

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 11, 2011

In the Matter of C.T.C., Minor.

No. 299325

Saginaw Circuit Court

Family Division

LC No. 09-032002-NA

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Respondent-mother appeals as of right the July 2010 order of the trial court that terminated her parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). We affirm.

In April 2009, the trial court took jurisdiction over respondent's two minor children, a son and a daughter. Only respondent's parental rights to the daughter are at issue in this appeal. The allegations against respondent included physical, emotional, and financial neglect.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews the trial court's factual findings in a parental termination case, as well as the decision whether termination is against the child's best interests, for clear error. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). To warrant reversal, the trial court's decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). A trial court may consider evidence on the whole record in making its best interests determination. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.

The trial court did not clearly err in finding that §§ (3)(c)(i), and (3)(g) were established by clear and convincing evidence. The court also did not clearly err in its best interests determination.

The first statutory ground for termination, MCL 712A.19b(3)(c)(i), was supported by sufficient evidence. Respondent had more than a year to improve her parenting skills and

provide a stable home environment. The trial court heard persuasive testimony from both respondent's case worker and her counselor that, despite support services, respondent's problematic attitudes and behaviors remained unchanged.

Respondent offered proof that she could properly care for her daughter. She attended individual counseling and participated in supervised visitation. The goal of the petition directives was that respondent consistently use skills acquired from the various support programs. Inappropriate parenting choices had been an issue since the original petition. Respondent was given ample time and repeatedly offered support services to improve her parenting skills, find a job, and find suitable housing. There was sufficient evidence in the court record that she made minimal effort to meet these goals as ordered by the court in the original petition and directed by petitioner. Importantly, there was considerable testimony, including from respondent, that respondent distrusted anyone who was a part of the child welfare system and firmly believed that no one could help her unless they had had a life experience similar to hers. The trial court reasonably concluded that this pervasive attitude would continue to be a barrier to needed behavioral changes. Although respondent claimed at trial that she had matured and was ready to properly parent, her conduct in the two months leading up to the trial would not be sustainable in the long term. Given the scope and duration of services provided to respondent, there was sufficient proof that the neglectful conditions that lead to removal of her daughter would likely remain unchanged.

These proofs similarly satisfied the second statutory basis for termination, MCL 712A.19b(3)(g). Respondent was unable to provide proper care of her daughter because her parenting skills and attitudes largely remained unchanged. Also, working part-time at a minimum wage job did not provide adequate resources to support the child. Although respondent had found housing just days before trial, the court record, as a whole, supported a finding that respondent would be unlikely to maintain a long-term stable home environment.

Respondent argues that the trial court improperly disregarded her successful parenting of her son when concluding that she was incapable of properly caring for her daughter. In support, respondent cites an unpublished opinion, *In re Tucker*, unpublished opinion per curiam of the Court of Appeals, issued September 15, 2009 (Docket Nos. 289919, 289920).¹ *In re Tucker* is inapplicable. In *Tucker*, the Court reversed a termination order because the petitioner had violated its statutory duty to make reasonable reunification efforts. The Court noted that the respondent-father was successfully caring for other children, but the Court did not base its decision on the father's care. Rather, the Court concluded that without reasonable reunification efforts, the trial court could not have made any proper finding that a statutory ground for termination existed.

Moreover, in the present case, the trial court did not clearly err when considering the weight of the evidence given to respondent's overnight visits with her son. There was testimony that respondent behaved inappropriately in the presence of both her son and her daughter. More importantly, the court properly considered that a custodial parent carries heavier responsibilities than that of a visiting parent, such as providing a stable home environment and placing the

¹ We note that unpublished opinions of this Court are not binding under the rule of stare decisis. MCR 7.215(C)(1).

child's long-term well-being above the parent's immediate desires and whims. Additionally, respondent's daughter, unlike her son who had the financial and emotional support of another parent, was completely dependent on respondent for basic care and protection. Thus, the trial court correctly viewed respondent's overnight visits within the larger context of the pivotal issues, namely, respondent's ability to consistently exercise good parenting, by placing her daughter's well-being above her own, along with meeting monthly financial obligations and maintaining a stable home environment.

Respondent's reliance on *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), overruled in part on other grounds, *In re Trejo*, 462 Mich at 353, 354, is misplaced. In *Boursaw*, the trial court erroneously terminated the respondent-mother's parental rights despite ample evidence that she had made "significant strides" in meeting each criterion within six months of the child's removal, including prompt and consistent visitations, proper and effective child discipline. Also, there was substantial evidence that the respondent-mother was highly motivated, was putting forth constructive effort in therapy, was gainfully employed, and had maintained suitable housing within nine months of the child's removal. The evidence in the present case, unlike that in *Boursaw*, clearly documented respondent's unchanged behavior and attitudes, along with her entrenched lackluster efforts to reunite with her daughter, over a period of more than one year.

It is laudable that respondent had been working part-time for two months and had found housing just days before trial. However, the testimonies of the case worker and the counselor showed, clearly and convincingly, that respondent was incapable of consistently disciplining and supervising her child. Also, respondent had a persistent pattern of behavior whereby she placed her own needs above that of her child to the point where she was unwilling or unable to consistently and promptly make a one-hour weekly visit with her daughter, even knowing that permanent placement was imminent.² Additionally, respondent was unable to provide adequate financial resources to support her daughter and provide a long-term stable home environment. Reviewing the whole record and assessing respondent's credibility, the trial court reasonably concluded that respondent was incapable of providing proper care and custody of her daughter and that termination was in the child's best interest.

Respondent had the opportunity to develop appropriate parenting skills and to maintain suitable housing by participating in, and benefiting from, the services provided by petitioner in an effort to reunite the family. Services included job placement assistance, individual counseling, psychological evaluation, random drug screens, transportation, supervised visitation, and temporary housing. Respondent failed to benefit from the provided services. There was no significant change in her neglectful parenting behaviors after more than a year of services from

² Respondent misconstrues the case worker's opinion, given at the final hearing, as supporting the argument that the trial court prematurely terminated her parental rights. The case worker testified that it would be "pathetic" if termination occurred because the case worker thought that respondent's issues were "correctable." The case worker was not referring to a court determination but rather to respondent and her lack of effort to deal with correctable issues that kept her from reuniting with her daughter.

petitioner. Most critically, respondent readily admitted that she was unable or unwilling to place her trust in, or accept help from, others to improve her life circumstances.

We conclude that the trial court did not clearly err in finding that §§ (3)(c)(i), and (3)(g) were established by clear and convincing evidence. The court also did not clearly err in its best interests determination.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello