Zinn had no family members to assist her and her plan to continue to raise the minor child with Hart was not reasonable in light of their long history of domestic violence. Zinn showed no understanding of how the domestic violence affected the minor child.

In addition to the continuing domestic violence, Zinn repeatedly violated a court order prohibiting her from having unsupervised contact with the minor child, and she remained unemployed and without housing. As the examining psychologist observed, Zinn was unable to meet her own basic needs, so there was no reasonable expectation that she would be able to meet the minor child's basic needs, either now or within the foreseeable future. Accordingly, we conclude that the trial court did not clearly err in finding that termination of Zinn's parental rights was in the minor child's best interests.

⁴ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

⁵ 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).

⁶ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

We affirm.

/s/ Cynthia Diane Stephens

/s/ William C. Whitbeck

/s/ Jane M. Beckering