

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 3, 2012

In the Matter of JACKSON/SIMMONS/BAKER,
Minors.

No. 307462
Saginaw Circuit Court
Family Division
LC Nos. 10-032392-NA,
10-032393-NA,
10-032394-NA

In the Matter of SIMMONS/BAKER, Minors.

No. 307494
Saginaw Circuit Court
Family Division
LC Nos. 10-032393-NA,
10-032394-NA

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

PER CURIAM.

In these consolidated appeals, respondents M. Baker (respondent mother) and A. Simmons (respondent father) contest the termination of their parental rights to the involved minor children. In Docket No. 307462, respondent mother appeals as of right from three orders terminating her parental rights to her nine children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). In Docket No. 307494, respondent father appeals as of right from two orders terminating his parental rights to his eight children, also pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). Respondent mother contends that the circuit court erred in finding clear and convincing evidence of statutory grounds for termination of her parental rights, and both respondents argue that the court clearly erred in finding that termination served the children's best interests. We affirm.

I. STANDARD OF REVIEW

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. See 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. *In re Trejo*, 462 Mich at 356; see also 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). Clear error signifies a decision that strikes the Court "as more than just maybe or probably wrong." *In re Trejo*, 462 Mich at 356. We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

II. STATUTORY GROUNDS FOR TERMINATION

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

We conclude that clear and convincing evidence justified the termination of respondent mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), which authorizes termination under the following circumstances:

- (c) 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.

Twenty months elapsed between the circuit court's entry of an initial dispositional order in March 2010 and the second termination hearing in November 2011. The conditions that led to the children's adjudication included respondent mother's neglect of the children's basic needs, failure to send the children to school, lack of suitable housing, and substance-abuse history. Clear and convincing evidence substantiated that the conditions causing the children's removal continued to be in place, within the meaning of MCL 712A.19b(3)(c)(i), at the time of the November 2011 termination hearing. At the time of the termination hearing respondent mother lived in a one-bedroom apartment, which she agreed was unsuitable for her nine children. She had a history of not providing appropriate housing for her children, and this situation was never resolved. She refused to undergo a substance-abuse assessment and sporadically submitted drug screens positive for marijuana, as recently as June 2011. Further, respondent mother exhibited minimal improvement in her parenting skills, even after having participated in available parenting classes, individual therapy, and supervised visits with the children since May 2010. See *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005) (a respondent parent must benefit from the services provided), superseded by statute on other grounds in MCL 712A.19b(5). As the trial court stated, respondent mother had not shown that she had changed substantially any of her behaviors or her preconceptions about the situation that had brought this matter before the court nearly two years earlier. The record also contains clear and convincing evidence that "there is no reasonable likelihood that the conditions will be rectified within a

reasonable time considering the child[ren]’s age,” in light of respondent mother’s limited demonstration of improvement in her parenting skills, the special (emotional and behavioral) needs of most of the children, and the 20-month period that the children had spent in foster care. See MCL 712A.19b(3)(c)(i).

We further conclude that the same evidence proves clearly and convincingly that respondent mother, “without regard to intent, fail[ed] to provide proper care or custody for the child[ren]” and that no reasonable expectation exists that she “will be able to provide proper care and custody within a reasonable time considering the child[ren]’s age[s].” MCL 712A.19b(3)(g). The circuit court thus correctly invoked subsection (g) in terminating respondent mother’s 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 . . . parent, that the child[ren] will be harmed if . . . 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 (1) the unfit conditions in which respondent mother admittedly had left the children in January 2010; (2) the small measure of progress demonstrated by respondent mother concerning her ability to care for the children; (3) most of the nine children’s special needs or behavioral issues, some of which encompassed aggressive behaviors and sexual acting out; and (4) a counselor and parenting-time supervisor’s testimony regarding respondent mother’s inability to control the children “and keep them from hurting each other.” We conclude that the circuit court properly cited subsection (j) as an alternative basis for terminating respondent mother’s parental rights.

C. REASONABLE ASSISTANCE WITH HOUSING

Respondent mother repeatedly maintains that petitioner “consistently refused to help her obtain housing with her nine children.” However, the record belies respondent mother’s assertions that petitioner “never made any effort to help her” obtain assistance with a “first months’ [sic] rent and security deposit after finding suitable housing” or any other “effort at all to help her.” At the first termination hearing, in response to an inquiry of respondent mother’s counsel about whether respondent mother had “called . . . or contacted you in the last couple of weeks to see about some financial assistance with respect to consumers and utilities because there was housing available to her[,]” a foster care worker recalled that “given [respondent mother’s] cash sanction, because she didn’t comply with Work First, no funds are available to her.” At the second termination hearing, a different foster care worker engaged in the following relevant exchange with the children’s guardian ad litem:

Q. Is it your job as the foster care worker to find housing?

A. No.

Q. You did offer, by way of providing information to [respondent mother] in terms of efforts to look for housing on her own?

A. Correct.

Q. Did she ever, to your knowledge, follow through and talk to the folks she needed to talk to . . . in the Department about what the Department could do to assist once she found a home?

A. She did. She applied for first month's rent security deposit.

Q. Okay. When, if you know?

A. I wanna believe it was July [2011] but I can't say for sure.

* * *

Q. [W]as it you're [sic] job to follow through to say, "Hey, [respondent mother], how's that going? Have ya found a house and have ya done what ya needed to do to secure that house?"

A. No, but I did.

* * *

I asked her about it.

* * *

I found out that she was denied the first month's rent security deposit

* * *

Basically, her income at the time could not support the housing that she was asking for and I explained to her that the Department was not going to set her up for failure to put her in a house that she . . . couldn't afford.

Respondent mother testified at the first termination hearing that she had applied for assistance "with housing and . . . utilities" but received no help and was told "they were not gonna [sic] help me because I wasn't doin [sic] something that they required me to do."

At the close of the first termination hearing, the circuit court expressly rejected respondent mother's suggestion that she received no assistance:

In terms of housing, [respondent mother] says she's in this one bedroom apartment but she found another house, she could have a house for the kids or a bigger apartment for the kids but the DHS won't help her. . . . She was sanctioned because she didn't do what she had to do to keep those benefits available to her. And, what I heard from her on the stand was excuses. That's all I heard, excuses.

In summary, we detect no clear error to the extent that the circuit court found that respondent mother had reasonable assistance in locating housing. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005) (“In general, when a child is removed from the parent’s custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal . . .”).

III. CHILDREN’S BEST INTERESTS

Both respondents 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 conclude that the circuit court did not clearly err when it determined that termination of respondents’ parental rights served the children’s best interests. Notwithstanding that respondents loved the children and the children seemed bonded to respondents, abundant evidence established that termination of their parental rights enhanced the best interests of the children, who by the time of the second termination hearing had spent almost two years in foster care. At the first termination hearing, the counselor for respondents and the children confirmed that “the lack of certainty, at this point, [was] detrimental for the kids[.]” Two caseworkers expressed their opinions that termination of both parents’ rights was in the children’s best interests.

With respect to respondent mother, even after having participated in parenting classes, individual therapy, and parenting time, she did not consistently display her ability to parent the children, most of whom had special behavioral, emotional, or medical needs. Unsupervised parenting visits were suspended because, according to a foster care worker, respondent mother “wasn’t showing the responsibility to care for the children while they were there.” She also had not secured housing suitable for her nine children or seriously addressed her acknowledged substance-abuse history.

Regarding respondent father, he failed to take advantage of many offered services. He disregarded six parenting class referrals, opted against engaging in individual therapy because he blamed his counselor for a negative attitude, and inconsistently attended supervised parenting times. Respondent father did not otherwise demonstrate that he could parent the children, whose special needs he did not fully comprehend. He also refused to undergo a substance-abuse assessment and had multiple drug screens positive for marijuana, including in July 2011, after the court had given him a second chance to rededicate himself to participating in services. For most of the proceedings, respondent father also lacked stable or suitable housing for his eight children.

The record contradicts respondent father’s assertion that “[t]he record is silent as to why . . . [his] care plan of his mother having his children in her home was never taken seriously.” In making findings at the end of the first termination hearing, the circuit court observed:

[A]llegation] S, is true from the description of the housing situations [respondent father] has by himself [testified to] and I have to note by [the testimony of] his mother, at this point, they’re going to buy this house, four bedrooms. According

to Ms. Milam [the counselor for respondents and the children], [respondent father's] mother had indicated she wasn't prepared to care for the children. His mother, [K.] Simmons, says that that's not true. Again, everybody says Ms. Milam's lying. I don't find any reason to believe Ms. Milam's lying about anything. I'm satisfied her testimony is adequate and accurate. But, according to [a foster care worker], the first time that she heard anything about Grandma Simmons being offered as a care plan, was pretty much when she came to the termination hearing. So, if that was a plan, it's certainly at the eleventh and a half hour that it's being offered. In terms of [allegation] U, I'm satisfied that [respondent father] hasn't offered an adequate care plan for his children

The court also noted the following in its findings at the conclusion of the second termination hearing:

[Respondent father] does not have adequate housing for his children. The indication is, from his mother, kids could go back and stay there. And yet, please remember back early in this case, a couple of the children were placed there. The indication to [the foster care worker] was, the parents need to do it, that's why the kids were removed. And, that's where we've been since that point.

We conclude that the circuit court did not clearly err in finding inadequate respondent father's plan for the children to live with his mother or in finding that termination served the children's best interests. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Jane M. Beckering
/s/ E. Thomas Fitzgerald
/s/ Cynthia Diane Stephens