

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 28, 2012

In the Matter of GORDON/JOPLIN, Minors.

No. 307201
Calhoun Circuit Court
Family Division
LC No. 2010-001471-NA

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

PER CURIAM.

Respondent appeals by right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

Respondent first argues that the trial court erred in exercising jurisdiction over her children. We conclude that this issue is not properly before this Court. It is well settled that the trial court's exercise of jurisdiction cannot be challenged in a collateral attack on appeal from the termination decision. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). Where, as here, termination is not ordered at the initial dispositional hearing, the trial court's decision to exercise jurisdiction can only be challenged by direct appeal from the order of disposition. MCR 3.993(A); *In re SLH*, 277 Mich App 662, 668-670; 747 NW2d 547 (2008); *In re Bechard*, 211 Mich App 155, 159; 535 NW2d 220 (1995); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). Nonetheless, we note that the record establishes that the trial court did not clearly err in finding that a statutory basis for jurisdiction existed by a preponderance of the evidence. Respondent's admissions were sufficient to establish by a preponderance of the evidence that she failed, regardless of her intention, to provide a proper home and care for her children and that she had recent criminal charges. Her best plan for her children was to place them with her mother, who had bouts of homelessness and a criminal record. These circumstances put the children in substantial risk of harm, and the environment of the children, "by reason of neglect [and] criminality," was an unfit place for them. MCL 712A.2(b)(1) and (2).

Next, respondent contends that the trial court clearly erred in finding clear and convincing evidence to support the statutory grounds for termination. MCR 3.977(K); *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). We disagree.

At the time of the adjudication, evidence demonstrated that respondent had experienced homelessness, had displayed assaultive and aggressive behaviors, was involved in violent

relationships, and had failed to take her prescribed medication for her diagnosed mental health issues. At the time of the termination hearing, respondent had appropriate housing and had been attending counseling, which was benefiting her. However, based upon her frequent lapses in medication, her belief that she did not need medication and the recency of her compliance, she had not demonstrated that she would consistently take her medication without being under a court order to do so. Her long history supported a finding that she could not manage her mental health problems without at least another six months to a year of services. The court found that, after a year and a half, the children needed structure and permanence, which respondent could not provide, and that there was a reasonable likelihood that the conditions of adjudication that still existed would not be rectified within a reasonable time.

Moreover, shortly after respondent was permitted unsupervised overnight visits with the children, new conditions arose that caused the children to be placed back in foster care. Respondent stopped taking her medication, stopped attending her counseling and mental health sessions, and was unable to control her anger issues. She admitted to hitting one of the children in the mouth, which she deemed appropriate discipline. It was found that her children had severely regressed in behavior and emotional maturity during the time that they stayed unsupervised with respondent. Despite this removal, respondent waited until just before the filing of the termination petition, almost five months later, to comply with her medication and attend services. The evidence showed that it would take respondent at least six more months to demonstrate compliance, stability, and the ability to provide proper care for her children. The court reasonably found that respondent had received a reasonable opportunity to rectify those conditions and that, considering the ages and needs of her children, those conditions would not be rectified within a reasonable time.

The same evidence established that, although respondent had a home and income at the termination hearing, she was not at that time able to provide proper care or custody for her children because of her instability, mental health issues, and poor decision-making skills. Based on the testimony and reports of her counselor, the DHS worker, and her psychological evaluation, there was clear and convincing evidence to support the court's finding that respondent would not be able to provide proper care and custody for her children within a reasonable time, considering their ages and the length of time that she had been provided to correct those conditions. Further, based on respondent's conduct when the children were returned to her during the proceedings, there was a reasonable likelihood they would be harmed if returned to her home permanently.

Finally, respondent contends that the trial court clearly erred in finding that termination of her parental rights was in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-367; 612 NW2d 407 (2000). We disagree. During this case, the children were returned to respondent's care for a month and were then placed back in foster care because of respondent's noncompliance with her medicine regimen and the marked deterioration in her behavior and ability to deal with life's stresses. It was observed that the children had lost much ground in their development, their behavior, and their emotional stability during the time that they were with respondent. At the termination hearing, a year and a half after the initial removal, respondent was still not ready to provide these children with a stable home, and it was clear that she would not be able to do so within a reasonable time. The children were in a home where they were provided with stability, structure, consistency, and where they felt loved and secure.

The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Jane M. Beckering

/s/ E. Thomas Fitzgerald

/s/ Cynthia Diane Stephens