

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOLENE BARENS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARILEE A. KLEEMAN,

Respondent-Appellant.

UNPUBLISHED

July 13, 2004

No. 250179

Luce Circuit Court

Family Division

LC No. 97-000867-NA

In the Matter of JAMIE BARENS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARILEE A. KLEEMAN,

Respondent-Appellant.

No. 250180

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Family Division

LC No. 97-000868-NA

Before: Gage, P.J., and O'Connell and Zahra, JJ.

O'CONNELL, J. (*dissenting*.)

I must respectfully dissent because the majority inexplicably fails to acknowledge the disturbing possibility that the children's exposure to their mother could lead them to severe emotional or physical harm. Further, during the relevant period of time, the trial court held two-dozen hearings and amassed several pounds of transcripts detailing respondent's failure to improve substantially her ability to provide these children with the stability, guidance, and protection they need. A thorough review of this case's facts demonstrate that the two girls at issue have suffered years of loss and displacement causing a series of emotional traumas compounded by their mother's mental and emotional incapacity to provide them with adequate care and support.

Jolene was born on February 25, 1988, and a little over a month later child protective services made a “prevention” house call because Jolene was struggling to gain weight. The next month, the Family Independence Agency (FIA) received a referral alleging that respondent referred to the “burning bed” case and indicated that either her abusive cohabitating boyfriend would kill himself, or she would kill him. The FIA investigated, but could not substantiate the referral. On November 15, 1989, police caught respondent selling marijuana. She stated that she would rather “blow herself and her daughter away” than lose custody. FIA workers found a mess in respondent’s home and began monitoring respondent’s parenting more closely. Respondent gave birth to Jamie on August 14, 1990. On November 15, 1990, FIA officials were alerted to the fact that respondent had locked Jolene in her room, and Jolene had smeared feces on the wall. On July 8, 1991, three-year-old Jolene was found wandering around a neighbor’s home without supervision. In 1992, the children’s father died.

On July 6, 1992, while an FIA supervisor was making funeral arrangements, respondent left one of the children in a car while she sat drinking in a bar. Later that day, the FIA supervisor followed up with respondent in her home. Irrate at local rumors that the father died of an overdose, respondent, in front of her children, flew into a rage, shouted at the official, told her she wanted to kill her, assaulted her, and punched a television speaker. Respondent declined mental health services. In July 1995, respondent admitted to FIA workers that she locked Jolene in the crawlspace of her house as a form of punishment.

In August 1996, respondent took Jolene swimming at a large lake with two of Jolene’s friends and their mother. According to her testimony, respondent noticed the wind picking up and the children struggling, so she told the other mother to run for help and dove in. The other mother dove in as well, and they hurried toward the children. Respondent claimed that she reached Jolene first and threw her toward the shore. At this point in the testimony, the facts become blurry. Respondent stated that the larger of the two sisters tried to climb on her back, but she was too big and dragged respondent down. She then turned and saw the smaller daughter “go under right beside” her. She went toward her and found she could stand, but somehow the daughter and mother swam to the larger daughter. Respondent, and Jolene, saw the daughters pull their mother under and all three drowned. Around this same time, a friend of the family molested Jolene while respondent was in the house.

These incidents led Jolene to adopt intense feelings of guilt which needed emotional support. Rather than provide that support, respondent regressed mentally and established a pattern of overreacting and threatening suicide. Respondent said that she wished her family had drowned in the other family’s place. On January 27, 1997, respondent referred to the Susan Smith infanticide case and threatened to kill herself and the children. When police arrived, she made obscene gestures at them through a window and would not answer the door. Others began blaming respondent and Jolene for the drowning deaths, and Jolene attempted suicide three times. The first two times she placed a knife to her throat and Jamie or respondent stopped her. The third time, before a deposition regarding the drowning incident, she was going to slit her wrists in the tub when her mother walked in.

On May 7, 1997, respondent contacted the FIA and told officials that she wanted to put her children in foster care so she could check herself into a mental hospital. She said she could not handle the emotional strain of raising the children. She complained that the house’s stopped-

up plumbing caused sewage to back up through the toilet and bathtub. She requested assistance even though she had ready money to repair the problem a few weeks earlier.

Less than a week later she called back and told officials that the children were sick from the plumbing problem, she feared that they would get AIDS, and she would rather have the FIA shoot them quickly than have them die of disease. She also made a reference to someone simply putting a bullet in her head to end her problems. She mentioned that she had access to a gun. When the FIA worker told her that she would notify police, respondent abruptly hung up. When police arrived, respondent pointed a shotgun at an officer and demanded that he leave. The children were found with sores on their buttocks from contact with the raw sewage. Respondent did not seek medical treatment for the boils. For the first time, the children entered foster care. Respondent was convicted of aggravated assault and placed on probation.

When the children were returned to her, respondent found herself overly restrained by her probation officer. After obtaining her children's counsel and consent, she intentionally violated her probation by smoking marijuana and subjected herself to a four-month prison sentence rather than the supervision probation entailed. She later stated that she wanted to be out from under the probation officer's thumb, and referring to their placement in foster care, explained that she had arranged for the children's care during her incarceration. She attempted suicide in jail.

The children were again returned to respondent. However, FIA workers reported that the situation was far from ideal. Respondent entered counseling, but continued to make hurtful statements toward her children. These comments included comparing one daughter with the other and threatening Jolene with committal in a mental hospital if she did not behave as respondent desired. Jolene, in turn, began to abuse her mother's permissive and vulnerable nature to get her own way around the house. Jolene threatened her classmates with suicide if they refused her friendship and stalked an older boy who would not return her affections. When the school principal separated Jolene from the boy, respondent blamed the boy, accused the principal of wrongfully segregating Jolene, and even filed a complaint against the school for discrimination.

Near the end of May 2000, respondent told her children that she would end it when they returned home from school that Tuesday. Jolene called a crisis hotline, and police again arrived at the house. One trooper had a riot gun drawn, and respondent told him that he had better have a body bag ready because she had not done anything wrong. Jamie chimed in her support with the assertion that he had better have two. When the children were put in a police car, respondent told police that she would rather they shoot her than take her children. A police officer acknowledged that the entire incident stemmed from Jolene's refusal to clean her room. The children were again placed in foster care.

During a brief period in January 2001 when the children were back with their mother, respondent went to the school to arrange permission for Jolene's absence on certain days. It was later discovered that respondent was arranging for Jolene to attend a parole hearing for the man who molested her. Months earlier, the FIA had discouraged respondent from involving Jolene in the legal proceedings against her assailant because they were detrimental to Jolene's emotional recovery. During the office visit, respondent joined a conversation about a car accident. Respondent mentioned that she hoped it resulted in the death of fifteen children from the school. She then made a comment to a worker at the school who was married to the trooper involved in

taking the children in May 2000. She said that she expected someone to put a bullet in the trooper someday, and she hoped someone would. The children were again placed in foster care. At the time of the termination in mid-2003, these girls had spent roughly four years of their lives in foster care, starting in mid-1997.¹

At the dispositional hearing following this incident, respondent claimed that she had a hard time dealing with police and other authority figures because she was raped on separate occasions by a police officer, an uncle, and another family member when she was young. She also testified that sirens caused her anxiety because they reminded her of the drowning incident.

All reliable accounts demonstrate that the children returned from supervised visits with their mother in an emotionally unstable state. Jolene is showing signs of the emotional fallout from her strained and sporadic relationship with her mother. She has demonstrated a precocious sexual disposition toward older men, including her foster fathers and teachers. During a supervised visitation, an older man who knew the family approached the table where Jolene sat with her mother and sister. In front of respondent and Jamie, the man reached under Jolene's arm and grabbed her breast from behind. Respondent did not alert the supervisor, who could not see the assault. Rather, she went into a state of prayer and glared at the culprit, who only licentiously returned a sneer. Respondent did not report the incident until she called her attorney the next day. She explained that she feared the incident would "come back on her" and that the culprit would accuse her of being crazy and seeing things.

Despite the majority's insistence that the trial court lacked evidence to find that respondent failed to improve her mental and emotional ability to parent, respondent testified at several hearings and provided the trial court with a first-hand look at her progress. Between the time of the original disposition in September 2000 and the termination hearing in June 2003, the trial court held two dozen hearings. Perhaps the majority should clarify how many more pounds of transcripts it would find sufficient to support respondent's termination. Petitioner produced evidence that in a therapy session respondent glossed over comments to the trooper's wife as a prayer for his safety. In one of her last appearances on the stand, respondent denied pointing the weapon at the police officer during the May 1997 incident; stated that she was within her rights to stand armed against the police and demand a warrant; indignantly blamed the FIA for failing to provide her with the tools she needed to parent her children; and refused to recognize that the government gave her any beneficial support despite the county's expenditure of over \$500,000 on foster care assistance, legal expenses, personalized psychological care, financial aid, and other costs. She claimed that she and her children acted as a codependent unit, and made a vague reference to their reunion with her on earth or in heaven. When petitioner pointed out that the children could revisit her in a few years when they turned eighteen, respondent failed to clarify her reference to the hereafter.

¹ This means they spent twice as many of their formative years suspended between one irresponsible mother and two temporary parents as they spent with the irresponsible mother alone. While the impact of this instability cannot be precisely measured, it bears noting that the girls were rather shocked to discover that an FIA worker interviewing them had never had foster parents.

The standard of review in this case is whether the trial court clearly erred when it determined that petitioner proved by clear and convincing evidence that one of the statutory reasons for terminating respondent's parental rights existed. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Simply put, the trial court found that the problems leading the court to take jurisdiction persisted and would not abate within a reasonable time, and respondent's parenting posed a threat to the emotional or physical safety of her children. MCL 712A.19b(3)(c)(i) and (3)(j). Despite respondent's own testimony denying all responsibility for her poor parenting and failing to recognize any link between her suicidal threats and the removal of her children, the majority finds no record evidence that respondent remains the same confused, sad, and desperate creature that required police intervention on three separate occasions to protect her children from her own hand. From her own mouth, the trial court collected evidence that respondent's mental condition had not improved sufficiently to warrant the return of the children, and would not improve enough to anticipate a reunion in any meaningful timeframe. The majority paints the petition as a snap judgment rather than the natural conclusion to such a heart-wrenching saga.

The majority makes much of the fact that the trial court granted unsupervised visitation to respondent a few months before it began deliberating on the termination issue. The majority fails to note that the trial court indicated its willingness to provide those visits as an opportunity for the family to say goodbye in light of the strong probability that respondent's rights would be terminated. These visits were apparently ill-advised, as the children reportedly returned from them in an emotionally unbalanced state and did not recover their mental bearings for a few days afterward.

The majority also misrepresents the trial court's connection between respondent's failure to improve and the danger her parenting flaws posed to her children. Evidence abounds that respondent repeatedly placed her children in harm's way through her volatile encounters with police. She also demonstrated that her mental misperceptions left her fearfully paralyzed while she stood by and watched her own daughter being groped by an older acquaintance. She blithely admitted that she expected the furnace in her home to kill her and the children because of its disrepair. She blamed its disrepair on the FIA and took no responsibility for remedying the problem herself. Nevertheless, she wanted the children returned to the home with her. Certainly these glimpses at the greater problem, added to the massive accumulation of evidence showing respondent's complete lack of parental responsibility, suffice to show, by clear and convincing evidence, that respondent lacks the capacity to protect her children from physical and emotional harm. The trial court did not clearly err when it found accordingly, and I would affirm.

/s/ Peter D. O'Connell