STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
November 18, 2010

In the Matter of WHITLEY Minors.

No. 297498
Wayne Circuit Court
Family Division
LC No. 04-432862

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Respondent's children were removed from her care in 2004 after the court found that she had abandoned them and previously left them on their own or with others for days at a time without provision for their care. After being temporary wards placed with their maternal grandmother for over two years, the children were legally returned to respondent's custody in 2006 (respondent was also residing with her mother, the children's grandmother, at the time). In October 2006, the court dismissed its jurisdiction despite concern expressed in the court report about respondent's ability to parent the children without assistance from her mother. Two years later, respondent was arrested for perpetrating domestic violence against her oldest child and was substantiated by Children's Protective Services ("CPS") for substance abuse and physical abuse. Respondent successfully completed Families First services but, less than a year later, the youngest child was found lost and wandering around a local business and was taken home by the police, where respondent was found sleeping. After being awakened, respondent admitted to the police that she had sent the child off to school with the full knowledge that he had not eaten breakfast, had missed the bus, and did not know the way to walk to school. Respondent later told a CPS investigator that it was the middle child's responsibility to awaken the youngest child but that this system did not always work. Furthermore, respondent explained that she had thought the youngest child knew the way to school since he had once walked there with his sister but respondent had not been sure that he knew. The Department of Human Services filed a petition seeking termination of respondent's parental rights at the initial dispositional hearing.

Respondent first contests the admission of allegedly inadmissible hearsay into evidence. The decision whether to admit evidence is within the trial court's discretion and will not be disturbed absent an abuse of that discretion. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 460; 750 NW2d 615 (2008). An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes. *In re Utrera*, 281 Mich

App 1, 15; 761 NW2d 253 (2008). It is well established that the rules of evidence apply when termination is sought at the initial dispositional hearing, MCR 3.977(E)(3), and that hearsay is not admissible except as provided for by the rules of evidence, MRE 802. It is also fundamental that errors in admission or exclusion of evidence are ordinarily not cause for reversal unless such would be inconsistent with substantial justice. MCR 2.613(A); *Utrera*, 281 Mich App at 14. In this case, assuming that the children's statements to the police and the CPS investigator constituted inadmissible hearsay, any error in the admission into evidence of those statements was harmless because the statements' content was established by other legally-admissible evidence, namely, respondent's admissions to the police and the CPS investigator.[1] Furthermore, respondent does not explain how her case would have been aided by the direct testimonies of the children. Therefore, there was no cause for reversal.

Next, this Court reviews the trial court's determinations that a ground for termination has been established and regarding the child's best interest under the "clearly erroneous" standard. MCR 3.977(K); *In re Jenks*, 281 Mich App 514, 516-517; 760 NW2d 297 (2008). In this case, the court specifically found that respondent's lapse in judgment in having the youngest child walk to school without breakfast and without knowing the way did not, by itself, constitute sufficient evidence upon which to terminate respondent's parental rights. However, the evidence concerning the 2004 to 2006 wardship of the children and respondent's 2008 assault of the oldest child[2] clearly and convincingly established past failures by respondent to provide proper care or custody for the children. Furthermore, the fact that respondent was believed to have successfully completed services on two previous occasions did not work in her favor since she clearly did not benefit from those services over the long term. The evidence clearly and convincingly showed that the children were parenting themselves and one another rather than being properly parented by respondent, who seemed unable to assume her parental responsibility despite the receipt of numerous services. Based on this evidence, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody for the children within a reasonable time considering their ages. MCL 712A.19b(3)(g). In addition, respondent's failure to properly parent the children would place the children's physical and emotional well being at risk of harm should reunification occur. MCL 712A.19b(3)(j).

Finally, the court did not clearly err in its best interests determination. MCL 712A.19b(5). It was unclear whether the court had the children's foster home or a hypothetical adoptive home in mind when it said that it was in the children's best interests to be "in a home where we know where there is reasonable expectation that they will be well cared for, loved, provided for, and there would be proper supervision," but what was clear was that the court was seeking a home where the children would be properly supervised and cared for. Even assuming the court was referring to the foster home, there was no clear error. While it is true that a court may not consider the advantages of a foster home in deciding statutory grounds for termination, such considerations are appropriate in determining best interests. *In re Foster*, 285 Mich App

[1] The police and the CPS investigator could testify about respondent's statements since those statements constituted admissions by a party-opponent and were not hearsay under MRE 801(d)(2).

[2] The doctrine of anticipatory neglect holds that how a parent treats one child is probative of how that parent may treat other children. See *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001).

630, 635; 776 NW2d 415 (2009). Next, the evidence about the bond shared by respondent and the children was overshadowed by respondent's ongoing inability to parent the children. The two youngest children were 10 and 11 years old at the time of the initial dispositional hearing, and they should not be placed into a situation where they would be responsible for raising themselves and one another.[3]

Affirmed.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

[3] Respondent's parental rights to her oldest child, who was almost 17 at the time of the initial dispositional hearing and who had been AWOL from her placement for some time, were not terminated.