

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 19, 2012

In the Matter of B. HUTCHISON, Minor.

No. 306064
St. Joseph Circuit Court
Family Division
LC No. 2009-000887-NA

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

This family first came to the attention of protective services when allegations of medical neglect were made by the minor child's treating pediatricians in the fall of 2009. The child was born the previous July addicted to the prescribed opiates respondent took during her pregnancy to treat chronic back pain. The newborn was hospitalized for 12 days following his birth. Upon his discharge, the infant required regular doses of methadone, to relieve the symptoms of opiate withdrawal, and regular blood work, to regulate the amount of methadone in his system. In August and September of 2009, respondent and her mother¹ frequently presented to a pediatric clinic with reports that the baby had stopped breathing and turned blue. Respondent also reported that he frequently choked during bottle feeding and expelled formula through his nose. No medical personnel ever witnessed the baby experiencing these symptoms. It was strongly recommended on several occasions that the infant be hospitalized to monitor these symptoms as well as his methadone treatment. Eventually, on September 28, 2009, respondent agreed to admit the baby to the hospital for evaluation of apnea. Despite respondent's eventual consent, a pediatrician was sufficiently concerned with the infant's continued wellbeing that he wrote a letter to petitioner disclosing his fear for the child's safety.

On September 30, 2009, an emergency order was entered directing petitioner to remove the child from respondent's care and place him in protective custody. The child was placed in a

¹ Respondent's mother had an extensive protective services history, which included termination of her parental rights to respondent.

foster home where he would remain during the pendency of the case. The foster mother testified that she never witnessed any of the alarming symptoms described by respondent. The foster mother, however, was concerned because it became apparent that respondent, before removal, was prematurely feeding her nine-week-old son cereal and baby food. After a lengthy adjudication trial in December 2009, the child was made a temporary ward of the court and respondent was ordered to participate in services.

Over the next 18 months, many services were provided to respondent. In addition, a termination of parental rights petition was filed, heard, and denied, which permitted respondent to continue to participate in treatment. Eventually, however, a termination of parental rights hearing was held in June 2011, after which the court entered an order terminating respondent's parental rights. This appeal followed.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). 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. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). If a statutory ground for termination is established and termination of parental rights is in the child's best interests, the court must terminate parental rights. MCL 712A.19b(5). This Court reviews the trial court's determination regarding a child's best interests under the clearly erroneous standard. *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008).

As a newborn, the child came into care because of his mother's medical neglect. At the time of the removal, she had clearly failed to provide proper care and custody of her son. She ignored the recommendations of physicians that her son be admitted to the hospital for observation, she failed to properly monitor the methadone regimen, she did not comply with blood draw requirements, and she cancelled or failed to appear for scheduled doctor's appointments. After the child was removed from respondent's care, respondent was offered many services over nearly two years directed toward improving her parenting skills and removing the barriers to reunification. Rather than benefit from the services provided, respondent continued to be defensive when feedback was given and resistant to redirection and instruction. She refused to participate in activities designed to improve the bond between parent and child. She continued to engage in questionable relationships with her dysfunctional mother and a man with his own domestic violence and protective services issues. Because respondent did not benefit from the services provided, she continued to struggle with reading her son's cues, engaging her son, structuring activities, following through on tasks, setting boundaries, and engaging in positive meaningful play with her child. Respondent simply failed to demonstrate that she could consistently provide a safe and stable environment within which to raise her child. At the time of the termination hearing, respondent's ability to parent her child was no better than when he had been removed from her care nearly two years earlier.

Further, there was no reasonable expectation that respondent would be able to provide proper care and custody of her son within a reasonable time. Respondent had made little to no progress after receiving services for 21 months. Indeed, the deficiencies noted in her parenting

skills at the time the child was removed continued to exist at the time of the termination hearing. She was diagnosed with borderline personality disorder. Respondent refused to address what was probably the primary barrier to her progress: the damage caused by her dysfunctional family of origin. The traits the doctor noted when evaluating the 21-year-old respondent were the same traits another psychologist had noted when respondent was evaluated at the age of 12. This witness explained that longstanding patterns of behavior were very hard to break. Based upon this evidence, the trial court did not clearly err when it found that the statutory grounds for termination, MCL 712A.19b(3)(g) and (j), had been proven by clear and convincing evidence.

In support of her position that the grounds for termination were not established by clear and convincing evidence, respondent simply argues that the evidence in this regard was contradictory. Respondent relies upon the testimony of her treating therapist to the effect that respondent had made progress, could eventually parent her child, and should be given more time to work toward reunification. Respondent fails to acknowledge that the therapist had only observed six hours of parenting time, compared to the 272 hours of parenting time observed by the Infant Mental Health Specialist. Further, the therapist agreed that respondent required more treatment and that the child needed permanency soon. Additionally, while the therapist would not recommend termination of parental rights, she similarly could not opine that termination of parental rights was not warranted. Thus, respondent's reliance upon this one witness's testimony is misplaced. In any event, this Court gives regard to the trial court's ability to judge the credibility of witnesses who appeared before it. *In re Miller*, 433 Mich at 337. The trial court was free to find other witnesses to be more credible.

Next, respondent argues that the trial court erred because it failed to state the basis for its finding that termination of parental rights was in the child's best interests. Contrary to respondent's assertions, the trial court articulated, in a very lengthy opinion, the basis for its finding. The child had been in the same foster home for nearly two years. During parenting time, the child showed signs of an insecure attachment disorder. Visitation was becoming stressful for the child. The stress and anxiety was beginning to cause behavioral concerns. All of the service providers agreed that respondent's son could not wait any longer for permanency and stability. Under the circumstances, the trial court did not clearly err when it found that termination of parental rights was in the child's best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause