

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of B. D. HORNOF, Minor.

UNPUBLISHED
May 8, 2012

No. 306585
Newaygo Circuit Court
Family Division
LC No. 11-007879-NA

In the Matter of B. D. HORNOF, Minor.

No. 306586
Newaygo Circuit Court
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In the Matter of HORNOF/MERROW, Minors.

No. 306615
Newaygo Circuit Court
Family Division
LC No. 10-007699-NA

In the Matter of HORNOF/MERROW, Minors.

No. 306616
Newaygo Circuit Court
Family Division
LC No. 10-007699-NA

Before: WHITBECK, P.J., AND SAWYER AND HOEKSTRA, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother L. Hornof and respondent-father R. Hornof (Hornof) appeal as of right from the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i) (physical injury or abuse), (b)(ii) (failure to protect), (c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (other conditions continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that the child will be harmed if returned to the home). We affirm.

I. FACTS

This family's history with Children's Protective Services (CPS) dates back several years to 2004. Between 2004 and 2010, CPS received 14 complaints of neglect, abuse, and/or domestic violence. In an effort to avoid removal of the children, the family was provided a multitude of services starting in 2006 to address the issues of domestic violence, mental health instability, and substance abuse. In December 2009, CPS received complaints that Hornof had, once again, physically abused two of the children. These allegations of abuse were substantiated, and it was further found that L. Hornof had failed to protect the children.

In January 2010, a safety plan was implemented that limited Hornof's contact with his children to telephonic communication. When the Hornofs failed to comply with this agreement, the trial court entered an order prohibiting Hornof from entering the family home and authorizing the Department of Human Services (DHS) to remove the children immediately in the event that Hornof was found violating the court's orders. The day after the entry of this order, the oldest daughter contacted DHS to report that Hornof was in the family home. Upon investigation, CPS workers found Hornof hiding in the bedroom closet. Thereafter, a petition was authorized, and the children were removed from the Hornofs' care and eventually adjudicated temporary wards of the court.

For the next year, the Hornofs continued to receive the same or similar services that had been in place for several years, including drug and alcohol screens, multiple parenting classes, individual counseling, marriage counseling, parenting time, psychological evaluations, transportation reimbursement and other financial aid, and case management and monitoring. The Hornofs' participation in the services was inconsistent and their progress was minimal. The Hornofs frequently tested positive for controlled substances and incidents of domestic violence continued. On several occasions, L. Hornof requested assistance in severing her relationship with Hornof. DHS offered aid; however, L. Hornof elected to stay with her husband.

The children were also provided counseling services in the months following removal. During their sessions, several of the children reported witnessing extreme domestic violence between respondents. The children also reported being themselves physically abused by Hornof and being fearful of him.

The domestic violence between the Hornofs escalated. In February 2011, Hornof brutally beat and stabbed L. Hornof. When Hornof attempted to flee the scene in his vehicle, he was severely injured in a motor vehicle accident. Hornof was charged with several felonies related to these events. After the beating, L. Hornof admitted to DHS that her husband had been physically abusing her and the children for several years and that she had failed to protect the children. Five months after the brutal beating of L. Hornof, DHS filed a petition to terminate the Hornofs' parental rights. After a one-day termination hearing, the lower court found that statutory grounds for termination of the Hornofs' parental rights had been established by clear and convincing evidence and that termination of the Hornofs' parental rights was in the children's best interests.

The Hornofs now appeal as of right.

II. TERMINATION OF THE HORNOFS' PARENTAL RIGHTS

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.¹ We review for clear error a trial court's decision terminating parental rights.² 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.³ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁴

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.⁵ 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.⁶ We review for clear error the trial court's decision regarding the child's best interests.⁷

B. L. HORNOF'S PARENTAL RIGHTS

L. Hornof does not contest the trial court's finding that the statutory grounds for termination of her parental rights were established by clear and convincing evidence. Instead, she argues that, despite the existence of grounds for termination, the trial court clearly erred because termination of her parental rights was not in her children's best interests. In support of this position, L. Hornof argues that, after the violence that occurred in February 2011, she had an epiphany and that she was now fully invested in and making progress toward her treatment goals. L. Hornof reasons that she should have been given additional time to work toward reunification. We disagree.

Although allegations of abuse and neglect had been ongoing and substantiated since 2006, the real impact of the abuse came to light after the children began their therapy and started

¹ MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

² 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.

³ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁴ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

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

⁶ *In re Trejo Minors*, 462 Mich at 353.

⁷ *Id.* at 356-357.

to disclose the extent of the damage inflicted by the Hornofs. The children were traumatized by Hornof's physical abuse, L. Hornof's failure to protect them, and the domestic violence that permeated the home. The children required a permanent and stable environment if they had any chance of repairing the damage done by the Hornofs. Unfortunately, at the time of the termination hearing, it was clear that L. Hornof could not meet her children's needs. L. Hornof was not capable of parenting her children, and the testimony indicated that she would not be in a position to care for her children within a reasonable time.

The evaluating psychologist testified that L. Hornof had been the victim of physical and sexual abuse for most of her life. He then opined that it would take eight to ten years of intensive inpatient and outpatient therapy for L. Hornof to address the mental health issues that severely impaired her ability to parent her children. L. Hornof's treating therapists similarly agreed that she was not currently capable of taking care of her children. Both therapists were reluctant to even speculate on a timeframe for treatment. When pushed, the counselors projected that it would take a year of therapy, if not more, perhaps a lifetime, before L. Hornof had addressed the issues of substance abuse, domestic violence, and her inclination toward unhealthy codependent relationships. Indeed, one therapist admitted that L. Hornof had only begun to scratch the surface of her codependency issues. The children, who had already been in care 18 months, simply did not have the luxury of waiting the length of time L. Hornof would require to overcome the barriers to reunification. Because of their own special needs, the children required permanency and stability immediately.

We note that L. Hornof raises a very brief argument on appeal that the trial court lacked jurisdiction because of defects occurring at the time of her no-contest plea to the termination petition. However, the record does not support her contention. At both the adjudication hearing regarding her five older children and the adjudication hearing involving the youngest child, L. Hornof was present and represented by counsel and indicated her understanding and acceptance of the trial court assuming jurisdiction pursuant to her plea. Further, this issue has not been properly raised on appeal because it was not included in her statement of questions presented,⁸ was not briefed,⁹ and was mounted as a collateral attack in an appeal from the trial court's termination decision.¹⁰

Considering the record, we conclude that the trial court did not clearly err when it determined that termination of L. Hornof's parental rights was in the children's best interests.

⁸ *People v Fonville*, 291 Mich App 363, 383; 804 NW2d 878 (2011).

⁹ *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

¹⁰ *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993).

C. HORNOF'S PARENTAL RIGHTS

Hornof argues that the trial court erred when it found that the statutory grounds for termination of his parental rights had been established by clear and convincing evidence and that termination of his rights was in the children's best interests.

1. STATUTORY GROUNDS FOR TERMINATION

We note that, for all practical purposes, Hornof admitted at the time of the termination hearing that the statutory grounds for termination existed and that termination of his parental rights would be in the children's best interests. Upon the trial court's inquiry, Hornof admitted that he would "probably be gone for a long time," referring to the criminal charges he faced. And when the court asked if the children would be safe in his care, Hornof candidly admitted that, based on his prior actions, they probably would not be safe in his care. Hornof simply requested that his wife be given more time to work toward reunification with the children.

Moreover, the overwhelming evidence presented at the termination hearing supports that the trial court did not err when it terminated Hornof's parental rights. The evidence established that Hornof had physically abused his children for years, the children had witnessed repeated acts of severe domestic violence, they lived in fear of Hornof, and they had been left emotionally damaged. The evidence further established that, for over five years, Hornof was offered a multitude of services. Hornof failed to participate in any meaningful way in the services provided. To the extent that he did participate in the treatment plan, he clearly failed to benefit from the services offered. The evidence further established that Hornof was unable to control his rage. The psychological evaluation that concluded that Hornof had a high potential for explosive behavior proved to be prophetic in light of the brutality he exhibited six months before the termination of his parental rights.

Accordingly, 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 Hornof's parental rights.

2. BEST INTERESTS DETERMINATION

The testimony of the children's therapist supported a finding that termination was in the children's best interests. The special needs of these children warranted placement in a stable and permanent environment that would foster healing and further growth and development. Accordingly, we conclude that the trial court did not clearly err in finding that termination of Hornof's parental rights was in the children's best interests.

We affirm.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Joel P. Hoekstra