

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 15, 2011

In the Matter of J. J. A. GLADDEN, Minor.

No. 299275
Wayne Circuit Court
Family Division
LC No. 06-456998

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

PER CURIAM.

Respondent C.M. Gladden appeals as of right from an order that terminated her parental rights to the minor child, J.J.A. Gladden.¹ The parental rights of the child's father were terminated at an earlier proceeding, and he is not participating in this appeal. We affirm.

I. FACTS

In July 2006, the Department of Human Services (DHS) filed a petition seeking to have J.J.A. Gladden adjudicated a temporary ward of the court. The petition alleged that C.M. Gladden, who was not quite 16 years old, was already a temporary ward in foster care. She had been AWOL from her placement for several months before being placed with fictive kin. However, the relationship between C.M. Gladden and the fictive kin became strained, and the placement was no longer available. C.M. Gladden's behavior was erratic and hostile. Police had to come to the fictive kin's house, and J.J.A. Gladden was taken into care. C.M. Gladden was taken for a psychiatric evaluation. Given C.M. Gladden's history, DHS was concerned about C.M. Gladden's ability to follow the rules and guidelines.

In August 2006, C.M. Gladden admitted that she was a temporary court ward without a home of her own or the ability to provide for J.J.A. Gladden. She and J.J.A. Gladden resided together at Florence Crittenden in a mother-baby program. C.M. Gladden requested the court to assist her in doing the things necessary to take care of J.J.A. Gladden by herself. C.M. Gladden acknowledged that she and J.J.A. Gladden were previously in separate foster homes after she

¹ MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (c)(ii) (other conditions exist), (g) (failure to provide proper care or custody), and (j) (child would likely be harmed if returned to the parent).

was asked to leave the fictive kin's home for failure to follow the rules. She understood that her failure to follow the rules would result in separate placements once again. J.J.A. Gladden was made a temporary ward. At an August 2006 dispositional hearing, C.M. Gladden was ordered to continue treatment in the Florence Crittendon program, which included counseling, parenting classes, anger management, and life skills. She was also ordered to continue attending school. C.M. Gladden was already beginning to experience trouble in the program. She had angry outbursts at staff and other residents. The referee added intensive individual counseling to C.M. Gladden's treatment plan.

At a September 2006, dispositional review hearing, the caseworker, Phillip Thomas, suggested that C.M. Gladden undergo a psychiatric evaluation. He reported that C.M. Gladden's behavior was "out of control" and that she could not control her anger, which was part of the reason she was recently moved out of the Florence Crittendon program after she attempted to assault a staff member. C.M. Gladden and J.J.A. Gladden were only at the Florence Crittendon program for about a month and a half. J.J.A. Gladden was placed in foster care, and Thomas was working on getting C.M. Gladden into the ICON residential program. At that time, however, C.M. Gladden was AWOL again.

At a December 2006 review hearing, Thomas revealed that C.M. Gladden had been lying and saying she was going to school, but she was not. She was removed from ICON and placed in the Vista Maria program because it had an onsite school. It was also reported that an October 2006 psychiatric evaluation resulted in a diagnosis of oppositional defiance disorder for which she was prescribed Abilify.

By the time of a September 2007 review hearing, C.M. Gladden was enjoying unsupervised visitation. However, C.M. Gladden's behavior had recently escalated again. She was refusing to go to school and refusing to take her medication. Her new program, Spectrum SIL (semi-independent living), was threatening to remove her. Upon learning of Spectrum's intentions, C.M. Gladden became irate. She began to cuss, and ran out of the room and then down the street. Because of her instability, it was recommended that C.M. Gladden no longer be allowed to have unsupervised visits. Upon hearing this, C.M. Gladden exclaimed:

I'm not gon do nothing. And I'm letting the Court know I'm not gon do nothing 'cause ain't nobody helping me. Therapy, okay I don't want to talk to him 'cause he's still not helping me get with my child. He still not helping me get with my mama. I'm not talking to nobody I'm not doing nothing. I'm not going to school.

I'm not gon take my meds I'm not gon do nothing until somebody get my unsupervised visits with my child because when I wasn't taking my meds I still had my unsupervised visits with my baby every weekend. Every weekend when I was not taking my meds and nothing would never happen with me and my child.

I love my child to this—everything. I'm not going to do nothing to my child that's something I pushed out. Never. And I did stop taking my meds and I still had my unsupervised visits with my child. And I was still taking my child with me going home every weekend and just all of sudden just because I had a—walked out the conference he want to take my unsupervised visits and give me supervised. No. I'm not going to do it.

The referee noted that the record spoke for itself and that C.M. Gladden would not have unsupervised visitation until she demonstrated compliance with her treatment plan and some stabilization.

At a December 2007 review hearing, it was reported that C.M. Gladden had AWOL'd from placement in early November 2007. The worker did not know whether C.M. Gladden was compliant with her medication. C.M. Gladden addressed the court and apologized for her previous outburst. C.M. Gladden did not want to return to her mother's care, and the referee relieved her of her obligation to participate in family therapy on the companion case. Fictive kin had been located for placement. Again, the referee indicated that C.M. Gladden needed to show a period of stability if she wanted increased visitation. C.M. Gladden had another outburst, expressing her dissatisfaction with the fact that "y'all still not be trying to plan is to give me my baby back But y'all talk about months and months at a time." C.M. Gladden stormed out of the courtroom, and the referee stated:

And when you have lacked in maturity to be able to handle disappointment or be able to face challenges, instead you go off in the courtroom and you storm out, then that gives me pause and makes me say well wait a minute, what are we doing here okay.

So I'm doing the best that we can but this is not helping her. Let the—you know, the record should reflect, it really is not.

The referee indicated that C.M. Gladden only needed to do "four simple things"—school, medication, counseling, and visits.

No progress had been made by a February 2008 review hearing. C.M. Gladden was not attending school on a regular basis, she lacked employment, and she was not taking her prescribed medication. She was also failing to participate in individual therapy, and she was not remaining in a stable environment.

The first termination hearing took place in April 2008. Philip Thomas was C.M. Gladden's foster care case worker. C.M. Gladden was still a court ward without suitable housing or a means to care for J.J.A. Gladden. C.M. Gladden's treatment plan included school, individual therapy, anger management, and parenting classes. C.M. Gladden received at least five different referrals for therapy. She needed a new referral every time there was a new placement, which was frequent. The longest stretch of time that C.M. Gladden participated in treatment was from November 2006 until April 2007 when she was at Vista Maria. C.M. Gladden completed parenting classes in March 2007. They seemed to help, as C.M. Gladden was always appropriate with J.J.A. Gladden. But C.M. Gladden's behavior changed when she went into the semi-independent supervised living in April 2007. When C.M. Gladden stopped taking Abilify in May or June 2007, her behavior became "erratic, unpredictable, reckless, and irresponsible." Thomas indicated that the problems had less to do with C.M. Gladden's parenting than with her inability to address her own personal problems. Thomas also opined that there was clearly a bond between C.M. Gladden and J.J.A. Gladden.

Thomas testified that C.M. Gladden's placements since June 2006 included: fictive kin, ICON, Florence Crittendon Mother-Baby Program, ICON a second time, Vista Maria, and

Spectrum SIL. Vista Marie helped C.M. Gladden go to school and take her medication. She completed parenting classes there and regularly participated in individual therapy. Because of her progress, she was ready to be placed in the Spectrum SIL program, where she stayed from April 2007 until September 2007. Thomas noted that when C.M. Gladden was on her medication her behavior was “shocking” in that she suddenly was smiling. She was talking positive and trying to get herself together. But when she stopped taking the medication, it was like “night and day[,] it became just ridiculous.” She went AWOL after the Spectrum SIL program.

Katie Adams was J.J.A. Gladden’s foster care worker with Catholic Social Services. C.M. Gladden missed visits with J.J.A. Gladden in January 2008. Adams believed it was in J.J.A. Gladden’s best interests to terminate C.M. Gladden’s parental rights based on the length of time he had been in care. Adams admitted there was no identified adoptive home for J.J.A. Gladden.

Despite the testimony, the referee declined to recommend termination of C.M. Gladden’s parental rights at that time, finding that it was not yet convinced that C.M. Gladden could not rectify the conditions of adjudication if given another chance to follow through with taking her medication.

A review hearing in August 2008, revealed that no progress had been made. Therefore, DHS filed a termination petition.

Termination hearings were held in June 2009 and August 2009. Catholic Social Services worker Laura Hudson-Burrell, testified that C.M. Gladden was supposed to obtain suitable housing, attend therapy and take medication for her bipolar disorder. However, C.M. Gladden was unemployed and receiving food stamps. She did not have stable housing. Although C.M. Gladden had already completed a set of parenting classes, DHS believed that her behavior warranted additional classes. C.M. Gladden had seen her psychiatrist three times since January 2009, but Hudson-Burrell could not confirm whether C.M. Gladden was complying with the therapeutic aspect of her treatment plan. C.M. Gladden had been kicked out of school at Clintondale Adult Education for excessive absences. C.M. Gladden also missed several visitations with J.J.A. Gladden. Hudson-Burrell believed that C.M. Gladden was given sufficient time to comply with the treatment plan and that no future services would be helpful. And although Hudson-Burrell testified that there was clearly a bond between C.M. Gladden and J.J.A. Gladden, she believed that termination of C.M. Gladden’s parental rights was in J.J.A. Gladden’s best interests.

Phillip Thomas testified that he was “conflicted” about whether termination of C.M. Gladden’s parental rights was in J.J.A. Gladden’s best interests. Thomas noted that J.J.A. Gladden had been moved to “many different foster homes.” Thomas worried “about him being in the system and not getting adopted for years on end.”

The referee found that a statutory basis existed to terminate C.M. Gladden’s parental rights; however, the referee was concerned about whether termination was in J.J.A. Gladden’s best interest. “I cannot ignore the evidence before the court and the testimony by the worker with the longest history on this case in that because of his own knowledge of the case, he can’t say that it’s in the child’s best interest.” Additionally, the referee had “never seen [C.M.

Gladden] so lucid. Never so articulate. Never so mature. Never. I've never seen that before. Blew me away." C.M. Gladden now appeared to understand the importance of complying with her treatment plan and putting J.J.A. Gladden first. Therefore, the referee declined to recommend termination of C.M. Gladden's parental rights. However, the referee warned C.M. Gladden that this was her last chance.

A review hearing was held in November 2009. Hudson-Burrell testified that C.M. Gladden missed a few visits, but always called. She had been approved for therapy at Detroit East Mental Health, but Hudson-Burrell was waiting for C.M. Gladden to sign a release. C.M. Gladden advised Hudson-Burrell that she was taking her medication. Hudson-Burrell was relying on C.M. Gladden's self-reporting. J.J.A. Gladden was in a new placement. The referee refused to simply take C.M. Gladden's word that she was compliant and ordered C.M. Gladden to sign a release within a week.

At a February 2010 review hearing, Hudson-Burrell testified that, within two days of the last hearing, C.M. Gladden had signed a release for therapy at Detroit East Mental Health, but C.M. Gladden had not yet started treatment. C.M. Gladden told Hudson-Burrell she was having problems with transportation, but Hudson-Burrell noted that she gave C.M. Gladden six bus tickets each time she saw her. C.M. Gladden gave Hudson-Burrell an address for a home where she was living. However, when Hudson-Burrell went there, C.M. Gladden was not there, and C.M. Gladden failed to provide Hudson-Burrell with the name of the landlord so that she could confirm that C.M. Gladden was living there. Hudson-Burrell also explained that there was one instance when the foster mother did not bring J.J.A. Gladden to a visit, and C.M. Gladden became irate. But Hudson-Burrell explained that the foster mother did not bring J.J.A. Gladden because C.M. Gladden had missed two consecutive visits and the foster mother was instructed not to bring the child unless the visit was confirmed.

J.J.A. Gladden's guardian ad litem (GAL) advised the lower court that J.J.A. Gladden was having a lot of behavioral problems. He would not nap and then would not go to bed until late at night. Even then he would wake up throughout the night with night terrors. He was very verbal, but frequently used profanity. The referee ordered that a psychological evaluation be performed. C.M. Gladden had come to the court with a young child that was not her own. C.M. Gladden was disruptive throughout the hearing. The referee ordered that a permanent custody petition be filed.

At a May 2010 review hearing, Hudson-Burrell revealed that the foster mother had recently asked that J.J.A. Gladden be removed from her home. Apparently, at a December 2009 visit, C.M. Gladden had instructed J.J.A. Gladden to use profanity with the staff. Also, C.M. Gladden told Hudson-Burrell that she had been working as an exotic dancer.

The final termination hearing took place in June 2010. Hudson-Burrell testified that C.M. Gladden's treatment plan remained unchanged—she was to enter into therapy, take her prescribed medication, obtain suitable housing, enter into a GED program, and visit with J.J.A. Gladden. C.M. Gladden was receiving in-home therapy with Juanita Harris. Before that she had been referred to Detroit East Mental Health Facilities, but failed to enter into the program. C.M. Gladden's insurance had dropped and then she claimed transportation was a problem. In May 2010, Hudson-Burrell had visited C.M. Gladden in her home and allowed C.M. Gladden to use her cell phone to call Detroit Receiving Hospital to see about obtaining her medication. C.M.

Gladden's therapist also gave C.M. Gladden the number for Team Mental Health to get her medication. C.M. Gladden did not provide Hudson-Burrell with information regarding whether she obtained the medication.

Hudson-Burrell testified that C.M. Gladden did not have adequate housing. The steps to the front porch were not safe, and C.M. Gladden failed to provide Hudson-Burrell with a copy of a lease. C.M. Gladden informed Hudson-Burrell that the home was in foreclosure, and it did not have any gas. C.M. Gladden's only known source of income was food stamps. C.M. Gladden was on probation and the probation officer told Hudson-Burrell that C.M. Gladden was not compliant with her probationary treatment plan. The probation officer believed that C.M. Gladden may have been "squatting" in the home. C.M. Gladden had failed two drug screens for marijuana and had not been complying with the drug screens for her probation. The probation officer told Hudson-Burrell that she could have violated C.M. Gladden earlier, but had been lenient.

Hudson-Burrell testified that she believed termination of C.M. Gladden's parental rights was in J.J.A. Gladden's best interests because C.M. Gladden was noncompliant with her treatment plan and lacked the capacity to parent him effectively. Although Hudson-Burrell believed that there was a bond between C.M. Gladden and J.J.A. Gladden, she also believed that that bond was fading because C.M. Gladden had not visited consistently. The GAL also admitted that "there is a bond between my client and the mother, but I believe it's stronger that my client have a home and some permanence." The GAL believed that J.J.A. Gladden's current placement was pre-adoptive.

The referee recommended that C.M. Gladden's parental rights be terminated pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). The trial court adopted the referee's findings and conclusion. C.M. Gladden now appeals as of right.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

C.M. Gladden apparently concedes that there was clear and convincing evidence to terminate her parental rights on each of the statutory grounds. Instead, she argues that DHS did not do enough to work with C.M. Gladden toward reunification. C.M. Gladden claims that more should have been done to accommodate her special position as a young mother with mental health issues.²

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

² Citing *In re Terry*, 240 Mich App 14; 610 NW2d 563 (2000) and *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991).

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

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

Contrary to C.M. Gladden's arguments, both her youth and her mental illness were considered and accommodated throughout the proceedings. C.M. Gladden was only 15 years old when two-month-old J.J.A. Gladden was adjudicated a temporary ward. C.M. Gladden was a court ward herself and did not have the ability or resources to raise the child on her own. Her behavior was unpredictable, and she had difficulty following the rules, which resulted in several placements, including numerous fictive kin, ICON (twice), Vista Maria, and Spectrum SIL. C.M. Gladden was not only immature, but she was suffering from problems with her mental health, including oppositional defiance disorder, bi-polar disorder, and depression. The consensus was that C.M. Gladden was markedly improved when she was on her medication. Nevertheless, C.M. Gladden voluntarily chose to stop taking her medication. Her behavior was defiant, as demonstrated by her many disruptions during the court proceedings.

C.M. Gladden argues that she was asked to do too much and was expected to behave as an adult, but the record speaks for itself. J.J.A. Gladden was made a temporary ward in August 2006. C.M. Gladden was ordered to take her medication, attend individual therapy, go to school, and complete parenting classes. As long as C.M. Gladden remained in school, neither DHS nor the court expected her to obtain employment. As for housing, C.M. Gladden was young and obviously had difficulty obtaining independent housing without any income. Still, C.M. Gladden ignores the fact that DHS worked with her over the years, trying to find a suitable placement for her, but she sabotaged each one with her behavior. The only time C.M. Gladden showed any stability was at Vista Maria where she received constant supervision. As soon as she was moved to semi-independent living, C.M. Gladden decided to stop taking her medication and her behavior escalated. She had conflicts with every placement thereafter.

C.M. Gladden cannot argue that DHS failed to provide her with proper services when she failed to avail herself of the services that were offered. If anything, because of C.M. Gladden's youth she was given the benefit of the doubt and afforded more than one opportunity to comply with services. She claims that transportation was a problem, but C.M. Gladden admitted that her failure to take her medication was a conscious decision and her failure to attend other appointments was due to her feeling that she should just "give up."

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).

C.M. Gladden also argues that Hudson-Burrell was ignorant of the circumstances of the case. C.M. Gladden complains that Hudson-Burrell could not provide the names of the therapists and physicians that treated C.M. Gladden but that was because of C.M. Gladden's actions. C.M. Gladden failed to sign the proper release. And after finally doing so, Hudson-Burrell confirmed that C.M. Gladden had not entered into the program. There was, therefore, nothing for Hudson-Burrell to report in terms of C.M. Gladden's compliance with drug treatment and therapy.

There were *three* termination hearings in the four years that J.J.A. Gladden was in care. The child remained in foster care all four years, waiting for C.M. Gladden to demonstrate maturity and stability. She never did. Even Phillip Thomas, who clearly had a soft spot for C.M. Gladden as the worker on her mother's companion case, conceded that C.M. Gladden was noncompliant. What little progress C.M. Gladden had made during the proceedings was gone at the time of the third termination hearing. She was offered four years of services and continued to remain unstable and unpredictable. She was not in a position to care for her child.

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 C.M. Gladden's parental rights.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

C.M. Gladden contends that the trial court erred in its best interests analysis because the record did not support that the foster care system was a better placement for J.J.A. Gladden.

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

The record clearly supports that C.M. Gladden could not properly care for the child. She had no housing or income. She was noncompliant with the mental health aspect of her treatment

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

⁸ *Trejo*, 462 Mich at 353.

⁹ *Id.* at 356-357.

plan. C.M. Gladden had received four years of services, but she was in a worse position than she was when the child was first placed into care.

C.M. Gladden believes that a best interests inquiry should include whether the child was adoptable. If he was not, then she should have been given additional time. However, C.M. Gladden misconstrues the best interests analysis. A parent should not be able to use the child's "unadoptability" as a means of indefinitely prolonging a case. It was true that the child had been placed in numerous homes, primarily because of his problems sleeping and crying at night. However, both Hudson-Burrell and the GAL believed that the child could still be adopted in the future. There was no way of knowing unless and until C.M. Gladden's parental rights were terminated and the matter proceeded to adoption.

What is obvious from the record was that C.M. Gladden could not care for him. They shared a bond, but C.M. Gladden's visits were sporadic. She also displayed some disturbing behavior, encouraging him to use profanity with staff and to act out in the foster home because he was going to be moved again. Thus, contrary to C.M. Gladden's argument, the focus should not have been on whether her son was adoptable; rather, the focus was properly on C.M. Gladden's ability to parent him. The child had been in limbo for four years waiting for C.M. Gladden to be able to care for him. Termination of C.M. Gladden's parental rights would be the first step in providing him with permanence and stability. Given C.M. Gladden's lack of progress and, indeed, her continue downward spiral, the child should not have been asked to wait longer than the four years he had already waited.

We affirm.

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder