

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.W.D. and A.A.D., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KIMBERLY DAVIDSON,

Respondent-Appellant,

and

ALLAN FORD DAVIDSON,

Respondent.

In the Matter of J.W.D. and A.A.D., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ALLAN FORD DAVIDSON,

Respondent-Appellant,

and

KIMBERLY DAVIDSON,

Respondent.

UNPUBLISHED
December 17, 2009

No. 291955
Saginaw Circuit Court
Family Division
LC No. 08-031698-NA

No. 291983
Saginaw Circuit Court
Family Division
LC No. 08-031698-NA

Before: Beckering, P.J., and Cavanagh and M. J. Kelly, JJ.

PER CURIAM.

In Docket No. 291955, respondent Kimberly Davidson (“respondent mother”) appeals as of right from an order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (g), and (j). In Docket No. 291983, respondent Allan Ford Davidson (“respondent father”) appeals as of right from the same order, which terminated his parental rights to the same children under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii). We affirm.

Both respondents argue that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court’s findings of fact are reviewed for clear error and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is given to the trial court’s special opportunity to judge the credibility of witnesses. *In re Miller, supra* at 337.

Once a statutory ground for termination has been proven, a court is required to terminate parental rights if it finds “that termination of parental rights is in the child’s best interests[.]” MCL 712A.19b(5). The trial court’s best interests decision is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

Both respondents argue that the trial court erred in finding that the statutory grounds for termination were established because petitioner violated its duty to make reasonable efforts to reunify the family by failing to provide services to respondent mother. Respondents do not challenge petitioner’s failure to offer services to respondent-father.

MCL 712A.19a(2)(a) provides that reasonable efforts toward reunification are not required when “[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances” as provided in MCL 722.638(1). Under MCL 722.638(1)(a)(iii), aggravated circumstances exist when “[t]he department determines that a parent . . . has abused the child or a sibling of the child and the abuse included . . . [c]riminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.” In this case, petitioner sought to terminate respondents’ parental rights because of respondent-father’s extensive, ongoing sexual abuse of two of his children,¹ which included sexual penetration, and respondent-mother’s refusal to protect the children from the abuse despite her knowledge that it was occurring. The trial court found that these allegations were established by clear and convincing

¹ This appeal involves only two of respondents’ three children. The third child attained the age of 18 before the initial adjudication and, therefore, was not subject to the trial court’s termination order.

evidence. Under the circumstances, petitioner was not required to provide respondent-mother with services and offer her a treatment plan before proceeding to termination.

Respondent-mother does not challenge the existence of a statutory ground for termination apart from arguing that petitioner was obligated to provide her with services to reunify the family. Respondent-father challenges the existence of a statutory ground for termination, but does not argue that the testimony describing his extensive and ongoing sexual abuse of his children, if believed, was insufficient to justify termination under §§ 19b(3)(b)(i), (g), (j), and (k)(ii). Rather, he only challenges the credibility of the evidence describing his abuse. However, the trial court considered and rejected each of respondent-father's credibility challenges. The trial court's credibility determinations are entitled to substantial deference and, after reviewing the record in this case, we find no reason to disturb them. The trial court did not clearly err in finding that there was clear and convincing evidence that respondent-father sexually abused two of his children on a regular and ongoing basis, and forced the children to participate in sexual activity with each other, and that respondent-mother was aware of the abuse and did nothing to protect the children. The evidence amply supports the trial court's reliance on each of the statutory grounds for termination cited with respect to both respondents.

We note that respondent-mother asserts on appeal that respondent-father's conduct was heinous, and she now appears to concede that the abuse occurred. In the trial court, however, respondent-mother consistently refused to acknowledge even the possibility that the allegations of sexual abuse might be true, and downplayed the allegations of physical abuse. The trial court found that her testimony and explanations for respondent-father's behavior were "unbelievable" and "incomprehensible," and that she had done "anything and everything she can to stick with [respondent-father] at the detriment of her children." The record discloses that respondent-mother's testimony was frequently inconsistent with other objective evidence that was presented, and that she repeatedly changed her testimony when presented with contradictions. The trial court did not clearly err in finding that her testimony was not credible, and that she could not be trusted to protect the children in the future because she had not done so in the past and because she continued to remain loyal to respondent-father despite his extensive abuse.

Finally, considering the extensive abuse to which the children were subjected and exposed to while in respondents' care, the trial court did not clearly err in finding that termination of their parental rights was in the children's best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly