

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHAWNA PARTELLO, Minor.

CHRISTINA PARTELLO,

Petitioner-Appellant,

v

SANDRA WAUKAZOO,

Respondent-Appellee.

UNPUBLISHED

September 15, 1998

No. 202757

Tuscola County Probate Court

LC No. 90-026570 GD

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM

This appeal arises from two orders relating to the disposition of Shawna Partello, a minor born March 27, 1990. Petitioner Christina Partello is the minor's mother.¹ Respondent Sandra Waukazoo is petitioner's mother. Shortly after Shawna was born, Christina consented to having Waukazoo appointed Shawna's guardian. On September 8, 1995, Christina petitioned the probate court to terminate Waukazoo's guardianship over Shawna. On December 15, 1995, Waukazoo petitioned the probate court for an order granting her authority to consent to the child's adoption by Cy and Renee Smith of Indiana, pursuant to the Adoption Code, MCL 710.28; MSA 27.3178(555.28) and MCL 710.43; MSA 27.3178(555.43), and the Probate Code, MCL 700.431(1)(c); MSA 27.5431(1)(c). On November 14, 1996, Tuscola County Probate Court Judge W. Wallace Kent, Jr., denied the petition to terminate the guardianship, ordered the termination of Christina's parental rights, and granted Waukazoo's petition for authorization to consent to the adoption. On March 12, 1997, the probate court denied Christina's motion for reconsideration of the order granting Waukazoo authority to agree to adoption. Christina appeals the order denying the motion for reconsideration, and we affirm.

I

The following account was presented at the probate court's hearings on the guardianship and adoption motions. Christina was sixteen years old when Shawna was born. Because Christina was unable to provide an adequate home for the child, she consented to have Waukazoo appointed as

guardian of the child on May 1, 1990. Between 1990 and 1993, Shawna's and Christina's living arrangements were peripatetic. At various times, she and Christina lived in Waukazoo's home, in the homes of relatives, in an apartment, and in a trailer home. Christina frequently left Shawna with Waukazoo for prolonged periods without making inquiries about the child's welfare. Waukazoo assumed responsibility for having the child inoculated, because Christina failed to do so.

Christina's boyfriend, Carlos Moncado (not Shawna's father), lived with petitioner and Shawna during much of this time. Christina abused alcohol and frequently had violent altercations with Carlos, sometimes when Shawna was present. Carlos and Christina frequently used corporal punishment on the child, and once struck her hard enough to leave a hand print on her back. Christina and Carlos argued about the corporal punishment, but Christina did not always intervene to protect Shawna. Christina attempted suicide on one occasion, and failed to receive counseling afterwards. On several occasions, they were kicked out of the relatives' homes. Carlos and Christina frequently left Shawna with Carlos' mother, although they knew that the mother abused marijuana and kept a filthy home. Since becoming involved with Carlos, Christina has had two more children, in 1992 and 1994.

In June, 1992, when Christina was expecting her second child, Waukazoo arranged for Shawna to stay with her friends in Indiana, Cy and Renee Smith. Shawna returned to Christina in August, 1992, but continued to make monthly visits to the Smiths in Indiana. In May, 1993, Waukazoo became upset about how Christina cared for Shawna, and again sent the child to the Smiths in Indiana. Christina had no contact with Shawna until September, 1993, when she learned that the Smiths wanted to adopt Shawna. Christina objected to the adoption, but did not request custody of Shawna, and did not see her again until December, 1993, although she had some telephone contact with the child. After December, 1993, Christina saw the child for a few hours every other month, in visits Waukazoo arranged. Christina has admitted that she never attempted to arrange any visits, although the Smiths gave her the opportunity. At the time of the guardianship hearing, in May, 1996, Christina admitted that she had not seen the child since February, 1996. There is no evidence that financial circumstances prevented Christina from visiting Shawna.

Christina failed to provide basic necessities, such as groceries. However, Christina was employed and/or receiving government assistance, and received money from the Indian tribe she belongs to.² During this time, she regularly purchased beer and cigarettes, and she bought a large television and an entertainment center.

Both Waukazoo and the Smiths have testified that they encouraged Christina to become a caring, responsible mother, to no avail. Waukazoo testified that Christina's love for Shawna is more similar to a girl's love for a younger sister than to a mother's love for a daughter. Waukazoo and the Smiths testified that Christina does not interact with the child, and shows her no emotion or affection. She testified that Christina and Carlos had not matured to the extent that they could properly care for the child.

Christina and Carlos both acknowledged that their home had been violent and unstable in the past, but maintain that their home environment had changed. Christina admitted that she was an alcoholic, and that she had drunk alcohol three weeks before the hearing, and that she had not attended

Alcoholics Anonymous meetings. She stated that she believed Carlos had cured his violent tendencies, although he had not sought any treatment or counseling. Carlos admitted the violent altercations, but denied that he was a violent person. A therapist testified that he believed Carlos and Christina could adequately meet the child's needs.

The Smiths and persons familiar with the Smiths testified that Shawna had been shy and sullen when she first went to Indiana, but that she had become happy and extroverted in their care. A psychologist testified that Shawna had been damaged by the instability in Christina's home, and that she would regress if returned to Christina.

After hearing this testimony, the probate court denied Christina's petition to terminate the guardianship, finding that it was not in the child's best interests to do so. See MCL 700.424c; MSA 27.5424(3). With regard to Christina's petition for authority to consent to the adoption, the probate court initially noted that the decision to grant such authority was discretionary and that the relevant statutes provided no real guidance for granting the motion. Because granting the petition would effectively terminate Christina's parental rights, the probate court decided to consider the standards set forth in the Juvenile Code for neglect and abuse cases. The court held that it first must find whether grounds for termination existed and, if so, must make a finding whether termination would be in the child's best interests. The court found that statutory grounds for termination existed under MCL 712A.19b(3)(b); MSA 27.3178(598.19b)(3)(b) (the parent's act caused the child physical injury or physical or sexual abuse or the parent failed to prevent the injury or abuse) and under MCL 712A.19b(3)(c); MSA 27.3178(598.19b)(3)(c) of the Juvenile Code (conditions continue to exist and are not likely to be rectified within a reasonable time). The court based these findings on evidence that Christina pursued a relationship with Carlos, who physically abused the child, instead of availing herself of opportunities to become a responsible, caring parent. The court also listed numerous facts supporting these findings: Christina's alcoholism, Carlos' violent behavior, their failure to seek counseling or therapy, Carlos' lack of commitment to his family, Christina's choice to spend money on alcohol and personal luxuries instead of child support and groceries, Shawna's exposure to substance abuse, sexual behavior, and domestic violence in Christina's home, and Christina's reliance on Carlos' mother for baby-sitting.

The probate court then considered the best interest factors set forth in the Adoption Code, MCL 710.22(f); MSA 27.3178(555.22)(f), to determine whether it would be appropriate to authorize respondent to consent to adoption of the child. The court emphasized that it would not make a comparison between Christina's home and the Smith's home, and that its decision would be based only on the child's best interests. Considering all of the statutory factors, the court concluded there was clear and convincing evidence that it was in the child's best interests to authorize respondent to terminate Christina's parental rights and authorized Waukazoo's consent to the Smith's adoption of the child despite Christina's objections.

II

In her first issue, Christina argues that the probate court erred in granting respondent's petition for authority to consent to adoption because petitioner did not consent to the adoption and her parental

rights had not been terminated at the time the petition was filed. This issue involves a question of statutory interpretation, which is a question of law that is reviewed de novo for error on appeal *In re Hill*, 221 Mich App 683, 689; 562 NW2d 254 (1997). We find no error.

Christina argues that the probate court erred in terminating her parental rights on the basis of respondent's petition for authority to consent to the child's adoption. The trial court granted Waukazoo's petition under MCL 710.43(5); MSA 27.3178(555.43)(5), which provides that the guardian of a child to be adopted "shall not execute a consent to the child's adoption . . . unless the guardian has first obtained authority to execute the consent from the court that appointed the guardian." Christina argues that under MCL 710.43(1); MSA 27.3178(555.43)(1), prior to adoption of the child, consent to adoption must be executed by each parent of the child unless the rights of the parent have been terminated. She argues that the probate court erred in granting respondent's petition because she did not consent to the adoption and her parental rights had not been terminated as of the date of the petition. In addition, Christina argues that MCR 5.974(A)(2) provides that parental rights may not be terminated unless termination was requested in an original, amended, or supplemental petition filed by the prosecutor, an agency, or a representative of the child, and that no such petition was filed in this case.

Christina's position is flawed. Under MCL 710.43(1); MSA 27.3178(555.43)(1), consent to adoption of a child must be executed by each parent of the child *except* when a guardian has been appointed for the child. MCL 710.43(1)(a)(iii); MSA 27.3178(555.43)(1)(a)(iii). The guardian may be authorized to execute consent to adoption of the child pursuant to MCL 710.43(1)(e) and (5); MSA 27.3178(555.43)(1)(e) and (5). Moreover, under MCL 710.51(1)(a); MSA 27.3178(555.51)(1)(a), the probate court may enter an order terminating parental rights if the court is satisfied as to "the genuineness of consent to the adoption and the legal authority of the person or persons signing the consent." Therefore, the probate court did not err in terminating Christina's parental rights on the basis of Waukazoo's petition.

III

A petitioner in an adoption proceeding must prove by clear and convincing evidence that termination of parental rights is warranted. *In re Hill*, *supra*, 221 Mich App 691. This Court reviews the probate court's findings of fact under the clearly erroneous standard. *Id.* A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.*, 691-692. Here, the termination of petitioner's parental rights was supported by clear and convincing evidence.

In considering respondent's petition, the probate court initially noted that there were no clear guidelines in the Adoption Code for the standards to be applied in determining whether the authority to consent to adoption should be granted. Because the decision to grant such authority is, in effect, a decision to terminate petitioner's parental rights, we conclude that the probate court correctly looked to the Juvenile Code for guidance to determine whether grounds for termination existed.

MCL 712A.19b(3)(b); MSA 27.3178(598.19b)(3)(b) of the Juvenile Code provides grounds for termination when the parent's act caused the child physical injury or physical or sexual abuse or the parent failed to prevent injury or abuse by others. There was ample evidence to establish that this ground existed. Instead of cooperating with Waukazoo's efforts to help her become a responsible parent, Christina involved herself with Carlos and repeatedly placed the child in dangerous situations where she was physically abused and exposed to violence, substance abuse, and unfit conditions. On one occasion, Carlos or Christina struck Shawna hard enough to leave a visible hand print on her back. Christina did not intervene, or otherwise attempt to protect Shawna from the abuse.

MCL 712A.19b(3)(c); MSA 27.3178(598.19b)(3)(c) of the Juvenile Code provides grounds for termination where conditions which led to juvenile proceedings continue to exist and are not likely to be rectified within a reasonable time.³ The probate court found that Christina and Carlos were unable to provide a stable home environment for the child because they moved frequently and became estranged from time to time and established separate residences. This pattern of conduct led the court to believe that there was no reasonable likelihood that Christina was any more capable of providing a suitable and stable home environment for the child than she was when the child was born. The probate court further found that Christina failed to provide any support for the child but instead spent money on beer and personal luxuries, failed to maintain contact with Shawna, failed to take action to correct her alcoholism and shortcomings as a parent. Based on this evidence, the probate court reasonably concluded that Christina's total lack of regard for the child's needs had not been rectified despite reasonable opportunities for improvement, and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering that the child was six years old.

Having concluded that grounds for termination existed, the probate court next considered each of the best interest factors set forth in the Adoption Code, MCL 710.22(f); MSA 27.3178(555.22)(f), to determine whether it would be appropriate to grant respondent authority to consent to adoption of Shawna. The court found that there was no meaningful love, affection, or other emotional ties existing between Christina and the child; that Christina failed to demonstrate that she had any capacity or disposition to give the child any love, affection, guidance, or religious education; that Christina grossly neglected the child's nutrition, clothing and medical care when the child was in her custody; that Christina's home environment was unstable and unsatisfactory due to the substance abuse and domestic violence in the home and the frequent moves; that there was no permanence as a family unit in Christina's home because she and Carlos separated frequently and avoided the commitment of marriage; that Christina's total disregard for the influence which Mrs. Moncado's marijuana use had on the child was an adverse reflection on Christina's morality; that Christina's engaging in sexual intercourse in the child's presence while Christina was intoxicated was immoral conduct; that Christina's inability to refrain from using alcohol adversely reflected on her mental and/or physical health; that the child had not lived with Christina for a sufficient time to establish a home, school, or community record; that no determination was made with regard to the preference of the child because the parties waived an interview with the child and because she was only six years old; that respondent and the Smiths tried to create a close and continuing parent/child relationship between Christina and the child but were frustrated in their efforts due to Christina's lack of cooperation; and that domestic violence was the norm in the home of Christina and Carlos. Based on the evidence presented, we conclude that the

probate court properly found clear and convincing evidence that it was in the child's best interests to authorize respondent to consent to adoption of the child despite Christina's objections.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

¹ Shawn's putative father has never participated in any proceedings concerning Shawn.

² Shawn is not eligible for membership in this tribe. Laws governing the adoption of Indian children are therefore not applicable.

³ Christina has argued that this statutory provision is inapplicable because no juvenile proceedings were ever initiated with regard to Shawn. This argument is irrelevant, because the trial court was deciding an adoption petition, and relied upon the statutory termination grounds by way of analogy.