

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANIYAH MARSHALL, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TANITA CROCKETT,

Respondent-Appellant.

UNPUBLISHED

April 22, 2010

No. 294470

Berrien Circuit Court

Family Division

LC No. 2006-000129-NA

Before: OWENS, P.J., AND SAWYER AND O'CONNELL, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to her youngest child pursuant to MCL 712A.19b(3)(g). We affirm.

Respondent first argues that the trial court erred in finding that a lack of bonding between her and the child provided clear and convincing evidence to terminate her parental rights under § 19b(3)(g). We disagree.

Petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. MCR 3.977(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, we are 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).

Parental rights may be terminated under § 19b(3)(g) where there is clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child."

This is truly a sad case. The mother appears to love her six young children and wants to take proper care of them, but despite significant efforts by social service agencies over several years, she continues to have difficulty providing minimally adequate care. The cause is primarily, but not exclusively, the mother's severe cognitive limitations. The psychological

evaluations of the mother showed her to have an I.Q. of 58, which is less than 99% of the population. The evaluations found her to score very low on parenting tests, to be oppositional, concrete and literal in her thinking, and extremely guarded and resistant. It is no wonder, then, that she would have great difficulty in benefiting from the multiple services offered to her. The court found that while she would not intentionally harm her children, especially Aniyah, the youngest, her cognitive limitations, chronically limited insight and lack of understanding of the gravity of certain situations caused her to have difficulty adequately meeting her children's needs, especially Aniyah's emotional needs.

The record shows that she had been involved with protective services since June 2006 due to issues of domestic violence and neglect. On November 28, 2006 the children were removed because respondent had left them home alone for a significant period of time, there were no diapers in the house and the children were behind on their medical care. The children suffered from severe adjustment disorders. After three sets of parenting classes, two psychological evaluations and individual and family counseling, unsupervised parenting time began on Halloween in 2008. After four visits, due to reports of neglect, unsupervised visits were terminated.

In January 2009, in order to assess respondent's capabilities, the trial court ordered the five older children returned to the mother's care. Aniyah was not returned, but continued to have visits with her mother. However, she screamed, threw temper tantrums, and begged not to have to visit her mother. She reportedly became so upset at the prospect of visiting her mother that she would vomit. On August 6, 2009 the five older children were again removed from respondent's care. At the time of the termination of respondent's parental rights on September 22, 2009, Aniyah, who had been placed in foster care at the age of fourteen months, was four years of age, meaning that she had been in foster care for almost three of her four years. While respondent generally complied with the case service plan and wanted to be an adequate mother, her cognitive and emotional limitations made it extremely difficult for her to do so.

The evidence at the termination hearing showed that respondent and Aniyah were unable to re-establish a parent-child bond. Robin Zollar, a clinical social worker and an expert on bonding issues, acknowledged that there may have been various contributing factors to this situation, including the number of initial foster placements, periods of suspended visitation, the number of siblings competing for respondent's attention, and respondent's cognitive deficits. However, numerous attempts to restore a bond through visitations and other therapeutic efforts had been made and were unsuccessful. Zollar determined that the child was capable of forming a normal parent-child bond, but not with respondent. Zollar concluded that, given the many visits and therapeutic attempts to restore a bond, and given the strong rejection of respondent shown by the child, there was no possibility of restoring a bond. She knew of nothing else that could be done to establish a bond, aside from what had already been done.

Contrary to what respondent argues, the inability to establish a parent-child bond implicates respondent's ability to provide proper care and custody for purposes of § 19b(3)(g). Zollar testified that forming a bond with the primary caregiver is as necessary as food, shelter, and other necessities. She explained that failure to form a bond interferes with a child's ability to form bonds and relationships later in life, and with normal social interaction. Further, lack of bonding has been correlated with antisocial and criminal behavior, substance abuse, and

sociopathic personality traits. Zollar opined that the current situation was causing great emotional stress for the child and hampering her emotional development. Further, because § 19b(3)(g) applies “without regard to intent,” it is immaterial that respondent may not be personally culpable in the child’s inability to bond with her. Also, the trial court did not engage in an improper comparison between respondent and the foster mother by observing that the child had bonded with the foster mother. Rather, the child’s bond with the foster mother was only relevant to showing that the child was capable of forming a bond with someone else.

For these reasons, we conclude that the trial court did not clearly err in finding that grounds for termination under § 19b(3)(g) were established by clear and convincing evidence.¹

Respondent also argues that termination of her parental rights was not in the child’s best interests. Once a statutory ground for termination has been proven, the trial court must still determine “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). In light of the evidence that the child was not bonded to respondent and was resistant to efforts to re-establish a bond, that the child would become stressed and physically ill before visits, and Zollar’s testimony that continuing the current situation was hampering the child’s emotional development, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the child’s best interests. In addition, the child had spent most of her life in foster care and needed permanence.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O’Connell

¹ This case is distinguishable from the unpublished decision on which respondent relies, *In re McEwen*, unpublished opinion per curiam of the Court of Appeals, issued March 26, 2009 (Docket No. 286426). In *In re McEwen*, this Court found that the trial court improperly engaged in a best interests analysis without truly analyzing the statutory grounds for termination alleged in the petition. The issue of bonding is virtually the only similarity between these two otherwise factually different cases.