

STATE OF MICHIGAN  
COURT OF APPEALS

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October 5, 2010

In the Matter of SHUMATE Minors.

No. 297120

Hillsdale Circuit Court

Family Division

LC No. 08-000314-NA

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Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

In these consolidated cases, respondents B. and G. Shumate appeal by right the trial court's order terminating their parental rights to their children pursuant to MCL 712A.19b(3)(c), (g), and (j) with respect to both parents, and also pursuant to MCL 712a.19b(3)(k), (m), and (n) as to G. Shumate. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

G. Shumate is the father of B. Shumate. The children in this case are the product of their relationship. Petitioner filed a petition to take custody of the children on May 19, 2008. Among the allegations listed for the request for the children's removal from the home included the fact that G. Shumate had been arrested for criminal sexual conduct in connection with the parties' sexual relationship, that the two continued to reside together after G. Shumate's release from jail, G. Shumate's re-arrest for domestic assault against B. Shumate shortly after his release from jail, the fact that the parties' home was "filthy and uninhabitable," B. Shumate's misuse of prescription medication, Both respondents' lack of attendance to the children's special needs and both respondents' refusal to participate in services.

Respondents challenge the trial court's determination that termination of their parental rights was in the children's best interests. Once a statutory ground for termination of parental rights has been proven, the trial court shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5). This Court reviews the trial court's best interests finding for clear error. *In re Trejo*, 462 Mich 341, 356-

357; 612 NW2d 407 (2000). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *Id.*; MCR 2.613(C).

Among the other requirements of his treatment plan, G. Shumate was to participate in, and benefit from, sex-offender counseling. However, testimony from petitioner's caseworker and another witness established that he did not do so. Both witnesses opined that his parental rights should be terminated for this reason. The trial court's action consistent with these opinions is not clearly erroneous.

We further conclude that the evidence also supported the trial court's action in regard to B. Shumate. The trial court found that B. Shumate would not be able to protect the children from her father because she could not protect herself from him. B. Shumate continued to believe that she could not survive by herself, and allowed herself to remain dependent on him. Specifically, B. Shumate's counselor testified that while she had made some progress in individual therapy in that she started to acknowledge the issues relating to her relationship with her father, she failed to take action to address her situation. According to the caseworker, B. Shumate was referred for housing assistance and offered opportunities for assistance. While she discussed steps toward removing herself from her living situation with her father, she did not make any progress toward establishing a separate home.

B. Shumate acknowledged the possible danger that her father posed to her daughter. However, B. Shumate did have a safety plan to keep the children from possible abuse. Similarly, B. Shumate failed to take advantage of any opportunity to establish independence. The caseworker offered to take her to obtain a driver's license, but she cancelled the appointment and never followed up to reschedule.

This issue is complicated by the fact that B. Shumate is a victim. However, given G. Shumate's lack of any progress in addressing his sexual offender issues, and B. Shumate's inability or unwillingness to remove herself from her dependency on him, the trial court did not err in finding that the children would likely be in danger if they were returned to her. Moreover, the testimony concerning respondents' lack of participation in other services, and their apparent lack of concern over the children's physical health issues supports a finding that the children would not be taken care of properly if returned to B. Shumate's care.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly