

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 15, 2011

In the Matter of JAWO/SESAY, Minors.

No. 297992
Kent Circuit Court
Family Division
LC No. 08-051967-NA

Before: HOEKSTRA, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

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

I. IN CAMERA INTERVIEW

Respondent first argues that reversal is required because the trial court improperly conducted in camera interviews of the children at the permanency planning hearing, and then failed to disqualify itself at the termination hearing, despite acknowledging that the earlier in camera interviews were improper. We conclude that respondent waived this claim of error.

After the permanency planning hearing, but before the termination hearing, this Court decided *In re HRC*, 286 Mich App 444, 445-446; 781 NW2d 105 (2009), in which this Court held that a trial court presiding over a child protective proceeding may not conduct an unrecorded in camera interview with a child in deciding whether termination of a respondent's parental rights is in the child's best interests. Before conducting the termination hearing in this case, the trial court acknowledged that its earlier in camera interviews were improper in light of *In re HRC*. Accordingly, the court gave respondent the option of having the case reassigned to a new judge. The court also informed respondent that if she decided not to request reassignment, the court would "completely disregard" and "not consider" the prior in camera interviews "in making a determination about termination in this case." After giving respondent an opportunity to consult with her attorney, respondent declined the opportunity for reassignment and affirmatively indicated that she wanted the court to continue to preside over the case. By affirmatively agreeing to allow the trial court to preside over the termination hearing, respondent waived this claim of error. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 255; 776 NW2d 145 (2009). See also *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989) (a party cannot be allowed to harbor error as an appellate parachute).

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

A statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (H)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(K); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

The children were removed from respondent's care because of physical abuse. This was the same issue that previously brought the children into care in 2004. Respondent received services then, including counseling and parenting classes, yet resumed using corporal punishment. According to respondent's son, respondent regularly physically abused him and also hit his younger sister. Although respondent contends that the child was lying, the trial court expressly found his testimony to be credible. We defer to the trial court's special opportunity to judge the credibility of the witnesses. *In re Miller*, 433 Mich at 337.

Respondent completed an anger management class, but repeatedly denied abusing the children or using corporal punishment. She also refused to admit any responsibility for the children coming into care. She was uncooperative in therapy and refused to consider the possibility that her past traumatic experiences might be connected to her abusive methods. She repeatedly blamed her problems on cultural differences over how to raise children, but consistently denied doing anything wrong and was unreceptive to suggestions concerning how to engage and communicate with her children.

Considering the child's testimony regarding respondent's abusive treatment, which the trial court found was credible, the trial court did not clearly err in finding that respondent continued to physically abuse the children after services were previously provided in 2004. Further, because respondent was unwilling to acknowledge that she had treated her children inappropriately or did anything wrong to cause their removal, and considering her poor progress in therapy and resistance to efforts to address her own prior traumatic history, the trial court did not clearly err in finding that the conditions that led to the original adjudication continued to exist and were not reasonably likely to be rectified within a reasonable time, given the ages of the children. Therefore, termination was appropriate under § 19b(3)(c)(i).

In addition, because respondent's abusive tendencies had not been successfully addressed or resolved, there was a reasonable likelihood that the children would be harmed if returned to respondent's home. Therefore, the trial court did not clearly err in finding that § 19b(3)(j) was also proven by clear and convincing evidence. Similarly, given the evidence of the future likelihood of abuse, as well as the evidence that respondent displayed little interaction and warmth with the children during visits, 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 within a reasonable time considering the ages of the children. Therefore, termination was also appropriate under § 19b(3)(g).

III. BEST INTERESTS OF THE CHILDREN

Respondent also challenges the trial court's determination that termination of her parental rights was in the children's best interests. "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). The trial court's best interests decision is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357, 356; 612 NW2d 407 (2000).

Respondent's son was adamant that he did not want to return to respondent's care. Neither child was strongly bonded to respondent. Both demonstrated negative behavioral issues related to respondent's visits, including aggression, defiance, and anxiety. Further, respondent never admitted any physical abuse or showed any willingness to change. Under these circumstances, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering