STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 19, 2012

In the Matter of RENARD, Minors.

No. 307531
Macomb Circuit Court
Family Division
LC Nos. 2011-000161 – NA
2011-000162 – NA

Before: O'CONNELL, P.J., AND JANSEN AND RIORDAN, JJ.

PER CURIAM.

Respondent, J.L. Hoey, appeals as of right the trial court's order terminating her parental rights to her minor daughters, A.B. Renard, born March 5, 2008, and A.L. Renard, born March 15, 2005, pursuant to MCL 712A.19b(3)(b)(ii) (failure to protect), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm in future). We affirm.

I. BACKGROUND

Respondent and her minor children moved in with respondent's boyfriend, Richard Pendergast, a few weeks after respondent and Pendergast began dating in November 2010. Soon after moving in, respondent began to notice that Pendergast's moods were changing, he was cuddling with A.L. and A.B. on the couch, and Pendergast was illegally taking Suboxone to cure his Vicodin addiction. Despite these revelations, respondent continued to live in the house and to allow Pendergast to babysit A.L. and A.B.

Pendergast's behavior began to change even more noticeably in March 2011. First, respondent witnessed a physical altercation between Pendergast and A.L. While respondent told Children's Protective Services (CPS) that Pendergast choked A.L., at trial, respondent testified that Pendergast's forearm may have come into contact with A.L.'s chest, which was not choking. After witnessing this physical altercation, respondent told Pendergast to not discipline her children. Also in March 2011, respondent witnessed Pendergast exit A.L. and A.B.'s bedroom at 4:30 a.m. on two separate occasions. Upon observing Pendergast's behavior, respondent waited until Pendergast went to shower and then entered the bedroom to look at A.L.'s genital area to check for redness, which she did not find. However, respondent denied being suspicious that Pendergast was sexually abusing A.L. and A.B. and continued to live in the house with Pendergast. Respondent also began to notice that A.B. was touching her vagina frequently and she forbade A.L. and A.B. from being on the couch with Pendergast.

In early April 2011, respondent was at home when she saw A.B. lying on the bed with her buttocks in the air. When respondent questioned A.B. about this strange position, A.B. said that Pendergast places his penis inside of her buttocks. A.B. also pointed to sexual lubrication gel in the bedside drawer and said that it tasted like mint. Respondent immediately confronted A.L., who said that one night Pendergast had come into the bedroom, told A.B. to "give [Pendergast] some loving," and threatened to kill A.L. if she left the bed. Pendergast then took A.B. from the room, A.L. heard A.B. crying and screaming for respondent, and A.L. went to the kitchen and saw A.B. naked, hiding behind the door, and bleeding from the mouth.

After hearing about this incident, respondent began to cry and in an attempt to comfort her, A.L. told respondent that A.L. was lying. Respondent called A.L. and A.B.'s biological father and, without providing specific details, asked him to take A.L. and A.B. to the doctor to check for sexual abuse. While A.L. and A.B.'s father told respondent that the doctor reported the girls were fine, no doctor records were ever located. Respondent continued to live in the house with Pendergast, although she tried to make sure that she or a teenage babysitter was with A.L. and A.B. at all times.

It was not until April 23, 2011, when respondent finally removed A.L. and A.B. from the house. Respondent was working late and had a teenage babysitter watching A.L. and A.B. Respondent arrived at the house at 2:30 a.m. and noticed that the blinds were drawn and the door was deadlocked, which was unusual. When respondent walked into the house, she smelled fecal matter and saw A.B. in the living room with her pants rolled down and her vagina on Pendergast's cheek. Respondent immediately picked A.B. up, A.B. said "ow, ow," and Pendergast pretended that he was snoring. Respondent examined A.B.'s anus and discovered that it was wet and open.[1] Respondent woke up A.L. and the babysitter, began packing, left the house, and called the police. Since the next day was Easter, respondent instructed A.L. and A.B. to not tell anyone about what had happened because it was a "secret."

After removing the minor children from respondent's care and placing them with their father, petitioner requested that respondent's parental rights be terminated at initial disposition pursuant to MCL 712A.19b(3)(b)(ii) (failure to protect), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm in future).[2] At the termination trial, psychologist Dr. Patrick Ryan testified that respondent had experienced significant trauma in her life including sexual and physical abuse, causing respondent to become cognitively autistic, lacking the ability to recognize normal signs of danger in her environment. According to Ryan, respondent was most likely "non-reactive" when confronted with the sexual abuse of A.L. and A.B. and that the earliest respondent could begin to effectively address her cognitive autism would be at least a year, probably longer, fortified by lifelong, periodic therapy.

[1] It was later discovered that A.B. had a lacerated sphincter, consistent with penetration of the anus and sexual abuse.

[2] The petition was amended to include the latter two statutory grounds at the beginning of the termination trial.

Respondent's two friends and stepmother testified that respondent was a good mother who cared for A.L. and A.B. properly. Respondent and her stepmother also testified that respondent had changed her life and was attending college, was in therapy, was living in a loving and stable environment with her stepmother, and her trustworthy female friends were now able to provide support for her. Moreover, according to Ryan, A.L. and A.B.'s biological father saw the world negatively, had a past involving domestic violence, and might not be able to detect abnormal behavior. However, according to the CPS worker involved in the case, after being removed from respondent's care and placed with their father, A.B. and A.L. were flourishing in a loving environment and A.L. had overcome her speech and cognitive problems. Also, A.L. and A.B. never expressed to the CPS worker a desire to see respondent or that they miss respondent, and they have said they do not want to live with respondent. Furthermore, Ryan testified that due to the trauma the minor children experienced, they were in an incredibly fragile mental state and additional trauma would increase the likelihood of health, emotional, and relationship problems.

After the termination trial, the court found that all three statutory grounds for termination, MCL 712A.19b(3)(b)(ii), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j), had been proven by clear and convincing evidence. The court stated that respondent was in the position to prevent the abuse of A.L. and A.B. but failed to do so, respondent would not be able to provide a safe and stable home for A.B. and A.L. within a reasonable time, and it was in A.B.'s and A.L.'s best interests to terminate respondent's parental rights. Respondent now appeals.

II. ANALYSIS

A. Standard of Review

Respondent first challenges the trial court's finding that petitioner presented clear and convincing evidence of the statutory grounds for termination. "'We review for clear error . . . the court's decision that a ground for termination has been proven by clear and convincing evidence . . . .'" *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009), quoting *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "'A finding is clearly erroneous if 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 Rood*, 483 Mich at 91, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Failure to Protect

The first statutory grounds for termination, MCL 712A.19b(3)(b)(ii), states that a court must find by clear and convincing evidence that:

> [t]he parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

While respondent agrees that there was clear and convincing evidence of a failure to prevent the physical and sexual abuse of A.B. and A.L., she contends that there is no evidence of a reasonable likelihood that A.B. or A.L. would suffer abuse or injury again in the foreseeable

future. Respondent's overwhelming failure to protect A.L. and A.B. suggests otherwise. Respondent had a number of opportunities to recognize and prevent future harm of A.L. and A.B., including: seeing Pendergast pay special attention to and cuddle A.B.; seeing Pendergast physically strike A.L.; seeing Pendergast come out of A.B. and A.L.'s room at 4:30 a.m. on two separate occasions; seeing A.B. in a sexualized position on the bed; hearing A.B. say that Pendergast places his penis inside of her buttocks; hearing A.B. say that she tasted sexual lubrication gel; hearing A.L. say that Pendergast threatened to kill her; and hearing A.L. say that Pendergast took A.B. from the bedroom and A.B. was later bleeding and naked in the kitchen with Pendergast. Yet, in spite of this astounding amount of evidence of physical and sexual abuse, respondent did not confront Pendergast, did not call CPS, did not move out of the house, and did not call the police until she actually walked in on A.B. being sexually abused.

Respondent insists that she has made improvements in her life such as living in a stable environment with her stepmother and having trustworthy female friends, and that Pendergast is no longer in her life. However, as respondent herself admitted at trial, this potential living situation and respondent's trustworthy friends existed at the time of the abuse. Moreover, the underlying cause of respondent's behavior is far more complex than access to a reliable living situation or trustworthy female friends. Due to her cognitive autism, respondent lacks the essential ability to recognize normal signs of abuse. While respondent claims Pendergast is no longer in her life and she would never place herself or the minor children in an abusive environment again, respondent's cognitive autism actually prevents her from even recognizing when she is in an abusive environment. Thus, the court did not clearly erred in finding that a reasonable probability exists that A.L. and A.B. would suffer abuse or injury in the foreseeable future if living with respondent.

C. Failure to Provide Proper Care and Custody

Respondent next challenges the trial court's finding regarding MCL 712A.19b(3)(g), which states that a court must find by clear and convincing evidence that:

> [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.

Respondent argues that, contrary to Dr. Ryan's imprecise recommendation of one year of therapy, she may need less than one year of therapy and could be able to take care of A.B. and A.L. within a reasonable time. Yet, the psychologist actually testified that, *at a minimum*, respondent would need one year of therapy, probably more, as well as periodic, lifelong therapy. He explained that even with therapy, there was no guarantee that respondent would overcome her cognitive autism. Furthermore, rather than an irrelevant mental condition, respondent's cognitive autism directly impacts her ability to recognize danger, which affects her ability to care for and to protect A.B. and A.L. Thus, based on this evidence, the trial court did not clearly err in finding that respondent would be unable to provide proper care and custody of A.B. and A.L. within a reasonable time. This is especially true considering the young age of A.L., five years old, and of A.B., three years old.

D. Reasonable Likelihood of Harm in Future

Respondent also challenges the trial court's finding of the last statutory grounds for termination, MCL 712A.19b(3)(j), which states that a trial court must find by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Respondent avers that she never physically harmed A.B. or A.L., she begged A.B. and A.L.'s father for help, and she eventually called the police to protect A.L. and A.B. While those assertions may be true, there was also considerable evidence suggesting that based on respondent's conduct, there was a reasonable likelihood that A.L. and A.B. would be harmed again in the future. Despite the abundant evidence of abuse, respondent failed to meaningfully confront Pendergast, did not call CPS, did not call the police, did not move out of the house, and continued to leave A.L. and A.B. in the sole care of a teenage babysitter when Pendergast was present in the house. It was not until respondent actually walked in on Pendergast molesting A.B. that she finally removed A.B. and A.L. from the house. Considering this absolute failure to protect A.B. and A.L., it cannot be said that the trial court clearly erred in finding that based on this conduct, there was a reasonable likelihood that A.B. and A.L. would be harmed again if placed in respondent's home.

Moreover, the evidence also supported a conclusion that, based on respondent's capacity, there was a reasonable likelihood that A.L. and A.B. would be harmed again if returned to respondent's home. As discussed above, respondent lacks the capacity to recognize normal signs of danger and would need an unusually large amount of evidence before being able to recognize signs of abuse. In order to overcome this condition, respondent would need significant and long term therapy. Thus, this evidence supports the court's finding that since respondent lacks the ability to recognize the ubiquitous dangers surrounding vulnerable children like A.L. and A.B., she lacks the capacity to prevent A.L. and A.B. from being harmed.

E. Chldren's Best Interests

Respondent's last claim on appeal is that the court clearly erred in finding that it was in A.L.'s and A.B.'s best interests to terminate respondent's parental rights. Respondent contends that she was a good mother, as corroborated by her friends and stepmother. Yet, this assertion directly contradicts significant evidence that respondent's parenting ability is severely handicapped by her own history of abuse and resulting cognitive autism. Evidence also suggests that A.L. and A.B. expressed anxiety and opposition to even seeing respondent. A CPS worker testified to the dramatic improvement in A.B. and A.L. since living with their father. Hence, considering the fragile mental state of the minor children and their acute need for stability, the trial court did not clearly err in finding that it was in A.B.'s and A.L.'s best interests to terminate respondent's parental rights

Lastly, while respondent argues that she should have had the opportunity to reunify the family and attend counseling before her parental rights were terminated, reunifications efforts were not required. Petitioner requested termination at initial disposition and according to MCR 3.977(E), "a court shall order that additional efforts for reunification of the child with the respondent shall not be made if . . . the original, or amended, petition contains a request for termination[.]" This Court has also affirmed that a petitioner "is not required to provide

reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Moreover, while respondent is correct that "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests[,]" *In re Olive/Metts*, __Mich App__; __NW2d__ (Docket No. 306279, issued June 5, 2012) (slip op at 4), A.L. and A.B. were living with their father, not a relative as defined in MCL 712A.13a(j).[3]

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Michael J. Riordan

[3] In the context of termination proceedings, "relative" is defined according to MCL 712A.13a(j) "as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above . . . ." Thus, a biological parent is not considered a "relative" for purposes of the best interest analysis in termination cases.