

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 11, 2011

In the Matter of HINKLEY, Minors.

No. 298325
Bay Circuit Court
Family Division
LC No. 09-010311-NA

Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Respondent mother appeals by right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) and (c)(i). We affirm.

In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). We review each of the trial court's determinations for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We must give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*, citing MCR 2.613(C).

The children at issue were adjudicated temporary court wards because respondent failed to protect them from sexual abuse perpetrated by her boyfriend. It is evident that respondent should have known that her boyfriend was capable of sexual impropriety and posed a risk of harm to her children because she was aware of his status as a convicted sex offender and that he was not allowed to be unsupervised around children pursuant to the terms of his probation. Despite this knowledge, she left her children unattended in his care on numerous occasions, evidently leading to the sexual abuse of her child. These facts clearly established that respondent, having the opportunity to do so, failed to protect her children from her boyfriend's sexual abuse. MCL 712A.19b(3)(b)(ii). Even after her eldest child revealed that respondent's

boyfriend had sexually abused her, respondent had difficulty accepting that he had abused her child and continued to have contact with him, which led to the removal of the children from her care and their subsequent adjudication.¹

Respondent's serious, past failure to protect her child from sexual abuse perpetrated by her boyfriend, a known sex offender, coupled with her ongoing ambivalence about whether her boyfriend committed the abuse during the proceedings showed a serious lack of insight, awareness, or parental judgment necessary to protect a child from future abuse or harm. Although, by the time of the termination hearing, over one year after the child revealed the abuse, respondent believed that she would be able to keep her children safe and protect them from future abuse or harm, the evidence clearly suggested otherwise. Notably, respondent's therapist, who worked with her for approximately nine months during the proceedings, revealed that respondent remained "ambivalent" about whether her boyfriend committed the abuse for almost the entirety of the proceedings, did not make any significant progress toward addressing her failure to protect the children from abuse, and was only in the beginning stages of therapy and would require additional therapy for "some time" to address her issues. In fact, respondent had only acknowledged that her boyfriend abused the child two days before the termination hearing and over one year after the abuse occurred. She was still frequenting the empty apartment of the perpetrator of the child's abuse, as late as one month before the termination hearing, despite instruction by the caseworker and the court not to do so. Further concerning was her lack of safe or suitable housing for the children. Instead, she continued to reside at her parents' home, which posed a risk of harm or abuse because her father had a prior criminal sexual conduct conviction relating to his abuse of his stepdaughter. Respondent also demonstrated a continued lack of insight necessary to protect her children from predators during the proceedings when she posted pictures of herself in a thong bikini and exposing cleavage on a website that also contained pictures of her daughters.

Under these circumstances, although respondent participated with services, she failed to demonstrate any significant benefit such that it could be reasonably assured that the children would be safe in her care, a paramount concern considering the past abuse suffered by her daughter while in her care. See *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). It was also questionable whether she would be able to adequately protect the children from harm or abuse within a reasonable time, if ever, considering her psychological evaluation revealing a propensity for dysfunctional relationships and placing her needs before her children's well being, an increased risk for similar behaviors, and a "guarded" prognosis for change. Under these facts, the trial court did not clearly err in finding under MCL 712A.19b(3)(b)(ii) that a reasonable likelihood exists that the children would suffer abuse or harm in the foreseeable future if returned to respondent's home. *Trejo*, 462 Mich at 356-357. The same evidence equally indicates that there was no reasonable likelihood that respondent would be able to address her failure to protect her children within a reasonable time considering the ages of the children, thus supporting the court's determination that termination was also warranted under MCL 712A.19b(3)(c)(i).

¹ During the lower court proceedings, respondent's boyfriend was convicted by guilty plea of criminal sexual conduct for the abuse he perpetrated on respondent's child.

We likewise find no clear error in the trial court's determination under MCL 712A.19b(5) that termination of respondent's parental rights was in the children's best interests. *Trejo*, 462 Mich at 356-357. We recognize that the record revealed that the children loved respondent, respondent and the children shared a strong bond, and the children expressed a preference to be with her. However, in light of the opinion by the children's therapist indicating a current need for permanency, stability, and security, the children's ongoing insecurity about whether respondent could protect them or keep them safe, their desire for certainty regarding their future, and the risk that they would be harmed or subjected to future abuse if returned to respondent's care, we are not left with a definite and firm conviction that the trial court made a mistake in terminating respondent's parental rights. *Miller*, 433 Mich at 337. Under such circumstances, it would be unfair to delay the children's permanency any longer while respondent attempts to address her issues further.

We affirm.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Pat M. Donofrio