

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of OWENELLO NELSON
SEXTON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHRISTINA LEE SEXTON,

Respondent-Appellant.

UNPUBLISHED
September 1, 2009

No. 290000
Oakland Circuit Court
Family Division
LC No. 06-723503-NA

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondent Christina Sexton appeals as of right from the December 2008 circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (3)(g) (failure to provide proper care and custody), and (3)(j) (reasonable likelihood of harm if child is returned to parent). We affirm.

I. Basic Facts And Procedural History

In July 2006, the trial court authorized the initial petition, which alleged that Lake Orion Police Officer Christopher Mires discovered Sexton in a highly intoxicated state at her home. According to the petition, Sexton was alone with her child and was so intoxicated that she could not care for the child or provide any information about another person who could care for the child, and she had to be transported to the hospital. Officer Mires observed cigarettes burning throughout the house and discovered a purse that had been reported stolen by a neighbor. Another neighbor reported overhearing Sexton discussing a cocaine delivery to her home. The petition alleged that Sexton had a criminal history and police contacts, indicating a substance abuse history.

In August 2006, Sexton pleaded no contest to the allegations in the petition, and the trial court took jurisdiction over the child. The trial court ordered Sexton to undergo a “PACE” assessment and comply with recommendations.

At disposition in September 2006, DHS worker Kimberly DeHaven reported that Sexton had completed her PACE assessment, and it was recommended that Sexton participate in PRISM, a thrice-weekly intensive outpatient program.

At a December 2006 review hearing, DeHaven informed the trial court that the grandmother, with whom the child was placed, reported that Sexton was under the influence at her son's recent first birthday party and possibly stole liquor from the home. Sexton completed the intake process at PRISM but only attended sporadically and was dropped from the program in November 2006, after a positive screen for cocaine. Later in December 2006, Sexton was admitted into rehabilitation at Turning Point, but left six days prematurely.

At a March 2007 permanency planning hearing, the trial court was informed that Sexton continued to use cocaine and alcohol, but was participating in outpatient substance abuse treatment at Recovery Consultants and was receiving psychiatric services at TTI. DeHaven desired to file a termination petition, but the trial court declined to authorize that, and set the matter for another permanency planning hearing in April to afford Sexton an opportunity to comply with her parent-agency agreement.

At an April 2007 permanency planning hearing, DeHaven reported that Sexton had participated in services with Recovery Consultants and TTI, but tested positive for adulterants in March 2007, and missed drug screens. Further, Sexton admitted to relapsing over the past weekend.

Another permanency planning hearing took place in July 2007. Sexton admitted to relapsing on in May by taking cocaine. Also, Sexton was arrested for driving under the influence in May 2007, and was incarcerated; she was therefore unable to participate in services for a time.

In September 2007, DeHaven reported that Sexton had been complying with the treatment plan. Sexton's drug screens were negative, she obtained employment and housing, and she participated in services. Overnight visits began in December 2007, and, in January 2008, the child was returned to Sexton's care.

From February 2008 through April 2008, Sexton continued to refrain from substance abuse, participated in mental health and substance services, and complied with the treatment plan.

At an April 2008 review hearing, DeHaven reported that Sexton was laid off, but was planning on reapplying to Michigan Works and returning to school in the fall under a program that would help her obtain a college degree. DeHaven requested a 60-day review so that Sexton could continue with in-home services and get back into the Michigan Works program. DeHaven intended to ask the trial court to terminate its jurisdiction at that hearing. The trial court set the matter for review in June 2008.

However, in May 2008, Sexton became intoxicated, entered a neighbor's home, and threatened others with a knife. Sexton was placed in jail and charged with home invasion and felonious assault. At some point before this, Sexton had left her child with a babysitter and then went to use drugs with other drug users. Sexton missed a drug screen on May 1. On May 13, 2008, the trial court removed the child from Sexton's care and suspended Sexton's visits until

she provided proof of two negative drug screens within a ten-day period. Several days later, Sexton failed to appear in court and was jailed on the felonious assault charge.

At the June 2008 permanency planning hearing, Dehaven indicated her intention to file a termination petition. Sexton was still in jail at that time on the felonious assault and disorderly conduct charges; her child was residing with his maternal grandmother again and doing well.

In August 2008, the DHS filed a termination petition seeking to terminate Sexton's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), based on her inability to remain substance free and her involvement in criminal activity. At an August 13, 2008, pretrial hearing, the court authorized two visits for Sexton.

Sexton pleaded no contest to paragraph C of the amended petition, which alleged:

According to foster care specialist Kimberly DeHaven Mother has been unable to remain substance free which has affected her ability to maintain housing or employment, adequately address her mental health issues, and refrain from criminal behavior. Mother has relapsed several times and all services have been exhausted. Mother continues to abuse substances and continues to engage in criminal activity, including a 2007 Operating While Intoxicated resulted in a prolonged incarceration as well as 2008 felonious assault charges, also resulting in incarceration. There are no other services available to aid Mother in reunification efforts with her child.

Sexton was released from jail and moved in to an inpatient rehabilitation program at CPI in lieu of a jail sentence. The trial court entered an order indicating that grounds for termination were established under MCL 712A.19b(3)(c)(i), (g), and (j) by clear and convincing evidence, and set the matter for a best interests hearing.

At the December 2008 best interests hearing, testimony was presented that Sexton completed a three-month inpatient program at CPI on October 20, and was now involved with drug screens, AA meetings, outpatient substance abuse and mental health treatment, and vocational training. Sexton's therapists felt that her therapy could be completed within six months. Sexton had not failed any drug or alcohol screens since being released from the program.

DHS worker Yashica Holloman, who had taken over the case from DeHaven, recommended terminating Sexton's parental rights because Sexton had not fully resolved her substance abuse and emotional stability issues. Holloman was concerned about Sexton's ability to provide and care for her child on a long-term basis. Holloman did not believe that Sexton had benefited from various services in the past. Holloman pointed out that Sexton had not established her own independence, as she was living with her fiancé, and did not have independent housing or income. Holloman felt that it was in the child's best interests to terminate Sexton's parental rights. Holloman observed Sexton's last two visits with her child, which took place on August 19 and August 27. Although Sexton was appropriate with her child and it was obvious that she loved her child, Holloman felt that the child did not display a bond with Sexton during those visits. Holloman felt that the child was not bonded to Sexton due to his limited contact with her.

Sexton testified that she was currently unemployed, but planned to obtain vocational services, and to apply to beauty college. The beauty school program was approximately one year. After that she planned to become certified and obtain employment. Sexton felt that she was committed to remaining substance free. Sexton admitted that she was not ready to care for her child now, and felt she needed two more years to be ready to care for her child. Sexton felt she needed that amount of time to become established in her career and mentally stable enough to care for her child. Sexton desired to visit her child and be in his life during this time frame, but not be his primary caregiver, and felt that such a plan was in her child's best interests. Sexton testified that she loved her child and, while he was hesitant on his August 19 visit, he ran up to her at a visit on August 27.

Following the proofs, the trial court concluded that the child's best interests would be served by terminating Sexton's parental rights.

II. Statutory Grounds For Termination

A. Standard Of Review

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.¹ We review for clear error a trial court's decision terminating parental rights.² 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.³ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁴

B. Analysis

Despite receiving services for more than two years, Sexton was unable to overcome her substance abuse problem, which in turn affected her ability to obtain stable housing and employment. 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.⁵ She also failed to adequately address her mental health issues or refrain from criminal behavior. Even Sexton conceded that it would take her at least two years to get her life in order before she would be in a position to care for the child. We conclude that the trial court did not clearly err in finding that statutory grounds for termination of Sexton's parental rights were established by clear and convincing evidence.⁶

¹ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

² MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

³ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁴ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁵ *JK*, *supra* at 214; *Trejo*, *supra* at 360-363, 361, n 16.

⁶ *JK*, *supra* at 209-210; *Trejo*, *supra* at 356-357.

III. Best Interests Determination

A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.⁷ 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.⁸ We review the trial court's decision regarding the child's best interests for clear error.⁹

B. Analysis

Sexton contends that the trial court erred in its best interests analysis because Sexton was addressing her substance abuse and mental health issues, and because she was bonded to the child, who, given his young age, will "adjust when his mother is completely ready to parent[.]" We disagree. Considering the length of time that the child had been a court ward, that Sexton would not be in a position to care for the child anytime soon, and the lack of any significant bond between Sexton and the child, the trial court did not clearly err in finding that termination of Sexton's parental rights was in the child's best interests.¹⁰ The minor child deserves permanency and stability in his life.

In sum, we conclude that the trial court did not err in terminating Sexton's parental rights to the child. Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra

⁷ 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, rather than finding that termination is *not* in the child's best interests.

⁸ *Trejo, supra* at 354.

⁹ *Id.* at 356-357.

¹⁰ MCL 712A.19b(5); *In re Trejo, supra* at 356-357.