

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 19, 2012

In the Matter of LALONE/CLUTIER, Minors.

No. 305975
Bay Circuit Court
Family Division
LC No. 07-009897-NA

In the Matter of LALONE/CLUTIER, Minors.

No. 305976
Bay Circuit Court
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LC No. 07-009897-NA

Before: MARKEY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondents contest the termination of their parental rights to the involved minor children. In Docket No. 305975, respondent father appeals as of right from a circuit court order terminating his parental rights to his son CC, pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). In Docket No. 305976, respondent mother appeals as of right from the same order, which terminated her parental rights to both AL and CC, also pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm because the trial court did not err in finding that the conditions that led to the adjudication continued without reasonable likelihood of change within a reasonable time, and that there was a reasonable likelihood that the children would be harmed if returned to respondents.

I. STANDARD OF REVIEW

Respondents maintain that the circuit court erred in finding clear and convincing evidence supporting termination of their parental rights, and in finding that termination served the children's best interests. The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). This Court reviews for clear error a circuit court's decision to terminate parental rights. MCR 3.977(K). The clear error

standard controls our review of “both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

II. STATUTORY GROUNDS FOR TERMINATION

A. MCL 712A.19b(3)(c)(i) & MCL 712A.19b(3)(g)

Clear and convincing evidence justified the termination of respondents’ parental rights pursuant to MCL 712A.19b(3)(c)(i), which authorizes termination under the following circumstances:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

The conditions that led to the children’s adjudication included respondent father’s court-ordered removal from the family home on the basis of his sex-offender status and his young daughter’s allegations of sexual abuse against him, respondent mother’s inability to keep the family home safe and clean even with assistance from in-home services, and respondents’ prior unsuccessful therapeutic treatment. The second amended petition filed by the Department of Human Services (DHS) also recounted the view of respondents’ therapist regarding their limited parenting skills, including that the children’s “physical and emotional needs are largely neglected due to [respondents’] limited capacities to parent,” that respondent mother’s skills “appear[] to be particularly limited,” and that respondent mother “function[ed] poorly when [respondent father] is out of the house.” More than a year elapsed between the circuit court’s entry of the initial dispositional order and the July 2011 termination hearing.

Abundant evidence established respondents’ ongoing inability to properly provide parental care to the children. Respondent mother’s psychological evaluation identified her dismissive attitude toward her step-daughter’s claim that respondent father sexually abused her, and her “severe[] underestimat[ion] [of] her role and responsibility as a parent.” Respondent father’s psychological evaluation reported his minimization and denial of responsibility concerning his CSC conviction and his young daughter’s abuse allegations, for which respondent father also minimized his culpability at the termination hearing, and his antisocial personality features that gave rise to concern “especially as it relates to parenting” because of the likelihood that he would routinely “place his needs before the needs of a child.” Parenting instructor Michael Grills testified that over the course of 10 parenting times observed by Grills, including as recently as March 2011, respondent mother repeatedly exhibited unprompted frustration with the children, and respondent mother either “really didn’t understand” the principles emphasized

in the parenting classes, or she “understood . . . and chose not to apply the information.” There was also testimony concerning respondents’ minimal interactions with AL and differential treatment of AL and CC, and the multiple instances in which respondent mother became frustrated with the children and did not follow through on discipline. Further, at the hearing respondent mother mistakenly attributed CC’s memory problems to the fact that “he’s not hearing everything because of how active he is.” Finally, the family home was unfit at the time of the children’s placement in foster care.

The record also clearly and convincingly showed that, despite respondents’ participation in several services over the course of a year, no reasonable likelihood existed that respondents would improve their parenting skills in a reasonable time. This is particularly so in light of the facts that respondent mother had reached only the stage of counseling at which she came to understand most of the many issues she faced; respondent father failed to even begin addressing in counseling his CSC conviction and the sexual abuse allegations by his daughter; CC had extensive special needs, and AL had behavioral and medication issues.

We conclude that the circuit court correctly terminated respondents’ parental rights pursuant to subsection (c)(i), in light of the clear and convincing evidence of their ongoing parental unfitness and the unlikelihood of their significant improvement within a reasonable time. The same evidence detailed in the preceding paragraph proves clearly and convincingly that respondents, “without regard to intent, fail[ed] to provide proper care or custody for the child[ren]” and no reasonable expectation exists that respondents “will be able to provide proper care and custody within a reasonable time considering the child[ren]’s age.” MCL 712A.19b(3)(g). The circuit court thus correctly invoked subsection (g) in terminating respondents’ parental rights.

B. MCL 712A.19b(3)(j)

The circuit court additionally invoked as a ground for termination MCL 712A.19b(3)(j), which permits a court to terminate parental rights if clear and convincing evidence establishes that “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.” Clear and convincing evidence supported the circuit court’s invocation of subsection (j) as a ground for termination, primarily the evidence of respondents’ minimization of respondent father’s CSC conviction and the more recent reports by his young daughter of sexual molestation, the psychological evaluations that revealed respondent mother’s “weak parenting instincts” and “severe[] underestimat[ion] [of] her role and responsibility as a parent,” as well as respondent father’s general insensitivity to children’s emotional needs and the likelihood that he would routinely “place his needs before the needs of a child.” In addition, AL’s and CC’s substantial emotional, medical, and other physical needs when they arrived in foster care, and the high level of dedication required to care for CC, and the abundant evidence of respondents’ failures to achieve significant progress toward addressing their parental shortcomings support the circuit court’s decision.

III. CHILDREN’S BEST INTERESTS

Respondents also both challenge the circuit court's finding that termination of their parental rights would serve the children's best interests. "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 . . ." MCL 712A.19b(5). We find no clear error in the circuit court's decision. As discussed above, respondents minimized their problems and failed to make progress in addressing their issues. Moreover, the circuit court's decision furthers the goal of providing the minor children with permanence and stability.

Affirmed.

/s/ Jane E. Markey
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro