

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 25, 2011

No. 298407

Jackson Circuit Court

Family Division

LC No. 08-001789-NA

In the Matter of OSTRANDER, Minors.

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

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

To terminate parental rights, the trial court must find that a statutory ground for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350, 356-357; 612 NW2d 407 (2000). After finding a statutory ground proven, the trial court must order termination of parental rights if it also finds that termination is in the children's best interests. MCL 712A.19b(5); MCR 3.977(H)(3). 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 unique opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent had been charged in a criminal court with first-degree criminal sexual conduct. She eventually pleaded no contest to gross indecency and contributing to the delinquency of a minor. The criminal charge stemmed from respondent's sexual relationship with her daughter's father, J., who was respondent's adoptive brother. When the relationship began, J. was 12 and respondent was 26. The relationship continued for approximately four years. Respondent did not testify during the course of the instant case, but she told therapists and the caseworker that her adoptive brother had raped her. J. testified that he and respondent had sex in respondent's apartment, which was part of their parents' house but with a separate entrance. J. stated that respondent provided alcohol on some occasions, gave him gifts, and took his side with their parents as long as they continued having sex. J. stayed in respondent's apartment five or six nights a week. J.'s brother, D., who was also respondent's adoptive brother, testified that respondent had sex with him when he was 13 and respondent was 26. D. said respondent threatened him many times when he said he would tell police about her and J. When the criminal charge came to light, the parents told J. to leave their house. He was 17.

Respondent's two children were removed in June 2008. Respondent received domestic-violence and sexual-assault counseling at the AWARE shelter and also saw a therapist arranged by petitioner. To these counselors and in psychological evaluations, she maintained that J. forced her to have sex and threatened her. She said he had even implied he had a gun. While her counselor thought she was making some progress, respondent never acknowledged responsibility for the sexual abuse perpetrated on J. The trial court found that until this happened, respondent could not move forward to provide a suitable environment for her children.¹ The trial court found that respondent's insistence on the "victim stance" was a reasonable indicator of what would happen if the court allowed her to continue services. The court found clear and convincing evidence that respondent would not be able to provide proper care and custody within a reasonable time and a reasonable likelihood that the children would suffer harm if returned to respondent's home. See MCL 712A.19b(3)(g) and (j).

We cannot find clear error in the trial court's decision. The evidence showed that respondent did not provide suitable care for her two children. Both wandered in while she was having sex with her adoptive brother; one time, J. had to put respondent's (and his) crawling daughter in a different room, thus leaving her without supervision. The sexual relationship went on for four years, and the evidence supported the court's finding that both children suffered the effects of it. There had been confusion on the part of the children, and there was evidence of severe hostility in the family connected to the sexual relationship between respondent and J. Moreover, a therapist testified that respondent "continued to perceive herself as a victim." Thus, respondent failed to take responsibility for the sexual abuse perpetrated on J., and we agree with the trial court that without this acceptance of responsibility, it was unlikely that she could benefit sufficiently from further services. Respondent's past actions and current mindset demonstrate that the children would be at risk of harm if placed in her care.

We likewise find no clear error in the trial court's finding that termination was in the children's best interests. MCL 712A.19b(5); MCR 3.977(K). While respondent did have a close bond with her children, they had been out of her home for over one and one-half years, and yet she still failed to take responsibility or even see a problem with her actions in having sex with her 12-year-old adoptive brother. This was a serious barrier to her ability to provide a safe and adequate home for them. We find the trial court's best-interests ruling supported by the evidence.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause

¹ We note that the trial court rejected respondent's allegations that she had been coerced into having sex with J.