

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 19, 2012

In the Matter of STASKER/SMUTZ, Minors.

No. 307903
Muskegon Circuit Court
Family Division
LC No. 07-036331-NA

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

PER CURIAM.

Respondent S. Campbell appeals as of right a circuit court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

I. FACTS

A. BACKGROUND FACTS

Campbell is the mother of J. Stasker, A. Stasker, and A. Smutz. In December 2010, the Department of Human Services (DHS) filed a petition for temporary custody of the children. This was not the first petition in this case. According to the initial service plan, the family had been the subject of numerous investigations by Children’s Protective Services dating back to 2004. The children were removed from Campbell’s custody in August 2009 because “[i]t was reported that [Campbell’s] home was unfit due to mold, feces, trash, dirty diapers and the children attempting to eat moldy food.” The girls were found outside without supervision and “were filthy and hungry.” J. Stasker and A. Stasker were placed with their father, and A. Smutz was placed in foster care. A. Smutz returned home in March 2010, J. Stasker and A. Stasker returned home in June 2010, and services were thereafter terminated.

The December 2010 petition alleged that in November 2010, Campbell refused to allow DHS employees into her home, and the police were called. A police officer observed that the “[t]he home was filthy, food and debris blocking most of the floor, ground food and crumb [sic] all over the place, clothing and trash littering the living room, broken crib with no bedding, the kitchen was trashed with dishes and clothing, and the basement window were [sic] open and the temperature outside was around 30 degrees.” Apparently, Campbell left the house and went to stay at the Muskegon Rescue Mission. The shelter was contemplating asking her to leave because “[s]he has not been bathing the children or giving A. Smutz his breathing treatments.” Following a preliminary hearing, the trial court authorized the petition and placed the children in foster care.

The trial court acquired jurisdiction over the children in March 2011, when Campbell entered a plea of admission to an added allegation. Campbell admitted that she had been unable to provide proper care for the children due, in part, to a lack of appropriate housing. The case proceeded directly to disposition. Services for Campbell were to include counseling, parenting classes, obtaining suitable housing, obtaining a state ID card, and participation in Michigan Works. When the trial court asked what had been going on with the case since November, the DHS counsel reported that it had taken “a long time” for Campbell to sign a parent-agency agreement and, after signing it, she did not call to become involved in services.

Campbell reported that she had moved into her mother’s house in December 2010, and she obtained a data entry job that allowed her to work from home. She was also working on obtaining her state ID card. She claimed that she had tried to make arrangements to begin participating in services, but she had “not had luck” reaching the necessary contacts. She was regularly attending family visits, but DHS had concerns about her “dividing her attention between her three children.”

Despite having tendered a plea, Campbell denied most of the allegations in the original petition. She stated that the condition of her home “was below my standards” but not to the point that “you couldn’t walk through my house.” She left the house and went to the shelter because A. Smutz’s father would not leave her alone. She claimed that she did not give A. Smutz his breathing treatments because the shelter would not allow her to do it at an appropriate time.

In May 2011, it was reported that Campbell was living with her mother. But, again, that home was deemed unsuitable, so Campbell was looking for alternative housing. Campbell reported that she was earning \$100 a week working from home, but she had not provided verification of her income. She rejected suggestions that she find a better-paying job because she believed that working from home “will be more convenient when her children return home.” Campbell also anticipated that her work would increase in the summer, and she expected to earn at least \$250 a week. Campbell recently began counseling; her therapist reported that she was in need of “long-term counseling.” Campbell had regularly attended family visits, but there were still concerns regarding with the lack of attention she gave to the children.

In July 2011, it was reported that A. Stasker and A. Smutz needed surgery to have tubes placed in their ears, and A. Stasker also needed to have her tonsils removed. However, Campbell failed to sign the consent for surgery forms, despite being asked for more than a month and even being offered transportation to get to the doctor’s office to sign the forms. Campbell was in counseling and attending parenting classes, and she seemed to be making progress. Although she was still living with her mother, she had obtained a mobile home, but it was not ready for a home inspection. The case worker who went to the home found “a strong cat and smoke odor throughout the trailer,” which had not been cleaned recently. Campbell claimed the odors were from the previous owner. She purchased the home knowing that it was “environmentally so questionable” because she had “limited funds available.” The trial court ordered Campbell to get the mobile home suitable for habitation such “that this child with respiratory issues will not be placed at a risk of harm.” Also, as of July 2011, Campbell was still working from home, earning \$150 a week. But her employer reported “that she does not take advantage of opportunities to

make more money.” Campbell had completed parenting classes at the end of June, and she was approved for unsupervised visitation at DHS discretion.

By September 2011, although Campbell claimed to be living in the mobile home, the case worker “did not observe any food in the home or signs that she is staying there.” Also, the odor issue had not been completely resolved. Campbell was still having trouble during family visits, and she was resistant to constructive criticism. Campbell was still earning just \$150 a week, and her employer had “concerns about her work ethic.” He stated that her job may be in jeopardy if she did not change.

One month later, in October 2011, the mobile home was still not ready. Campbell’s job situation was unchanged. A. Stasker and A. Smutz had their surgeries in early October 2011, but about half an hour before A. Stasker was discharged, Campbell could not be located. Later that evening, she was arrested and spent the night in jail “due to retail fraud third degree.”

The trial court authorized the filing of a supplemental petition for termination. The trial court also suspended parenting time. The supplemental petition alleged that the children had been removed from Campbell in August 2009 for issues involving “failure to provide for the child’s medical needs, environmental neglect, improper supervision, and domestic violence,” that Campbell participated in services and the case was closed in July 2010, but that the children were again removed in November 2010 “for issues once again involving environmental neglect and failure to provide medical treatment.” It alleged that Campbell failed to benefit from services and was not in a position to regain custody because of unsuitable housing and poor parenting skills.

B. TERMINATION HEARING

Ann Windberg, a clinician at Pine Rest Christian Mental Health Services, testified that J. Stasker and A. Stasker had stated that they loved Campbell, but they could not explain why they loved her or why she loved them. Both girls said they missed Campbell and would like to see her. But Windberg opined that the girls did not have “a healthy attachment” to Campbell. According to Windberg, J. Stasker felt responsible for trying to take care of her mother, which caused her anxiety. Windberg testified that both girls needed “a predictable, consistent, loving, caring, save [sic] environment to live in.”

Foster-care worker Diana Hanna testified that environmental neglect was an issue in this case. Although some improvements had been made to the mobile home when Hanna visited on December 1, the home was not appropriate for the children. Hanna also testified that on December 6, 2011, Campbell’s employer informed her that “he found someone else who could perform on a more consistent manner.” Hanna opined that termination would be in the children’s best interests because she believed that Campbell was not able to provide consistency and structure for the children at present or on a long-term basis. Hanna testified that the foster parents wanted to adopt the girls. The foster parents also had a good relationship with A. Smutz’s father and worked with him to arrange visits between A. Smutz and his sisters.

Kimberly Palmgren, Campbell’s therapist, testified that she had been treating Campbell since April 2011. Palmgren testified that Campbell had benefited from counseling. But she also

admitted that Campbell had not made progress to the extent that she committed a crime and lost her job. Palmgren testified that Campbell still had work to do, but with time, Palmgren believed she would be successful.

Campbell testified, admitting that housing has been an ongoing problem. And although she also admitted that the trailer was not suitable for the children because it required repairs, she denied that there was any problem related to cleanliness and testified that she had maintained the cleanliness of the home. Campbell denied any knowledge of having been fired, but admitted that she had not been paid for the previous work week. Campbell testified that she was looking for a new job. She also planned to attend community college in January 2012.

Although Campbell testified that she had only had \$10 in savings and received \$200 a month in food stamps, she did not foresee any problems with financially supporting the children. She expected that after paying school expenses, she would have at least \$1,000 left from her financial aid package to cover the lot rent for her trailer. She could use food stamps to provide food and noted that her monthly allotment would increase when the children were returned. But Campbell conceded that she had not made any plans for childcare while she was in school or at work.

Campbell testified that she and the children had a “close bond” and that she loved the children unconditionally. But Campbell admitted that, during the pendency of the case, she failed to show the court that she could provide stability for the children.

The trial court found that termination was warranted under §§ 19b(3)(c)(i) and (g). It noted that the case had been ongoing for years, and Campbell’s current desire to change was “too little, too late.” Although the trial court acknowledged that Campbell had made positive steps forward, her progress did not continue as necessary. The trial court explained that it had no doubt that Campbell loved her children, she needed to “show it in ways that go beyond . . . talking about it and that’s not done.” The trial court then found that “182 days have elapsed since the initial disposition and the issues that caused the adjudication continue to exist and those [sic] no reasonable likelihood that those conditions will be rectified within a reasonable period of time.” The trial court noted that Campbell had lost her job, and “nothing of substance was done to create a reasonable and appropriate environment for these children to return to.” Accordingly, the trial court found that there was clear and convincing evidence to terminate Campbell’s parental rights. The trial court further found that termination was in the children’s best interests. Campbell 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. RELEVANT STATUTORY PROVISIONS

MCL 712A.19b(3)(c)(i) 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] [t]he 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.

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."

C. ANALYSIS

DHS removed the children from Campbell in 2009 because she was unable to provide proper care and custody for them. DHS provided her with services, and she improved to the point that the children were returned to her home in 2010. Within four months after that case was closed, Campbell again was unable to provide proper care and custody, and DHS again removed the children. The trial court acquired jurisdiction over the children on the basis of Campbell's admission that she was unable to properly care for the children due, in part, to a lack of appropriate housing. Campbell was living at a shelter at the time.

By the time that DHS filed a supplemental petition in October 2011, 221 days after the initial disposition, Campbell had acquired a trailer, but it was not in a habitable condition and Campbell herself was not even living there.

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).

By the time of the termination hearing, Campbell had moved into the trailer, but the cleanliness of the home had again started to decline and it was not appropriate for the children. In addition, Campbell lost her job and had no job prospects. Campbell participated in therapy, but her initial progress “declined markedly,” and her therapist admitted that Campbell was not stable. Campbell completed parenting classes and regularly attended family visits, but she did not attend to the children in an appropriate manner on a consistent basis.

Given that suitable housing was an issue that had been addressed with Campbell previously, that it had become a problem again just four months after the prior case was closed, and that Campbell was unable to demonstrate an ability to maintain suitable housing during the pendency of this case, we conclude that the trial court did not clearly err in finding that the condition was not likely to be rectified within a reasonable time considering the children’s ages.

Further, because Campbell was unable or unwilling to continue utilizing the information and skills acquired in the prior case and failed to make sufficient progress during the nine months between the adjudication and the dispositional hearing to enable the children to return home, we also conclude that the trial court did not clearly err in finding that Campbell was unlikely to be able to provide proper care and custody within a reasonable time considering the ages of the children.

In sum, 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 Campbell’s parental rights under MCL 712A.19b(3)(c)(i) and (g).

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Campbell contends that the trial court erred in its best interests analysis. We review for clear error the trial court’s decision regarding the child’s best interests.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

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.⁷ 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

⁵ *In re Trejo Minors*, 462 Mich at 356-357.

⁶ *Id.* at 353.

⁷ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

treatment plans, the child's well-being while in care, and the possibility of adoption.⁸ 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.⁹

C. ANALYSIS

Initially, we note that Campbell argues that the trial court erred in its best interests analysis because "the record shows proof that termination of [Campbell's] parental rights to the child is clearly not in the child's best interests." However, in making this argument, Campbell relies on standard set forth in the pre-amendment version of MCL 712A.19b(5). MCL 712A.19b(5) was amended in 2008,¹⁰ such that the trial court must now find that termination of parental rights *is* in the child's best interests, rather than finding that termination is *not* in the child's best interests. Thus, 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.¹¹

Here, the evidence showed that the girls were suffering from post-traumatic stress disorder as a result of their home life and required a highly structured predictable and consistent environment, which Campbell was not able to provide. The younger child had been out of Campbell's care longer than he had been with Campbell. Despite counseling, Campbell continued to deny any problem with maintaining a home in habitable condition, either at the time the children were removed or at the time of the termination hearing, contending that any problems were temporary and related to moving. She also denied responsibility for the fact that the girls were in counseling. Campbell still lacked appropriate housing and had no income with which to support the children. She also had difficulty parenting during supervised visits. Considering these circumstances and the fact that this was the children's second time entering foster care, the evidence supports the trial court's finding that the children could no longer wait for Campbell to "pull it together" and that termination of Campbell's parental rights was in the

⁸ 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).

⁹ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

¹⁰ 2008 PA 199, effective July 11, 2008.

¹¹ MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Trejo Minors*, 462 Mich at 351.

children's best interests. We therefore conclude that the trial court did not clearly err in finding that termination of Campbell's parental rights was in the child's best interests.

We affirm.

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