

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.E.J., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LESLIE MARIE JUDKINS,

Respondent-Appellant.

UNPUBLISHED
February 19, 2008

No. 279372
Macomb Circuit Court
Family Division
LC No. 2006-000277-NA

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

MEMORANDUM.

Respondent appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), (h), (j), and (n)(i). We affirm.

Respondent does not challenge the trial court's determination that a statutory ground for termination was proven by clear and convincing evidence. Rather, she argues that the trial court erred in its consideration of the child's best interests.

Once a statutory ground for termination has been proven, "the court shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5). If termination is predicated on § 19b(3)(n), however, the court must affirmatively find that "termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child." MCL 712A.19b(3)(n). The trial court's findings regarding the child's best interests are reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous 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).

Respondent's son was the product of a sexual offense perpetrated by respondent against the child's father. Respondent was afforded an opportunity to raise her son when she initially pleaded guilty and was released on probation in December 2005. Within four months she was arrested for another sexual offense. The trial court continued respondent on probation in conjunction with a jail sentence. Respondent was released from jail in December 2006 and

began participating in services toward reunification. She attended family visits and was beginning to reestablish a bond with her son. However, she also resumed sexual relations with the child's father, contrary to the terms of her probation. Respondent was sent to prison in February 2007, and would be there for the next two to four years.

The evidence showed that respondent continued to put her own sexual desires above the needs of her son with the result that she repeatedly placed herself in a position where she was unable to care for him. Consequently, she was unable to complete any aspect of the service plan goals for reunification and would not be available for services for at least two years. In the meantime, the child had been in alternate placement for a year already and required permanency and stability. Such evidence, at a minimum, showed that termination was not clearly contrary to the child's best interests. Therefore, the trial court did not err in terminating respondent's parental rights to the child.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra