

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 4, 2011

In the Matter of PAYNE/DARLING/WRIGHT,
Minors.

No. 297674
Genesee Circuit Court
Family Division
LC No. 07-122979-NA

Before: SHAPIRO, P.J., and SAAD and K.F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court ordered termination under MCL 712.A.19b(3)(c)(i) and (c)(ii) as well as under MCL 712.19b(3)(g) and (3)(j). 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); *Sours*, 459 Mich at 632-633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller*, 433 Mich at 337.

Respondent's two older children were initially removed from the home in 2007. Although respondent did not fully comply with the service agreement that she signed, the children were returned to her care after three months. Less than one month later, the police raided respondent's home where they found crack cocaine and weapons and arrested respondent. The home was also infested with roaches and not safe for children. The court exercised jurisdiction over the two children who were removed from the home. Respondent was referred for parenting classes, substance abuse evaluation, random drug screening and supervised parenting time. There was a period of approximately 10 months during which the state failed to provide the ordered services. However, services were initiated after that period. In January, 2009, respondent gave birth to a third child who at birth tested positive for cocaine and

marijuana, and respondent admitted that she had used cocaine throughout her pregnancy. The DHS petitioned the court to exercise jurisdiction over this third child and the court did so.

Respondent argues that petitioner failed to make reasonable efforts to assist her with family reunification. She specifically argues that petitioner did not provide her with services to obtain employment or help her find housing. However, there is no evidence that respondent sought petitioner's assistance with housing or employment. To the contrary, the record shows that respondent had difficulty finding housing because she was not employed full time. Contrary to respondent's assertion, she was offered services but failed to take advantage of the services offered to her.

Respondent's assertion that she was not offered drug counseling to address her marijuana dependency is without merit. Following a substance abuse evaluation respondent was referred for intensive outpatient treatment, but was discharged from treatment in July 2009 due to her failure to attend. This program addressed general drug treatment and was suitable for someone with marijuana issues. In January 2009 she completed an IARC assessment and was diagnosed as cocaine dependent. In March 2009 respondent attended a program at Catholic Charities where she learned about the effects of substance abuse on families. Despite these programs, she continued using marijuana through the entire two years of proceedings, and tested positive for cocaine on more than one occasion. Moreover, respondent does not provide support for her assertion that she needed special drug treatment for marijuana users. The record shows that respondent was provided with appropriate services but did not benefit from them.

Respondent did not demonstrate that she could remain drug-free or that she could maintain independent, suitable housing for herself and her children. At the time the petition was filed respondent was still living in a cluttered and dirty home that was unsafe and she had a history of eviction. By the time of the termination hearing, she had moved in with relatives. Respondent had also failed to demonstrate that she could maintain employment and financially support her children.

Respondent also argues that her drug use did not place her children at risk or rendered her unable to care for them. We disagree. We do not criticize the 2007 conclusion by the Department that, at that time, petitioner's illicit drug use was limited to marijuana and that return of the children was proper where, in the words of the subsequent petition, "[respondent's] marijuana usage did not present to hinder her ability to care for her children." However, the children were placed in protective care a second time after crack cocaine and weapons were found in respondent's home, and the house was found to be roach-infested and unsafe for children. Petitioner then had ample reason to believe that marijuana was not the only drug being used by respondent and whatever drugs she was using were, by that time, significantly interfering with her ability to parent. Thereafter, she consistently tested positive for marijuana and periodically for cocaine, including a positive cocaine test just a few weeks before the termination hearing. Indeed, it does not appear that petitioner ever had a negative drug test during the entire time she was monitored.

Finally, respondent argues that she was in substantial compliance with her treatment plan. She asserts that she was cooperative and took advantage of services. Although respondent was somewhat compliant with her treatment plan she did not benefit from services. A parent must

benefit from the services offered to the point where the children would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Respondent also has the burden of showing evidence of an improved home, *In re Kantola*, 139 Mich App 23, 28; 361 NW2d 20 (1984), which she did not do. Respondent's efforts were not sufficient to keep the children safe from harm or ensure their proper care.

Affirmed.¹

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Kirsten Frank Kelly

¹ The trial court did err in finding MCL 712A.19b(3)(c)(ii) proven by clear and convincing evidence. However, the error was harmless because the court correctly terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).