

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ELECTRA ROSS, EULILIA
LOPEZ, IDALIS REYES, and RAUL LOPEZ,
JR., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CANDY KAY LOPEZ,

Respondent-Appellant,

and

DEDRICK GREEN, OSCAR R. LOPEZ, and
RAUL LOPEZ,

Respondents.

In the Matter of EULILIA LOPEZ, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

OSCAR R. LOPEZ,

Respondent-Appellant,

and

CANDY KAY LOPEZ and DEDRICK GREEN,

Respondents.

UNPUBLISHED
November 25, 2008

No. 285049
Allegan Circuit Court
Family Division
LC No. 06-039898-NA

No. 285050
Allegan Circuit Court
Family Division
LC No. 06-039898-NA

Before: Hoekstra, P.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother Candy Lopez appeals as of right from the trial court order terminating her parental rights to her minor children Electra Ross, Eulilia Lopez, Idalis Reyes, and Raul Lopez, Jr.¹ Respondent father Oscar Lopez appeals as of right from the trial court order terminating his parental rights to Eulilia Lopez.² We affirm.

I. Basic Facts And Procedural History

In August 2006, petitioner Department of Human Services (DHS) filed a petition for temporary custody, alleging that (1) Candy Lopez physically abused Idalis Reyes by choking and punching her in the face, grabbing her by the neck and throwing her into a wall, and holding her hand in scalding hot soup; (2) Candy Lopez had a substance abuse problem; (3) Candy Lopez had an extensive criminal history; (4) Candy Lopez had failed to pay her utilities and had no propane to heat her home; (5) Candy Lopez's home was filthy and unsanitary; and (6) Candy Lopez had an extensive history of involvement with DHS.

In October 2006, Candy Lopez admitted allegations of the petition. Oscar Lopez was present at the hearing and did not object to Candy Lopez's admissions or the trial court's finding of jurisdiction. This was Oscar Lopez's only court appearance.

Candy Lopez testified that the case arose because she was charged with third-degree child abuse and aggravated assault on Idalis Reyes. She pleaded guilty to both charges and in December 2006, she was sentenced to ten months in jail. She was released after eight months with good time credit.

The termination of parental rights hearing took place in March 2008, beginning with the testimony of Nicholas Hogue, who administered drug testing for Solutions Drug Testing. The first screen he administered on Candy Lopez in August 2006 was a hair test, and the results were positive for cocaine. Hair tests show a client's substance use in the 90 days before the test. He performed a urine screen on Candy Lopez on that same day to determine if she was then using any type of substance, and the results of that test were negative. A hair screen on Candy Lopez in January 2008 was negative, although her urine screen in February 2008 was positive for cocaine. In March 2008, Hogue left a letter for Candy Lopez, but she did not contact him as the letter requested. Candy Lopez also failed to appear at substance abuse evaluations scheduled to occur at her home. On three different occasions, Hogue went with an evaluator to Candy Lopez's home for the scheduled appointments, but she was not there.

Joleen Lamew testified that she supervised four or five visits between Candy Lopez and the children beginning in August 2006 until Candy Lopez went to jail. Lamew testified that she

¹ See MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions exist), and (g) (failure to provide proper care and custody).

² See MCL 712A.19b(3)(a)(ii) (abandoned child for more than 91 days).

had concerns about Candy Lopez's ability to parent. One problem was Candy Lopez's relationship with Raul Lopez, Jr. Raul Lopez, Jr. was very violent with Candy Lopez: he beat her, punched her, slapped her, bit her, threw toys at her face, called her a bitch, told her to "kiss my feet, woman," and was very verbally and physically abusive. In response, Candy Lopez simply said, "Hey," or used threats. Candy Lopez tried to hold Raul Lopez, Jr. in her lap, but that was impossible. Raul Lopez, Jr. was wild and would try to bite and head butt her. Raul Lopez, Jr. tried to leave the room many times. Lamew grabbed him a few times and told him he had to stay in the room, but "there was no talking to him."

Lamew stated that Candy Lopez favored Electra Ross. She brought gifts for Electra Ross when she did not bring any for the other children, or she bought Electra Ross better gifts than she gave to the other children. If Raul Lopez, Jr. hit Electra Ross, Candy Lopez would be very upset, but she would not correct Electra Ross for hitting one of the other children or for acting out. If Eulilia Lopez did the same thing as Electra Ross, only Eulilia Lopez would get in trouble. Candy Lopez would scold Eulilia Lopez and verbally degrade her for doing something Raul Lopez, Jr. was doing. Electra Ross would sob and Candy Lopez would comfort her, but not Eulilia Lopez.

Lamew testified that visits were very chaotic. It was common for the children to refuse to come to visits, and Candy Lopez was often a no show/no call for visits. Lamew thought that Raul Lopez, Jr. acted as he did out of a lack of discipline and affection, and because Candy Lopez did not fulfill his needs. Lamew was looking for an emotional attachment between Candy Lopez and the children, looking to see if Candy Lopez had the ability to parent and gain control when the situation got out of control. Advising Candy Lopez was difficult because Candy Lopez did not want to listen to Lamew and because Raul Lopez, Jr. was so out of control. Lamew opined that Candy Lopez should have shared her attention rather than focus on Electra Ross and should have brought presents for all of the children. Also, there were times when the children ran in and wanted to give Candy Lopez a hug, but Candy Lopez would not respond.

Paula Kanaan, the foster care manager from Lutheran Social Services assigned to the case since February 2007, testified that she offered services to Candy Lopez, including a psychological evaluation, individual therapy, parenting classes, a drug assessment, and drug screens. Candy Lopez was also required to obtain employment and housing. Candy Lopez was not employed at the time of trial, and Kanaan did not know where she lived. When Kanaan took over the case, Candy Lopez was incarcerated. Kanaan called Candy Lopez upon her release from jail to begin services. Candy Lopez completed a psychological evaluation in September 2007. Candy Lopez then began individual therapy and saw her therapist a few times, but she did not reschedule with the therapist after the therapist came to Candy Lopez's home and Candy Lopez was not there, even after Kanaan arranged for the therapist to come to Candy Lopez's home because she lacked transportation. Candy Lopez completed a parenting class for younger children, but Candy Lopez had limited parenting skills even after attending the class.

Kanaan supervised one visit between Candy Lopez and the children. The visit, which took place at the courthouse after a hearing, was chaotic. Eulilia Lopez was sulking and said that Candy Lopez did not love or care for her. Electra Ross spent a lot of time writing and avoiding Candy Lopez. Raul Lopez, Jr. went between being overly needy and wanting physical affection to hiding from Candy Lopez. Eulilia Lopez and Raul Lopez, Jr. were aggressive toward one another. Over the course of the case, Candy Lopez did not attend many visits and called to

cancel others. Candy Lopez was supposed to bring a snack or dinner for the children because the visits took place at dinnertime, but she almost always failed to bring food. Candy Lopez claimed that she could not afford to bring a meal. Sometimes, Candy Lopez promised the children specific meals, like lasagna, but then never brought it.

Candy Lopez never completed a substance abuse evaluation. Candy Lopez told Kanaan that she had been prescribed medication for mental health issues and that she was taking the medication. She was taking an anti-depressant and an anti-anxiety drug. At first, Candy Lopez did not want to take medication. She was using marijuana and felt that it was working for her and she did not want to use medication. Kanaan had several discussions with Candy Lopez about the medication, and it took Candy Lopez months to fill the prescriptions.

Kanaan testified that Oscar Lopez was Eulilia Lopez's father. Raul Lopez, Jr. and Eulilia Lopez reported that Oscar Lopez lived in their home periodically. Raul Lopez, Jr. said that Oscar Lopez babysat him frequently. However, Oscar Lopez never contacted Kanaan or engaged in any services.

Carolyn Delach, a case aide for Lutheran Family Services, testified that she also supervised visits between Candy Lopez and the children. The visits started at the DHS office, but then Candy Lopez made arrangements for the visits to be held at a library. Candy Lopez arranged a room at the library with a closed door, and Delach sat in the room with them. The visits were weekly for one hour, and Candy Lopez was fairly consistent with attendance. At visits, Raul Lopez, Jr. was generally out of control; he was very hyperactive and was uncontrollable most of the time. Raul Lopez, Jr. hung on to Candy Lopez and did not want to let her go. When Candy Lopez tried to talk to Eulilia Lopez or Electra Ross, Raul Lopez, Jr. would cause a disturbance so that the girls did not get their individual time with Candy Lopez. Candy Lopez knew she was supposed to bring a snack to visits, but most of the time she did not.

Candy Lopez testified that before she went to jail, she did not do parenting classes or drug screens because she did not have anywhere to live and she stayed on the road with her boyfriend, who was a truck driver. When she learned that her boyfriend did not want her to have her children, she removed herself from that situation. In jail, she did AA classes, went to school, and read some pamphlets on parenting. She received a parent-agency treatment plan and testified that her problems were parenting skills and substance abuse. After her release from jail, she took two parenting classes and did the psychological evaluation. It took Candy Lopez some time to get on medication because she had to find a doctor to prescribe the medication, but, at the time of trial, she had been taking the medication for two and one-half or three months. The medication helped her: she did not panic as much when she saw the children, and she felt that she had more control of her life than ever before.

Candy Lopez confirmed that she had not participated in the substance abuse program that Kanaan suggested. Candy Lopez thought that she could do it on her own without counseling and medication, but she realized then that she did need help and that she could not give up on her children. She explained that she used drugs so that she did not feel the pain of her girls crying to come home when she could not bring them home. After she was released from jail, Candy Lopez went to the Holland Rescue Mission and applied for their program for women with children. She took some parenting classes there, but she had to leave the program after less than

two weeks because she was arrested for nonpayment of child support. She was then in jail ten days.

Candy Lopez had been searching for employment but was told by employers where she applied that there were no openings. Candy Lopez “had a feeling” that it was her felony conviction that was preventing her from getting a job, but she would keep trying so she could get a place of her own and the children could come home. Candy Lopez received food stamps, and her sisters and father helped her out. She had a vehicle, but her license was suspended after she was caught with marijuana years before. Candy Lopez testified that she had no job, no license, lived with her grandmother, and was admittedly not ready to have her children back.

Candy Lopez testified that Oscar Lopez occasionally paid child support, but he never brought Eulilia Lopez clothes or Christmas presents. Candy Lopez also testified that Oscar Lopez did not visit regularly.

The trial court found that DHS had established MCL 712A.19b(3)(c)(i), (c)(ii), and (g) with regard to Candy Lopez, and (a)(ii) with regard to Oscar Lopez, and that termination of both parents’ rights was not contrary to the children’s best interests.

II. Statutory Grounds For Termination

A. Standard Of Review

To terminate parental rights, the trial court must find that DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.³ We review for clear error a trial court’s decision terminating parental rights.⁴ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁵ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁶

B. Analysis

1. Candy Lopez

Candy Lopez pleaded to allegations in the petition that she had a substance abuse problem, that her home was filthy and unsanitary, and that she had no propane to heat her home. At the time of the termination trial, Candy Lopez admitted using cocaine just a month before the trial and that she needed help to resolve her substance abuse issues. She had no home for the children. She also had limited parenting skills; even after attending parenting classes, the visits

³ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

⁴ MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

⁵ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁶ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

with the children were chaotic, and she failed to discipline Raul Lopez, Jr. Therefore, the evidence established that the conditions leading to adjudication continued to exist and that Candy Lopez had failed to provide proper care and custody for the children.

Candy Lopez argues that she would be able to rectify these conditions and provide proper care and custody for the children within a reasonable time. However, Candy Lopez had months to take action and did little before she went to prison or after she was released. Candy Lopez attended some parenting classes but did not appear to benefit from them, discontinued counseling even though the counselor came to her home, did not complete a substance abuse evaluation, and used cocaine one month before the termination hearing. A parent's failure to comply with the parent/agency agreement is evidence of a parent's failure to provide proper care and custody for the child and can be a valid indication of neglect.⁷ The trial court did not find Candy Lopez's testimony that she would be able to complete an inpatient drug treatment program and find employment and housing for the children within 90 days to be credible. This finding was not clearly erroneous as Candy Lopez had done so little in the months before the termination trial. Accordingly, we conclude that the trial court did not clearly err in finding that sections (c)(i) and (g) were established by clear and convincing evidence.

The trial court cites Candy Lopez's plea and conviction for child abuse of Idalis as the other condition that existed that would have caused the children to come within the trial court's jurisdiction.⁸ There is no doubt that the child abuse would have brought the children into the trial court's jurisdiction. This condition was listed on the petition for temporary custody of the children, although Candy Lopez did not admit this allegation of the petition and had not been convicted of the charges. In September 2006, however, an emergency motion to suspend Candy Lopez's visitation was filed, citing Candy Lopez's plea to child abuse charges as the reason for the request. Thus, Candy Lopez received notice of this new condition. At a hearing held in February 2007, Candy Lopez was ordered to complete a psychological evaluation, parenting classes, anger management, and individual counseling. Thus, recommendations were made to rectify this condition. Candy Lopez completed the psychological evaluation and two parenting classes, but she did not appear to benefit from the parenting classes. She did not complete anger management classes or individual counseling. She had the opportunity, in the months following her release from jail for child abuse, to complete these recommendations but did not. Accordingly, we conclude that the trial court did not clearly err in finding that section (c)(ii) was established by clear and convincing evidence.

2. Oscar Lopez

Oscar Lopez attended the adjudication hearing during which Candy Lopez pleaded to allegations in the petition. He did not object to her admissions or to the trial court's assumption of jurisdiction over his daughter. He rejected the trial court's offer of appointed counsel and said that he would represent himself. Although notices of other hearings were mailed to him, he did not attend any other hearings, contact the foster care worker to seek custody of his daughter, or

⁷ *JK, supra* at 214; *Trejo, supra* at 360-363, 361, n 16.

⁸ MCL 712A.19b(3)(c)(ii).

seek any information regarding his daughter. His child was placed with Oscar Lopez's mother, and there was testimony that he might have seen her there or even lived there with her at times. At all times, Oscar Lopez could have easily obtained the contact information for the foster care worker. Oscar Lopez knew that he could seek custody of his daughter but did not do so in the entire time the case was pending. Accordingly, we conclude that the trial court did not clearly err in finding that MCL 712A.19b(3)(a)(ii) was established by clear and convincing evidence.

III. Best Interests Determination

A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the trial court finds from evidence on the whole record that termination is clearly not in the child's best interests.⁹ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹⁰ We review the trial court's decision regarding the child's best interests for clear error.¹¹

B. Analysis

1. Candy Lopez

Considering the lack of bond between Candy Lopez and her children, her recent use of cocaine, her failure to attend substance abuse treatment, the unaddressed physical abuse of one child, and her lack of housing and employment, the trial court did not clearly err in finding that the children's best interests did not preclude termination of her parental rights.

2. Oscar Lopez

Considering Oscar Lopez's failure to contact the foster care worker and failure to attend any hearings except the adjudication hearing, the court also did not clearly err in its determination that termination of his parental rights was not contrary to his child's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Michael J. Talbot

⁹ MCL 712A.19b(5); *Trejo, supra* at 350. We note that MCL 712A.19b(5) was recently amended such that the trial court must now find that termination of parental rights is in the child's best interests. 2008 PA 199, effective July 11, 2008. However, here we use the prior standard under which the trial court made its original disposition.

¹⁰ *Trejo, supra* at 354.

¹¹ *Id.* at 356-357.