STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
September 11, 2012

In the Matter of CHARNES and AUSTIN, Minors.

No. 308873
Newaygo Circuit Court
Family Division
LC No. 10-007769-NA

Before: WILDER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right from a trial court order terminating her parental rights pursuant to MCL 712A.19b(3)(c)(*i*).[1] We affirm.

I. BASIC FACTS

Respondent is a German citizen and has lived in the United Stated for over eight years. She has two children living in Germany from her first marriage, who were ages 16 and 18 at the time of the termination hearing. Respondent divorced her first husband and married Matthew Austin, an American soldier stationed in Germany. Respondent and Austin are the parents of N.M.A. and S.N.A. Respondent and Austin moved to the United States after Austin was discharged from the military, but the two divorced in 2007. In 2009, respondent married John Charnes. Respondent and Charnes are the parents of C.J.C.

Child Protective Services (CPS) became concerned about the welfare of respondent's children after three separate incidents that occurred from January 2010 to April 2010. Charnes had been arrested for violation of a personal protection order (PPO) and the two had been involved in recent domestic violence. Respondent was also demonstrating mental health issues. She contacted police and asked that her children be cared for by relatives because she was overwhelmed and "needed a break." On May 3, 2010, CPS was notified that respondent was being treated for psychiatric mental illness at Hackley Hospital. The next day, the Department of Human Services (DHS) sought temporary jurisdiction over the children. On May 26, 2010, respondent and Charnes pled no contest to the allegations contained in the petition and the trial

[1] The fathers' parental rights to their respective children were terminated at the time respondent's parental rights were terminated. The fathers are not participating in this appeal.

court accepted jurisdiction over the minor children. The parent-agency agreement (PAA) listed emotional stability, chronic depression, severe low self esteem, financial instability, and domestic violence as barriers to reunification.

Respondent initially made some progress in stabilizing her mental health, but that stability began to decline once again, based on the September 2010 updated service plan. Respondent started to appear exhausted and "zoned out" during her visits. Additionally, Charnes had been sentenced to one year in jail for domestic violence. DHS also submitted a psychological evaluation and counseling assessment from Sandy Terwillegar, a limited licensed psychologist. Terwillegar stated that respondent reported having a history of psychiatric hospitalization in both Germany and the United States. Respondent "continues to present with significantly high levels of anxiety." Additionally, respondent "has difficulty coping with normal levels of environmental stress without decompensating." Respondent was diagnosed with major depression (recurrent, severe, without psychotic features), generalized anxiety disorder, bipolar disorder (manic), and dependant personality disorder (with borderline personality features and with paranoid personality features). DHS was so concerned about respondent's mental health in September 2012 that it considered evaluating respondent for an adult guardian.

Respondent attempted suicide on October 4, 2010. However, during her stay in the hospital, respondent's medication regime was changed and she began demonstrating real progress. Respondent was participating in Community Mental Health services. She was much more engaging with her children and was acting appropriately. Things were going so well that in December 2010, DHS requested discretion to allow unsupervised and overnight visits between respondent and the children.

Respondent continued to make significant strides. While there were lingering concerns regarding respondent's relationship with Charnes, who had recently been released from jail in May 2011, respondent was demonstrating substantial progress with her mental health and ability to care for herself and her children. The children were returned home on June 6, 2010. However, respondent and Charnes had not taken advantage of all available opportunities to seek employment. DHS had received information that Charnes was drinking again, but it was unable to confirm those allegations. Respondent and Charnes admitted to having a loud argument. In addition, the family needed to complete Family Reunification Services before the case could be dismissed.

However, on August 16, 2011, the DHS filed a child protective proceedings petition seeking to remove the children from the home. On August 11, 2011, respondent consumed alcohol while driving with her three children in the car. A DHS case worker found an empty bottle of alcohol in the trash bin at the family's home. Charnes admitted that the alcohol belonged to him. Respondent reported that she and Charnes were drinking. Respondent also reported that she and Charnes were fighting, and that she was afraid to bring the children home. Once again, respondent reported that she was overwhelmed, stressed, and unable to care for the children.

After the August 16, 2011 re-removal, respondent and Charnes failed to participate in services. They remained unemployed and failed to participate in counseling and parenting

classes. Further, Charnes continued to abuse alcohol and failed to attend AA/NA meetings. Their participation in drug and alcohol screening was sporadic and that respondent refused to test on three occasions. Further, N.M.A. and S.N.A. reported that Charnes began drinking immediately after he was released from prison. N.M.A. reported that Charnes made him urinate in a cup when the Accurate Screen worker came to the house to test Charnes. S.N.A. reported going to bed very early, between 3:30 p.m. and 5:30 p.m., and stated that she had to take a "purple pill" before bed.

At the February 9, 2012, termination hearing, Terwillegar stated that she worked with respondent from July 2010 until January 2012, but there was a period of time that respondent stopped attending. Terwillegar stated that respondent started to cancel or "no show" in July 2011. Respondent did not attend any sessions in August or September, but she returned on October 20, 2011. Terwillegar stated that during the October 20, 2011 session, respondent admitted that Charnes started drinking the day he got out of prison, and that N.M.A. was providing urine drops for Charnes. Terwillegar concurred with DHS's recommendation that it was in the best interest of the children to terminate respondent's parental rights. Terwillegar stated that "with [respondent's] dependency . . .such as it is and her feeling overwhelmed and decompensating as readily as she does, I am concerned that she will not be able to keep the children safe, even though I believe that she loves them, I don't believe that she will be able to keep them safe over the long term." Terwillegar explained that respondent's dependant personality disorder was not related solely to Charnes. Respondent became easily overwhelmed and was dependant and needy of most anyone. She could not live by herself and make decisions. Terwillegar acknowledged that respondent's diagnosis was treatable over the long term, but stated that "you have the children waiting for her to get that resolved." Terwillegar testified that it would still be years before the children would be safe and properly cared for and, even if Charnes was not in the picture, she would still be concerned about respondent's habit of finding other dysfunctional people with similar personalities.

Respondent testified that she filed for divorce in August 2011, after the children were removed. Respondent planned on following through with the divorce and was willing to commit to having Charnes out of the house. However, she acknowledged that she was still living with Charnes, and that Charnes was still drinking. When asked why Charnes was still in the house, respondent stated "[h]e has nowhere else to go and he is not going to leave, ..." Respondent stated that she was willing to get Charnes out of the house "whenever there is a court order."

The trial court entered an order terminating respondent's parental rights on February 9, 2012. She now appeals as of right.

II. ANALYSIS

Termination of parental rights requires a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "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.19b(5). "We review for clear error 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 Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court's termination decision "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 JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(*i*), which provides:

> (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:
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> (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.

In terminating respondent's parental rights, the trial court noted:

> Essentially, there is really no decision to be made here, because after several years of all types of intervention, the circumstance[s] [are] exactly the same today as [they were] when the court took jurisdiction here back in May of '10. By the mother's own statement on the record here today, the children are still at risk and the circumstances . . . which create[] the risk are exactly the same [as] they were when the court intervened. . . .
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> Now as to [respondent], I am tremendously sympathetic, but the profile of her life and her behavior essentially is being repeated for the third time. We have the Germany situation and the older children there, we have the Austin situation, now the John Charnes situation and life repeats itself. Given her profile, I understand that . . . if she is not under stress . . . she is capable of dealing with her problems and living a reasonable life, but the pressure of three children and an alcoholic husband, which she is unwilling essentially, to physically divorce. You can legally divorce him and file divorce actions and pieces of paper all of your life, but until there is some type of a physical separation that puts these children into some type of a situation that would indicate that they are going to be safe and going to have three meals a day and essentially could look forward to coming home from school at night without controversy, would be able to do their homework without some argument and upset and I just can't visualize how difficult it has been. You know the sad part of these children is that they know no different. They have adapted to live with it. This case had been before this court for more than 182 days that have lapsed since the issue of the initial dispositional

> order. The court by clear and convicting evidence finds that the conditions that lead to the adjudication continue to exist. There is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the children's age. Given that the circumstance and the different reasons for the different parents, the court would terminate that parental rights of all three of those parents and refer the children to the Michigan Children's Institute for adoption.

We conclude that there was clear and convincing evidence for the trial court to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*). The principal conditions that led to adjudication were respondent's mental instability and domestic relationship with Charnes, an admitted alcoholic with a history of domestic violence. At the time of termination, respondent continued to struggle with these issues. Respondent was diagnosed with a number of mental health issues, including dependant personality disorder. Though respondent's mental conditions were treatable generally, the record indicated that her dependant personality disorder would take years of counseling to treat. The danger of respondent's dependent personality disorder manifested in her failure to separate herself from Charnes. Respondent herself conceded that it would be dangerous for the children to return home as long as she continued to live with her husband. Yet, respondent could not physically separate herself from Charnes. During the termination hearing, respondent stated that she had filed for divorce; however, she acknowledged that she was still living with Charnes and, and that he continued to abuse alcohol. Respondent stated that she would not ask him to leave because he had nowhere else to go. Moreover, as Terwillager noted, even if respondent successfully separated herself from Charnes, she was at risk of attaching herself to other dysfunctional people with similar personalities. It was clear that the conditions leading to adjudication continued to exist and that there was no reasonable likelihood that the conditions would be rectified in the near future.

The evidence also supported the trial court's finding that termination of respondent's parental rights was in the children's best interests. At the time of the termination order, all three children had been in out-of-home placement for approximately 18 of the past 21 months. The two older children, ages 9 and 10, had been in two different foster homes since they were first removed from respondent. The youngest child was under the age of three and had spent the majority of his life living with his paternal grandparents. The children deserve to be brought up in a healthy, stable, and permanent environment, which respondent is simply unable to provide. Respondent's history of mental instability rendered her unable to provide for the care and custody of her children under periods of stress. Further, respondent's domestic relationship created a dangerous home environment in which the children were likely to be harmed. Accordingly, the evidence established that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly