

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 14, 2010

In the Matter of SEYMOUR/WILCOX, Minors.

No. 296301
Delta Circuit Court
Family Division
LC Nos. 09-000462-NA
09-000463-NA
09-000464-NA

Before: BORRELLO, P.J., and JANSEN and BANDSTRA, JJ.

PER CURIAM.

Respondent mother appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). For the reasons set forth in this opinion, we affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interest of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000).

Termination of parental rights was proper under MCL 712A.19b(3)(c)(i) and (g) because the conditions that led to the adjudication continued to exist, and because respondent was unable to provide proper care and custody of the children. Notwithstanding respondent's own admission that she could not properly care for her children, independent evidence supported termination of her parental rights pursuant to the statutory grounds. Respondent admitted to having a history of abusing substances for over two years, and there was no evidence that her drug use would be rectified within a reasonable time. Although respondent completed drug treatment, she did not regularly follow up with aftercare. Respondent only temporarily stopped using drugs for a couple of weeks at a time. She smoked marijuana as recently as November 2009 and tested positive for drugs. Respondent admitted to smoking marijuana and using amphetamines around the same time she reunited with her boyfriend, a known drug user, who was arrested on a probation violation for drug use only one month after his release from jail. Despite the negative influence this man had on respondent, she wavered regarding her relationship with him and whether he was going to be part of her life. She also continued to associate with other criminals and substance abusers. During a recent visit with the children,

when respondent returned from the bathroom acting strangely, syringes were found in the bathroom where she had just been.

Respondent's health issues also rendered her unable to care for her children. She was diagnosed with bipolar disorder and Hepatitis C. Her illness often caused her to be sick in bed and affected her ability to financially support the children. She was found to be disabled and unable to work because of her health issues. She was last employed in 2006 and was receiving state cash assistance and food stamps. Respondent would not be able to support her children unless she was working.

Respondent never demonstrated an ability to maintain appropriate and suitable housing. During the course of the case, she had been homeless for an entire month. At the time of the permanent custody hearing, respondent was living in a house with a roommate that was inappropriate for her children. Respondent also failed to attend a parenting program in order to improve her parenting skills. She missed numerous visits with her children, which suggested that they were not her priority. In 20 weeks she should have visited with her children 40 times, but she visited less than 20 times. Thus, termination of respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g) was proper.

The trial court also did not err in its best interest determination. Respondent argues that the trial court made no separate analysis of the children's best interests. Although the trial court did not give an extensive analysis of the children's best interests, their best interests were addressed. We recognize that termination of parental rights may occur only if the court finds a statutory ground for termination and finds that the termination of parental rights is in the child's best interests. *In re Hansen*, 285 Mich App 158, 164 (2009). In this case, respondent admitted the statutory bases for termination. Our review of the record reveals that the trial court questioned respondent at length regarding her substance abuse problems, her health problems, which included Hepatitis C and bipolar disorder, unemployment, lack of housing for the children, and missing visits with her kids. The trial court also specifically asked respondent if it would be in her children's best interests to terminate her rights, and she responded affirmatively. In addition, a foster care worker testified that termination was in the children's best interests. After the trial court determined that the statutory grounds for termination were met by clear and convincing evidence, it proceeded to the best interest phase and asked counsel if they wanted to supplement the best interest phase of the hearing by calling witnesses or offering exhibits. At that point, counsel for respondent offered to stipulate "what has been my client's view pretty much all along, that the best interest of her children are best served by termination of her parental rights" Counsel for petitioner similarly stipulated and noted that the foster care worker had testified that termination was in the children's best interests, and counsel for respondent then noted that he and respondent were present for the foster care worker's best interests testimony. The trial court made a best interest finding after respondent stipulated that the children's best interests were best served by termination of her parental rights. Thus, the issue of their best interests was uncontested at the termination hearing. A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court. *Living Alternatives for the Developmentally Disabled v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 426 (1994); *People v Buck*, 197 Mich App 404, 423; 496 NW2d 321 (1992). The trial court then found that termination "would be in the best interest of the children." Although it did not articulate specific factors, it was clear from the

foster care worker's testimony and respondent's answers to the trial court's questions that termination was in the children's best interests. In reviewing the record, we conclude that the trial court's determination that termination was in the best interests of the children was proper and sufficient.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Richard A. Bandstra