

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 15, 2011

In the Matter of J. CLEMENTS and C.
CLEMENTS, Minors.

No. 298912
Genesee Circuit Court
Family Division
LC No. 07-123056-NA

Before: WHITBECK, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Respondent K. Woodward appeals as of right from the order terminating her parental rights to her children, J. Clements and C. Clements.¹ The trial court also terminated the parental rights of J. Clements' legal father, who has not appealed and thus is not participating further in this case. The termination order additionally terminated parental rights in connection with "any known/unknown father" of the children.² We affirm.

I. FACTS

In its June 2010 ruling, the trial court provided a succinct statement of some of the underlying facts and proceedings in this case:

The petition was filed . . . initially on August 30, 2007, related to the three minor children that were in the home of [K. Woodward] at the time The allegations in the petition related to a complaint on March 26, 2007, related to the condition of the home and the youngest child wearing dirty clothes. Additional allegations were received August 29, 2007, and related to [K. Woodward's] home. There were concerns over the physical appearance of all three children at that particular time.

¹ MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (children will likely be harmed if returned).

² A third child was originally involved in this case, but the Oglala Soo Tribal Court in South Dakota has accepted jurisdiction over that child.

On September 25, 2007, the Court took jurisdiction and [K. Woodward] did admit to paragraphs one and four of the petition. Paragraph four . . . indicated that . . . [Child Protective Services workers] reported the home to be in deplorable condition. Photos were taken of the home. There was animal feces throughout the home, rotting old food throughout the home, and also on the children's toys, flies and maggots swarming inside and outside of the home. There was an unknown stench coming from inside the home that was also present while standing outside. There were clothes, blankets, toys and dirt strewn about the home. The children's high chair and the kitchen cabinets were covered in stains, old food and grime. The bathroom was viewed to have human feces on the floor.

. . . [K. Woodward] admitted to that particular paragraph.

The Court took jurisdiction. And [K. Woodward] was to complete the Parent/Agency Agreement, which included completing parenting classes and maintain appropriate housing.

So, needless to say, it's been a long period of time that these children have been in foster care.

During the termination trial, Georgia Smith, a Foster Care Case Manager with Lutheran Social Services, testified that she became the case manager for this case in October 2008. Smith recounted that K. Woodward had unsupervised parenting time with the children and had completed a course in parenting skills by the time Smith became case worker. Smith elaborated that K. Woodward was progressing fairly well with her parent-agency agreement at the time. She visited with J. Clements in her home, but she visited with C. Clements in a shopping mall's play area. Smith said that, two months after she became involved, C. Clements joined in the home visits.

Smith indicated that K. Woodward's home was inappropriate, describing it as "extremely cluttered, extremely dirty," with "rooms . . . full of trash, garbage[.]" She added that a large dog urinated on the floor several times and that there was also "a distinct odor of cat urine." Nevertheless, K. Woodward had unsupervised visitation in her home until November 2009. Smith testified that the visitation was taking place in the home at the insistence of the Department of Human Services (DHS), but she "questioned the amount of supervision the children were actually getting while they were in the home." Smith explained that the home actually belonged to K. Woodward's parents. And Smith stated that on several occasions when she came to collect J. Clements, K. Woodward would come downstairs while J. Clements came up from the basement. J. Clements described spending time with his grandfather.

Smith testified that the visitation status changed from unsupervised to supervised as of December 2008 because of concerns over K. Woodward's domestic relationships:

She was reported dating an 18-year-old boy. He caused fights between the family members. She would disappear for days on end. And they wouldn't know where she was. I received phone calls, voice mails, from [the] ex-boyfriends stating that

the new boyfriend was in the family home. And I could hear screaming in the background.

Smith elaborated that there were suspicions that this new boyfriend was selling drugs and had a juvenile record. Smith expressed concerns about domestic violence and described coming upon J. Clements walking down the street yelling at K. Woodward because an ex-boyfriend was in the home. Smith testified that other concerns with the home persisted; it was “still very dirty, very cluttered.” Smith noted that K. Woodward smoked in the home in the presence of J. Clements, who had asthma. Smith additionally testified that drug screens were added to the parent-agency agreement and that K. Woodward tested positive for THC (the active ingredient in marijuana), three times.

When asked to name another reason why her recommendation had been to change visitation from unsupervised to supervised, Smith replied, “[K. Woodward] had reported that she had moved out of her home and was living with her boyfriend and his family[.]” She added that this was the same boyfriend over whom Smith had earlier expressed concerns. According to Smith, she discovered that the boyfriend’s mother had a history with Protective Services and that both his father and mother’s boyfriend had criminal records. Smith continued that when she expressed her concerns to K. Woodward, she promptly moved back to her parents’ home. Visitation continued to be supervised, Smith explained, because K. Woodward continued to test positive for THC.

Smith testified that C. Clements was receiving services for developmentally delayed speech and that J. Clements had received mental health services. Smith opined that “it is in the best interest of the children that the parental rights be terminated,” adding that K. Woodward “has not demonstrated the ability to maintain appropriate housing for her children” and “has also been unable to make appropriate decisions in regards to her own life.” K. Woodward had failed to appear for recent visitations.

K. Woodward testified that she had made numerous recent improvements in her home and added that the large dog was no longer in the house. K. Woodward testified that she relied on income from Social Security Insurance because she had cerebral palsy and water on the brain, which had arrested its development. K. Woodward additionally described having dyslexia and permanently damaged kidneys. According to K. Woodward, she was taking classes for a GED and was doing well in general, except for being a year behind in mathematics. K. Woodward stated that she had completed parenting classes, but agreed that she “didn’t seem to benefit” and was “sent . . . back two or three times.”

Michele Owen, an Administrative Assistant with Lutheran Social Services, stated that she had observed approximately 50 visits of K. Woodward with her children, from September 2007 until June 2008. Owen stated: “[K. Woodward] didn’t appear to pay much attention to [J. Clements]. He was always off by himself. She would pay attention to [C. Clements] . . . [K. Woodward] seemed confused as to what was going on. I had to redirect [K. Woodward] into the proper care of the kids.” When asked if K. Woodward would respond when advised of corrective action, Owen answered, “[K. Woodward] would correct the action. But then she would forget very quickly afterwards. That was a consistent; every visit. We were reminding [K. Woodward] [about] basic child care.”

Terri June, a DHS Foster Care Worker, testified that concerns for K. Woodward's housing and parenting skills remained to the present. June reported that K. Woodward had been referred to parenting classes four times and had completed all of them, but K. Woodward consistently failed to show that she had benefited from them as desired.

June further testified that a parent aid had been placed in K. Woodward's home for three months. June described the parent aid program as one where "an aide goes out to the home and assists the parents with home cleanliness, budgeting, and personal hygiene; pretty much there in the home, working with the family to assist them with whatever they need." When asked how K. Woodward had done with that program, June answered, "[K. Woodward] did complete that program, but a benefit was not shown," and "the home still is not appropriate for the children to return to." June elaborated, "The children have been in care over two years. [K. Woodward] has been provided ample opportunity and services to rectify the conditions that brought the children into care. . . . And these children need permanence and stability" When asked about potential harm to the children if returned to K. Woodward, June replied:

During this entire case, [K. Woodward] has shown very little regard to the needs of the children, has continued to smoke around [J. Clements], even though he has asthma. And I know during the unsupervised visits, most of the parenting when the kids were with [K. Woodward] they watched TV, they were in separate rooms from [K. Woodward] and [K. Woodward] put a lot of the parenting onto Grandma.

June agreed that there was a bond between K. Woodward and the children, but opined, "I don't think [K. Woodward] can meet the needs of the children[.]" She believed that termination was in the children's best interests.

Martin Gonzales identified himself as a Foster Care Specialist who became involved with the children in December 2009. Gonzales testified that K. Woodward had consistently appeared for weekly one-hour visits with the children. However, he was concerned about continued visitations because "none of the issues have been resolved as far as what brought the children in care." Gonzales opined that termination was in the children's best interests.

The trial court recited the statutory provisions under which termination was sought, and held as follows:

I think the primary issue we're dealing with as it relates to [K. Woodward] is that while she's completed the recommended services and some progress has been made, unfortunately the progress has been minimum. . . . And I give her credit for showing up at these Court hearings and going through all of the classes. But from the testimony that's been shown, this Court is not satisfied she's benefitted from the parenting classes that she's taken. And even to this day, she continues to struggle in maintaining an appropriate home.

As the testimony was offered, her choice of people she dated over a period of time since we've had this case has been in question. And the Court has been

concerned about her ability to make positive choices about the assistance of family members.

So, there's certainly some concerns that these two children would suffer physical neglect if they were returned to [K. Woodward], despite the efforts that she's made.

So, from everything that the Court has reviewed and concerned in terms of the evidence presented, unfortunately the Court finds that there is clear and convincing evidence that the statutory sections have been met.

K. Woodward now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.³ We review for clear error a trial court's decision terminating parental rights.⁴ 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.⁵ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁶

B. ANALYSIS

The testimony at trial was clear that K. Woodward's house, despite recent improvements, still did not provide a suitable environment for children. Indeed, despite being provided an in-home aide to assist her with cleanliness, budgeting, and personal hygiene, still no benefit was shown, and the home remained inappropriate for the children to return to. Notably, K. Woodward still smoked in the home even though her son had asthma.

K. Woodward points out that she completed four different courses of parenting classes. But, despite her attendance at the classes, the reason for repeating those courses was that she consistently failed to benefit from them. There was also testimony that K. Woodward spent much of her unsupervised at-home visitation with the children watching television and that she tended to allot much parenting responsibility to the children's grandmother.

³ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

⁴ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 633.

⁵ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁶ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

K. Woodward also points out that she suffers from cerebral palsy and learning disabilities. And we commend her efforts to improve in light of her physical and mental conditions. But those disabilities, coupled with her continuing failures to demonstrate competent parenting or homemaking skills, in fact support the conclusion that she cannot be expected to provide a proper home in reasonable time.

We further note that the evidence raises concerns beyond K. Woodward's failure to sufficiently rehabilitate her living environment or to benefit from parenting classes. There was evidence that K. Woodward developed a dating relationship with a drug-dealing teenager with a juvenile record and had apparently lived with him until a case worker urged her to return to her own home. This further demonstrates K. Woodward's inability to make proper choices, not only for her children, but for herself.

At the time of the termination trial, the children had been in care over two years. And K. Woodward had been provided ample opportunity and services to rectify the conditions that brought the children into care. Yet, the conditions leading to adjudication still continued to exist. These children need permanence and stability, and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. Accordingly, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of K. Woodward's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

K. Woodward contends that the trial court erred in its best interests analysis because "there was a parenting-child bond and relationship worthy of saving."

Once the DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.⁷ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.⁸ We review the trial court's decision regarding the child's best interests for clear error.⁹

B. ANALYSIS

As K. Woodward points out, Foster Care Worker Terri June did testify that there was a bond between K. Woodward and the children. And Foster Care Specialist Martin Gonzales also

⁷ MCL 712A.19b(5); *Trejo*, 462 Mich at 350.

⁸ *Trejo*, 462 Mich at 353.

⁹ *Id.* at 356-357.

testified that K. Woodward had consistently attended visitations. However, June also testified that termination was in the children's best interests because she did not think K. Woodward was capable of meeting the children's needs. Similarly, Gonzales testified that termination was in the children's best interests because "none of the issues have been resolved as far as what brought the children in care." And Foster Care Case Manager Georgia Smith testified that termination was in the children's best interests because K. Woodward "has not demonstrated the ability to maintain appropriate housing for her children" and "has also been unable to make appropriate decisions in regards to her own life." Again, these children needed permanence and stability that K. Woodward unfortunately, but clearly, was not capable of providing. Accordingly, we conclude that the trial court did not err in finding that termination of K. Woodward's parental rights was in the child's best interests.

We affirm.

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder