

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 19, 2012

In the Matter of ENGLISH/WILSON, Minors.

No. 308267
Muskegon Circuit Court
Family Division
LC No. 11-040631-NA

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

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Because we conclude that the trial court did not clearly err in finding at least one statutory ground for termination was proved by clear and convincing evidence, and that termination was in the minors' best interests, we affirm.

The Department of Human Services (DHS) filed a petition for temporary custody of the minor children in March 2011. In April 2011, the trial court took jurisdiction over the minors, after respondent entered a plea admitting to certain allegations contained in the petition, including that she had four different homes between February 28 and March 24, 2011, and that she was currently living in a motel where the room was dirty, she did not have a refrigerator, and one of the minor children was wrapped in a blanket despite the fact that the room was very hot. A parent/agency agreement was entered into, and respondent was offered services including substance abuse assessment, drug screening, psychological evaluation, counseling, parenting classes, and housing and employment assistance. Respondent only partially complied with the agreement, and DHS filed a supplemental petition for termination on November 14, 2011. It essentially alleged that respondent had failed to substantially comply with and benefit from services and requested termination pursuant to §§ 19b(3)(a)(ii), (c)(i), (c)(ii) (g), and (j). The termination hearing was held on December 13, 2011. The evidence demonstrated that respondent continued to struggle with substance abuse, employment, and housing issues. The trial court concluded that the statutory grounds for termination set forth in §§ 19b(3)(c)(i), (g), and (j) were proved by clear and convincing evidence, and that termination was in the best interests of the minor children.

On appeal, respondent first argues that the trial court clearly erred in finding clear and convincing evidence to prove the statutory grounds for termination set forth in §§ 19b(3)(g) and (j).

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. 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. 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. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). 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).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

* * *

(g) The 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.

* * *

(j) There 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.

In regard to §19b(c)(i), the evidence demonstrated that the conditions that led to the adjudication continued to exist, and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the minors' ages. The children were originally removed from respondent's care because respondent lacked adequate housing and employment. Testimony at the termination hearing established that respondent was still unemployed and still did not have housing.

In regard to §19b(3)(g), respondent's plea established that she failed to provide proper care and custody for the children. She did not have stable housing, had been living in a motel room that was unsanitary, and she lacked proper food supplies. At the time of the termination hearing, there was no evidence to indicate respondent would be capable of providing proper care and custody for the children in the future. The evidence at the termination hearing demonstrated that respondent still lacked suitable housing. Respondent left what she claimed to be appropriate housing for no particular reason to live with two men. One was her ex-boyfriend who was alleged to be violent and had declined to participate in services, and respondent did not know the other man's full name. Respondent also lacked a source of income with which to support the children. In addition, respondent made no effort to obtain employment and had no explanation for her lack of effort. She was apparently relying on handouts from friends. Respondent also had a serious substance abuse problem. She made no effort to obtain treatment and had no explanation for her lack of effort. She admitted that she was still abusing Vicodin. In addition to respondent's unresolved substance abuse problem, respondent's psychological evaluation indicated that she functioned more as an adolescent than an adult, and that a child would be at a moderate to high risk of harm if placed in her care. This evidence also supports the trial court's conclusion that pursuant to the statutory grounds set forth in §19b(3)(j), there was a reasonable likelihood that the children would be harmed if returned to respondent. Therefore, we conclude that the trial court did not clearly err in finding that §§19b(3)(c)(i), (g) and (j) were established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich at 355-357; MCR 3.977(H)(3)(a) and (K).

Respondent also argues that the trial court clearly erred in finding that termination of her parental rights was in the children's best interests. MCL 712A.19(b)(5); MCR 3.977(K).

We review the trial court's best-interest determination for clear error. MCR 3.977(K). "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 and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo Minors*, 462 Mich at 353.

The trial court found that respondent loved the children and there was evidence that the children had a bond with respondent while visitation was still in effect. There was also evidence that respondent was able to interact appropriately with the children. However, the evidence also showed that respondent displayed no interest in trying to overcome her barriers to reunification. Due to respondent's apparent lack of interest in reunification and refusal to comply with the parent/agency plan, her parenting time was suspended for the four-month period before the termination hearing. After the visits stopped, the older child stopped having nightmares and he also stopped asking about respondent. The children were doing well in foster care and were bonded to their foster parents. Accordingly, we conclude that the trial court did not clearly err in finding that termination was in the best interests of the children. Therefore, the trial court did not clearly err in terminating respondent's parental rights to the minor children.

Affirmed.

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