

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 19, 2012

In the Matter of WOOD/GRIFFEN, Minors.

No. 307254
Muskegon Circuit Court
Family Division
LC No. 10-039446-NA

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent F. Wood appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

I. FACTS

In March 2010, petitioner, Department of Human Services (DHS), filed a petition to take temporary custody of the minor children. The petition alleged an extensive Children's Protective Services (CPS) history, educational neglect, transient lifestyle, and Wood's failure to comply with services. Wood stipulated to probable cause, and the children were allowed to remain home, at DHS's request.

At a hearing in March 2010, the trial court adjudicated the children to come within the jurisdiction of the court and proceeded to the initial disposition in April 2010. The trial court admitted a parent agency agreement and a CPS report. The report stated that Wood was smoking marijuana and drinking alcohol with several runaways who were staying in her home. Previous complaints involved no running water, no refrigerator, minimal food, and assault of Wood by the father of Wood's four younger children, frequent gas leaks, heating with an unsafe space heater, and the home being destroyed in a fire set while Wood was sleeping. At the time of the hearing, Wood still lacked beds for the children, although her home was rated minimally acceptable within community standards. Further, the children had been dropped from school for poor attendance. The trial court ordered Wood to comply with the parent agency agreement, which required that Wood (1) ensure the children attend school; (2) receive parenting education; (3) develop a homework schedule and ensure homework was done; (4) assure that two of the children have counseling assessments; and (5) request mentors through Big Brothers/Big Sisters. Because her rental housing was in foreclosure, she was also referred to a housing program.

At a review hearing in June 2010, Wood was exhibiting some progress, but was not yet fully complying with the parent agency agreement. For example, she had not yet signed the

children up with Big Brothers/Big Sisters, the children had missed counseling appointments, and the children's school attendance had not improved. The trial court continued the children's placement at home and told DHS to assist them in getting Social Security.

At the next two review hearings in September 2010, the home was reported to be acceptable, and the children were clean and appropriately dressed on several visits. Wood said that she had not followed through with the court orders because she was busy scheduling appointments to address one of the children's seizures. The children were enrolled in new schools and were attending regularly. Wood was making progress and DHS requested discretion to close the case. The trial court ordered supervised visits and allowed DHS to close the case after ensuring that the children were stabilized in school.

Despite the seeming progress of September, DHS filed an emergency removal petition in November 2010, and the trial court issued an order to take the children into custody. DHS alleged that in early September, one of the children had been brought to the emergency room, but Wood could not be immediately contacted. She later arrived and acknowledged being intoxicated, not refilling the child's prescriptions, and not taking him to his doctor for follow-up care. In late September, one of the other children, (three years old at the time) was found walking down the street alone. The court authorized the petition and allowed Wood structured, unsupervised visits.

At the next review hearing in January 2011, Wood was subject to a new parent agency agreement, requiring a psychological evaluation, counseling, parenting and budgeting classes, visitations, attendance at the children's medical appointments, and suitable housing and income. Wood was also to assist the children with potty training, self-control, and homework. Wood was reported to be cooperating and making good progress. She had a job, and parenting classes were being rescheduled to accommodate the job. Wood had unsupervised visits and good support from relatives. DHS hoped for reunification soon, depending on the psychological evaluation. The trial court found that Wood had made a lot of progress but continued the children in foster care until she obtained suitable housing.

At a review/permanency planning hearing in April 2011, DHS's attorney reported that Wood had obtained suitable housing. However, she missed enrollment for parenting class and only just recently signed up for budgeting classes. She was fired from her job for lying on her application. Further, police were called to her home several times during visitations; the calls involved fighting between the children or between Wood and the children, child abuse, and inappropriate sexual contact committed by one of the children. Wood's psychological evaluation found a moderate to severe risk for abuse and neglect. Wood had no driver's license, and she was consistently late in returning the children and was not using car seats. Two of the children were suspended from school. The five younger children were still wetting the bed.

Bethany Christian Services Caseworker, Karla Rought, testified that because of her dull normal intelligence, Wood would have difficulty understanding verbal communication, and hands-on parenting training would be required. Despite this, she testified that Wood "[a]bsolutely" was bonded with the children; she loved them and they looked forward to visits. Further, the lawyer-guardian ad litem stated that the children wanted to be reunified with Wood as soon as possible. Rought recommended that a parent monitor be assigned for supervised

visits. The trial court found some supervised and some unsupervised visits to be in the children's best interests. The trial court found that there had been insufficient time for services to be arranged and for Wood to benefit. Yet, the trial court had serious concerns about her housing accommodating all the children.

By the next review hearing in June 2011, Wood had made some progress, but Rought deemed it insufficient and recommended termination. Wood had gotten a job but quit because the relative who transported her to work was going out of town one weekend. She was referred to transportation services, but she quit anyway. Although she "successfully" completed her eight-session budget class, Wood did not benefit. She was threatened with eviction for nonpayment of utilities. At her next housing placement, she paid utilities up to date, and she even had paid rent for six months in advance. But she missed assigned counseling and parent support group meetings and did not timely register for parenting classes. The children were returning from visits very hungry, and Rought worried about their safety during visits. The trial court continued services but changed the permanency plan to adoption.

DHS filed a petition for termination in July 2011, and the termination hearing began in August 2011. Joseph Auffrey, PhD., qualified as an expert in psychology, testified that it would be difficult for Wood to maintain employment because of her personality characteristics (argumentativeness, etc.). She would also have problems with parent mentors and counselors for the same reasons. Dr. Auffrey could think of no other services to motivate change. Wood's prognosis was poor. He felt she would have difficulty organizing a household of five or seven children and would need help for five years. Rought again testified that termination was in the children's best interests. They needed a safe, secure, stable home that was "not going to disappear in a few month[s]." They were ready: their attitudes had changed and further delay would create problems. To avoid termination, Wood would need a stable home and compliance for over six months. But the children were anxious and could not handle it emotionally if they had to wait another six months. Further, the lawyer-guardian ad litem stated that he spoke with the children, and they were sad and missed Wood. All wanted to go home. However, the lawyer-guardian ad litem favored termination because the children were thriving in foster care and Wood was not improving.

In its opinion ordering termination, the trial court found that Wood was unable to provide proper care and custody for the children because she lacked appropriate housing, which was an issue that had "persisted . . . for a very significant length of time." The trial court further found that although Wood had shown some progress with services, "she has shown little evidence of internalizing those lessons[.]" The trial court also noted that Wood's psychological evaluation indicated that she had a moderate to severe risk for abuse or neglect and that it would require five years of supportive services before reunification could be possible. Accordingly, the trial court found that termination was justified under MCL 712A.19b(3)(c)(ii) and (g). Turning to the children's best interests, the trial court found that there was "definitely a mutual loving bond" between Wood and her children. However, noting the children's poor school attendance and performance, health issues, the "dysfunctional environment" caused by an unsupportive family dynamic, and the lack of safe, adequate housing were they to return to Wood's care, the trial court found it in the children's best interests to grant the petition for termination.

Wood now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the 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

B. ANALYSIS

MCL 712A.19b(3)(c)(ii) provides a statutory ground for termination when

[t]he 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 [that] . . . [o]ther conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Further, MCL 712A.19b(3)(g) provides a statutory ground for termination when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Wood failed to make sufficient progress on her parent agency agreement in the 18 months the case was pending. While the children were left in Wood's care for the first part of the temporary wardship, they had to be removed because of Wood's medical neglect and lack of supervision. She was later evicted from her housing, in part for allowing unauthorized persons to stay at her home. Wood did not benefit sufficiently from parenting or budgeting classes or the counseling appointments she attended. Her housing was unstable. At visitations, she could not

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).

control the children. A parent must benefit from services in order to provide a safe, adequate home.⁵ Clearly, the evidence showed that Wood did not do this. We therefore conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Wood's parental rights under MCL 712A.19b(3)(c)(ii) and (g).

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Wood contends that the trial court erred in its best interests analysis because, as the trial court acknowledged, they shared a strong bond. 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.⁶ 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.⁷ We review for clear error the trial court's decision regarding the child's best interests.⁸

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.⁹ 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.¹⁰ 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.¹¹

⁵ *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

⁶ MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Trejo Minors*, 462 Mich at 351.

⁷ *In re Trejo Minors*, 462 Mich at 353.

⁸ *Id.* at 356-357.

⁹ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

¹⁰ 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).

¹¹ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

C. ANALYSIS

While Wood and the children were bonded, her history of neglect and inability to improve made it very unlikely that she would be able to meet the children's emotional and physical needs and provide a safe environment. Wood had a very poor record of taking care of their needs, from housing instability and lack of structure to medical and educational neglect. Wood learned little from services and was unable to change sufficiently. The children improved in the foster home and were enjoying school and activities. The children need a permanent, stable environment. We therefore conclude that the trial court did not clearly err in finding that termination of Wood's parental rights was in the child's best interests.

We affirm.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck