STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
November 16, 2010

In the Matter of BEMBRY/JACKSON, Minors.

No. 296360
Wayne Circuit Court
Family Division
LC No. 09-484563-NA

In the Matter of BEMBRY/JACKSON, Minors.

No. 296361
Wayne Circuit Court
Family Division
LC No. 09-484563-NA

Before: MURPHY, C.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Respondent mother appeals as of right, in Docket No. 296360, from the trial court's order terminating her parental rights to ten minor children under MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (g), (j), and (k)(*iii*). In Docket No. 296361, respondent father appeals as of right from the same order terminating his parental rights to the six youngest children under the same subsections. We affirm.

Termination of parental rights requires a finding that at least one of the statutory grounds in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350, 356-357; 612 NW2d 407 (2000). Once a statutory ground is established, the trial court must order termination if it finds that termination is in the child's best interests. MCL 712A.19b(5). The trial court's findings are reviewed for clear error. MCR 3.977(K); *Trejo*, 462 Mich at 356-357. A finding is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake was committed, giving due regard to the trial court's opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The evidence showed that respondents kept the three oldest children locked in a small basement room and beat these children with sticks, boards, and extension cords, causing scars and marks. The older three children slept on the concrete floor of the basement, without pillows, blankets, or sheets. They were not allowed to eat with the rest of the family and were fed only or mostly beans. Since the family moved about four years previously, the older three children were not permitted to go to school, and they did not play outside or with the other children. When

they would break out of their confinement and respondents discovered this, the children would be beaten. Respondent mother said she homeschooled the older three children, but the evidence did not support her claim. Moreover, one night in January 2009, the three older children broke out of their basement room and walked over a mile in a snowstorm to a Kmart, where they began eating a pie. The police were called, and the boys were given more food and warm clothes.

Respondent mother argues that termination of her parental rights was premature because petitioner did not offer a case service plan containing a schedule of services to facilitate reunification. However, services are not required where the agency's goal is termination. See *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Termination may occur at the initial dispositional hearing if proper grounds are established, see MCL 712A.19b(4) and MCR 3.977(E), and petitioner is required to request termination at the initial dispositional hearing in cases – such as the instant case – that involve severe abuse, MCL 722.638(2).

Both respondents contend that the record lacked clear and convincing evidence to terminate their parental rights. However, the trial court heard the older children's testimony and that of a pediatrician and child abuse specialist who examined them and found evidence of child abuse. The trial court found the older children's testimony credible and was in the best position to determine witness credibility. *Miller*, 433 Mich at 337. The abuse of the older children was probative of probable neglect and abuse of the other children should they be returned to respondents' home or homes. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). The trial court did not clearly err in finding clear and convincing evidence to terminate respondents' parental rights.

Respondent father assigns as error the admission of so-called "tender years" testimony without a hearing under MCR 3.972(C)(2). The evidence consisted of one answer from the caseworker regarding statements by the younger children. It is not clear that the answer fell within the tender-years rule cited by respondent father because it evidently did not involve abuse "performed with or on the [children]" whose statements were alluded to and instead pertained to siblings of those children. See MCR 3.972(C)(2). At any rate, the court limited the evidence to the best-interests phase, and any error resulting from the brief testimony was harmless in light of the overwhelming evidence supporting termination. MCR 2.613(A).

Respondent father also objects to evidence comparing the children's conditions in their residential placements to the conditions in respondents' home. At the termination hearing, objections were made regarding this evidence and the court limited the evidence to the best-interests phase. Respondent father's attorney was satisfied with the court's ruling, and we find no error requiring reversal. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009); *In re Archer*, 277 Mich App 71, 79 n 3; 744 NW2d 1 (2008). Again, any error was harmless in light of the overwhelming evidence supporting termination. MCR 2.613(A).

Finally, respondents argue that the court clearly erred in finding that termination was in the children's best interests. Having reviewed the record and the ample evidence of severe abuse and neglect, we disagree and find no clear error in the trial court's best-interests finding.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro