

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 23, 2012

In the Matter of JOHNSON/DOWNEY, Minors.

No. 309646
Shiawassee Circuit Court
Family Division
LC No. 03-010615-NA

In the Matter of JOHNSON/DOWNEY, Minors.

No. 309700
Shiawassee Circuit Court
Family Division
LC No. 03-010615-NA

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Respondents appeal as of right the order terminating their parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g). Respondent mother's parental rights were also terminated pursuant to MCL 712A.19b(3)(c)(ii).¹ We affirm because there was sufficient evidence to

¹ The relevant provisions read:

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified

support the trial court's conclusions that the statutory grounds for termination were met and that termination was in the children's best interest.

We review the trial court's factual findings for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); MCR 3.977(K). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

At the conclusion of the statutory phase of the bifurcated proceedings, the trial court issued findings on the record, citing MCL 712A.19b(3)(c)(i) as a basis for terminating respondent father's parental rights and (c)(ii) and (g) as the grounds for terminating respondent mother's parental rights. After the best-interest hearing, the court issued a written order terminating respondents' parental rights, citing MCL 712A.19b(3)(c)(i) and (g) as grounds for both respondents. Respondent mother argues on appeal that the trial court's oral findings pursuant to MCL 712A.19b(3)(c)(ii) should be stricken because this statutory ground was not included in the trial court's written order. This argument is meritless because paragraph six of the order clearly incorporates by reference its specific findings of fact and law rendered from the bench.

Respondent mother also argues that the trial court's written finding under MCL 712A.19b(3)(c)(i) should be stricken because this matter was originally bifurcated, and the trial court's second finding was issued after hearing best-interest testimony. This contention is also groundless. Respondent mother had sufficient notice that termination was sought under MCL 712A.19b(3)(c)(i) and (c)(ii) in addition to (g) as stated in the termination petition. Further, respondent mother was aware that the trial court found at least one statutory ground was established by clear and convincing evidence, thus necessitating a best-interest determination. Respondent mother was not prejudiced by an additional statutory finding under § (c)(i) after the best-interest determination phase of the hearing concluded.

The conditions that led to petitioner's intervention were respondents' substance abuse along with improper supervision and threatened harm to the children. Respondents and the children have a lengthy history with petitioner, beginning with respondent mother in 2003 and respondent father in 2005. The oldest child was removed from respondent mother's care on allegations of domestic violence between respondent mother and the child's biological father. Two additional neglect petitions were pursued against respondents in 2005 because of domestic violence, substance abuse, and financial instability. A fourth protective proceeding was initiated

by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, 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. [MCL 712A.19b(3)].

in 2006. Before the most recent protective proceeding began in 2010, petitioner had provided respondents with a myriad of family reunification services, including psychological evaluations, individual counseling, a homemaking program, parenting education classes, anger management classes, a domestic violence program or counseling, Families First Program support, CPS caseworker monitoring, drugs screens, substance abuse assessments, case management services, safety plans, health department support services, and parenting time.

In February 2010, the youngest child tested positive for THC shortly after birth and respondent mother also tested positive for THC in March and April 2010. She refused to provide four random drugs screens in April 2010. Respondent father tested positive for opiates in early May 2010. Petitioner filed a fifth petition to remove the children from respondents' care because of substance abuse, improper supervision, and threatened harm. From June 2010 until the termination hearing that began in December 2011, respondents were ordered to comply with and benefit from five parent agency treatment plans in an attempt to reunify the family. Barriers to reunification included respondents' emotional instability, poor parenting skills, substance abuse, and a history of domestic violence. Respondents' treatment goals included achieving emotional stability, acquiring necessary parenting skills, obtaining and maintaining a drug-free lifestyle, acquiring and maintaining adequate housing, and employment. Respondent father also was to comply with all terms of his probation from a criminal conviction. Petitioner again provided services, including drug screens, substance abuse treatment, parenting classes, a visitation coach, anger management classes for respondent father, and individual counseling and a domestic violence program for respondent mother. Respondents were also to attend AA/NA meetings twice each week and provide proof of attendance.

After more than a year of reunification efforts, respondents' living circumstances remained uncertain and posed a continued threat of harm to the children. Although respondents completed a substance abuse assessment and an outpatient substance abuse program, they failed to achieve or maintain a drug-free life style, financial stability, and suitable housing. Respondent father had several positive drug tests and missed numerous drug screens. He had two positive screens for opiates in March and April 2011. There was also a pending show cause hearing for failing to submit to drug testing from May through September 2011 and new charges pending for heroin possession. The trial court concluded that respondent mother had been substance-free for only a short time period. Although she provided some drug screens that were clean, she refused other screens, which were then considered to be positive and on September 6, 2011, respondents failed to complete hair follicle drug screens that would test for drug use for the previous three months. Thus, the trial court did not clearly err in finding that respondents failed to rectify the condition of substance abuse, which was among the conditions that led to the children's removal. Respondent father failed to achieve, and respondent mother failed to maintain for an adequate duration, a drug-free life style.

Respondents' unstable housing also posed a continued threat to the children. At one point, respondents had suitable housing, but they were unable to maintain it for a consistent time period. They moved from the home in which they resided at the time of the children's removal because respondent father had lost his part-time job and they were unable to pay the rent. Respondents briefly relocated to Flint in mid-February 2011 but then returned to the Owosso area at the end of March 2011 because respondent mother was unable to find a job in Flint. Respondents resided with friends and family for several weeks. Respondent father never located

adequate housing. At the time of termination, respondent mother had housing, but it was unsuitable for children because it was physically unsafe. Respondents never achieved financial stability.

Further, respondent mother failed to rectify other conditions that needed to be remedied, including poor judgment evidenced by remaining in a harmfully dependent relationship with respondent father with whom respondent mother had a domestically violent history.

Respondent mother asserts that the trial court improperly took issue with respondent mother residing with her grandmother; claiming that no caseworker ever said that living with her grandmother would be a barrier to reunification and no case law or statutory authority supported that requirement. The case service agreements, including the first agreement which respondent mother admitted that she had reviewed with the first caseworker, clearly required respondent mother to acquire and maintain suitable independent housing, for which she paid rent and utilities. Moreover, it was undisputed that respondent's grandmother's home was physically unsuitable as of the first day of the termination hearing. Respondent mother hastily made necessary repairs while the termination hearing was in progress. Thus, the trial court did not clearly err in finding that respondent mother had not demonstrated the ability to provide suitable housing in the long term.

Similarly, it was beyond dispute that respondents had not achieved much less maintained, financial stability. At times, they reported having jobs but would not provide any employment verification. When the termination petition was filed, respondents' only monthly income source, other than unverified part-time work as house painters, was \$367 in food stamps. At the time of termination, respondent father was jobless and respondent mother earned only \$30 each week babysitting part time for her cousin. Given these proofs, the trial court did not clearly err in finding that respondents, without regard to intent, remained unable to provide proper care or custody for the children. Given the longstanding history of neglect, beginning in 2003 with respondent mother and 2005 for respondent father, there was sufficient proof that respondents were unlikely to be able to properly care for the children within a reasonable time considering the children's age.

Respondent mother argues that the trial court improperly cited inappropriate housing, domestic violence, and lateness to visits as legal justification for termination. Respondents' unstable housing, financial uncertainty, parenting skills, and history of domestic violence were relevant to the statutory grounds for termination asserted by petitioner. The trial court therefore did not err by considering these factors.

Respondent mother contends that the trial court improperly considered other factors in terminating her parental rights. She argues that the trial court should not have reviewed her failure to complete a domestic violence program as a basis for terminating her parental rights. It was entirely proper to consider this factor because of the previous instances of domestic violence that respondent mother had been involved in.

Additionally, respondent mother contends that the trial court erroneously considered her failure to leave her husband. She claims that she was never informed that continuing her marriage would be a reunification barrier. The record, however, shows that respondent mother

knew that she needed to separate herself from respondent father. She failed to avail herself of offered services, including individual counseling and services through RAVE, a domestic violence program, aimed to help her learn to live independently of respondent father. Respondent mother continued to have contact with respondent father after knowing he was abusing drugs and was arrested for heroin possession with intent to deliver. At the termination hearing, she was unable to unequivocally state that she had permanently separated herself from respondent father. Although respondent mother claimed that she was completely caught off guard in learning that respondent father was using drugs, she was well aware of his persistent refusals to participate in court-ordered random drug screens. Further, respondent mother was unwilling to acknowledge at the termination hearing that there had been a recent substantiated CPS incident involving respondent father and one of their sons, even though the incident was discussed with her at a permanency planning conference. The trial court properly weighed respondent mother's continued involvement with respondent father in determining whether her apparent lack of sound parental judgment posed a continued threat to the children's wellbeing.

Respondents argue that the trial court did not consider that much of the reason for their difficulties in complying with the case treatment plan was that services, including visitation, were offered in Genesee County rather than Shiawassee County, where respondents resided. In December 2010, the children were removed from relative foster care and placed in two separate homes in Genesee County, presumably because there were no foster homes available in Shiawassee County. Services were transferred to Genesee County. Petitioner acknowledged that having the children placed in a county other than where the parents resided posed reunification difficulties; however, the children's placement made it easier to supervise parenting time. The record shows that petitioner made appropriate accommodations by giving respondents bus fare, rides, gas cards, and a van shuttle to and from Flint. Respondents had ongoing transportation issues even before the children were placed in Genesee County. Respondents had briefly relocated to Flint because they believed it would be easier to find employment, not as they assert on appeal because it was inconvenient to visit with the children and participate in services in Genesee County. Petitioner then arranged for services, including drug screens and counseling, to be provided in the county where respondents resided at that time. Services, except for visitation, resumed in Shiawassee County when petitioner learned that respondents had moved back to the Owosso area. As of September 2011, respondents apparently had their own vehicle, and respondent mother admitted that she regularly used her grandmother's car. However, even with their own vehicle, along with other transportation assistance, respondents continued to be significantly late or missed supervised visitation.

Respondents also contend that petitioner did not make reasonable efforts to reunify the family. It is well established that petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000); MCL 712A.18f; MCL 712A.19(7). Respondents assert that it was impossible for the court to properly conclude that respondents would be unable to provide proper care and custody within a reasonable time because petitioner did not provide consistent services and clear communication. To the contrary, there was a long record of petitioner repeatedly providing respondents with reunification services, but to no avail. The trial court record does not support respondents' claim that their services were deficient because seven workers were assigned to the case over a 17-month period. In mid-June 2010, petitioner appropriately transferred respondents' file from the initial caseworker to relieve her of a case

overload. Although for six weeks, from mid-November to January 3, 2011, there was no caseworker directly assigned to the case, respondents' file was overseen by petitioner's case supervisor. Further, respondents' emphasis on the number of caseworkers is misleading. In mid-December, 2010, caseworkers were assigned to respondents' file on two levels: a caseworker from Alternatives of Genesee County, who was responsible under a purchase of services agreement for working directly with respondents, and a caseworker assigned by petitioner to oversee the file. Two Alternatives caseworkers worked directly with respondents from mid-December 2010 until the termination hearing.

Further, petitioner continued to make all necessary referrals for services and also provided case supervision. On two occasions, petitioner's caseworker stepped in and directly provided services, including conducting a home visit and making a follow-up referral for drug screens, when the newly assigned Alternatives worker had failed to do so. Contrary to respondents' assertion that the caseworkers did not communicate among themselves, the record shows that each caseworker reviewed respondents' file and spoke with various personnel who had previously worked on the case. Also, the record (including four review hearings, five updated service plans, and three permanency placement conferences) shows that respondents were fully informed of the actions they needed to take to be reunited with their children.

Respondent mother claims that no worker visited her home until two months after the termination petition was filed. Caseworkers testified that home visits were attempted before and after the termination petition was filed. In February 2011, respondents admitted that they were not ready for an inspection during a home visit at their Flint home. Between the time respondents relocated back to Owosso in March 2011 and when respondent mother moved into her grandmother's house, additional home visits were not possible because respondents were living from place to place. After the termination petition was filed, respondent mother admitted during home visits that the home was unsuitable. Respondent mother knew that the home was unsuitable for children after home visits on November 14 and December 2, 2011. After more than a year of deficient housing, respondent mother's home was deemed suitable in February 2012 while the termination hearing was already in progress. The trial court reasonably concluded that respondent mother was unable to consistently maintain suitable and stable housing.

As discussed above, the trial court did not clearly err in finding that respondent mother failed to achieve financial stability, find suitable housing, or maintain a drug-free lifestyle for any substantial period of time. As a result, it was not clear error for the trial court to find that the statutory grounds under MCL 712A.19b(3)(c)(i) and (g) for both parents and MCL 712A.19b(3)(c)(ii) for respondent mother were proven by clear and convincing evidence.

Finally, respondent mother argues that the trial court erred when it found that terminating her parental rights was in the children's best interests. Once one or more statutory grounds for termination of parental rights have been proven by clear and convincing evidence, the trial court must terminate if it is clearly in the children's best interests to do so. MCL 712A.19b(5); MCR 3.977(F)(1).

The trial court did not clearly err in finding that terminating respondent mother's parental rights was in the children's best interests. Parental termination cases are deemed to be one

continuous proceeding. *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). Therefore, the trial court properly considered evidence of the most recent removal petition as part of a larger continuum of the court's involvement with the family that began in 2003. Although respondent mother offered proofs that she loved her children, this was not enough to overcome the stark reality that her children had been in foster care for an extended period of time. A review of the whole record reveals that inappropriate housing, unemployment, and substance abuse issues permeated respondent mother's life. Respondent mother had a track record of constant DHS involvement beginning in 2003 through March 2007 and again in 2009. Less than a year later, in 2010, the present case was opened because of persistent substance abuse issues, lack of proper supervision, and threatened harm to the children.

Respondent mother's behaviors and circumstances, despite numerous reunification services, remained largely unchanged. She remained incapable of providing her children with a safe and stable home because of her limited income. Moreover, respondent mother admitted shortly after the children's most recent removal that she had a domestic violence history. Despite being offered support services designed to help her gain independence, respondent mother was unable or unwilling to fully extricate herself from respondent father. The children already had spent a significant part of their lives in foster care. Clearly it was not in their best interests "to await the mere possibility of a radical change" in respondent mother's life. See *In re Williams*, 286 Mich App at 273-273. The children needed stability and permanence, which respondent mother was unable to provide.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen Fort Hood
/s/ Douglas B. Shapiro