

STATE OF MICHIGAN
COURT OF APPEALS

In re WOODS, Minors.

UNPUBLISHED
November 20, 2014

No. 321516
Lake Circuit Court
Family Division
LC No. 13-001539-NA

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Before: BOONSTRA, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

Respondents appeal by right an order of the trial court terminating their parental rights to their six children pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood of harm). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondents have an extensive history with petitioner. The events leading to the ultimate termination of their parental rights began the day the youngest child was born. Petitioner learned that respondent-mother and child had left the hospital a day early against medical advice.¹ It was discovered that the children's home had no running water, electricity, or glass in the windows. The home was being heated by a space heater, and the children were found lying beside it wrapped in blankets. After extensive services proved unsuccessful, petitioner sought termination of respondents' parental rights.

¹ The infant child weighed 4 pounds, 15 ounces at the time.

At the termination hearing, multiple case workers testified to respondents' nearly ten-year-long involvement with petitioner, during which time respondents had been offered nearly every service available. The gist of each worker's testimony was that, although respondents were capable of making short-term improvements under supervision, they eventually backslid into keeping an inappropriately dirty, vermin-filled, and dangerous home for their children. Respondents often had their utility services shut off, and repeatedly were evicted for nonpayment of rent, after which they left the home in poor condition. Respondents had never worked and were prohibited from obtaining federally-assisted housing because of noncompliance with program requirements. The children were often inappropriately dressed for the weather and for school. In 2012, a child protective services (CPS) worker substantiated an allegation that respondent-father had smoked marijuana in front of the children. Respondents missed several doctor appointments for HW, who was diagnosed with "failure to thrive" while under respondents' care.

Several experts in psychology and child psychology also testified. Eric Van Treese, Ph.D., a professor of psychology and "clinical director of Regional Psychology" was qualified by the court as an expert witness in the field of psychology, and testified that he evaluated respondents in 2008. Van Treese testified that respondent-father suffers from histrionic, narcissistic, and paranoid personality disorders. He further testified that respondent-father is not a bad person, but that he is likely to put his own needs ahead of the needs of others. While Van Treese acknowledged that he has not seen respondent-father since 2008, he concluded that it would be unlikely that respondent-father's psychological issues would improve because he does not have a desire to attend therapy. Van Treese further testified that respondent-mother has deep emotional issues stemming from abuse she suffered as a child. Van Treese testified that his prognosis for respondent-mother would be guarded, with a low probability of success.

The lower court also qualified psychologist Eric Harvey, Ph.D., as an expert witness in psychology. Harvey testified that he conducted psychological evaluations on both respondents in October 2013. Harvey concluded that respondent-father "is unable to recognize and enforce the boundaries that are necessary to raise his children," and that "in spite of many interventions, has not been able to put those practices into effect." He said respondent-father acknowledged that his living conditions were "deplorable," but that he was nonetheless unable to "conform his behavior to help his children." In addition, Harvey testified that respondent-father cannot put the needs of his children above his own personal needs. Finally, Harvey opined that respondent-father "is unable to learn from the various services that have been provided to him and then incorporate that into his parenting strategies and provide a safe and appropriate environment for his children."

As for respondent-mother, Harvey testified that she "is not capable of learning . . . the parenting skills that would be necessary for her to be able to protect her children or to recognize the sort of horrific situation that these children have been subjected to over a long period of time." Harvey testified that there are no programs or treatments that would allow respondent-mother to become an effective parent within a reasonable time. As a result, Harvey concluded, it would be against the children's best interests to be returned to respondents.

Byron Barnes, an expert in child psychology, testified that he had performed evaluations on the three older children, JW (born November 6, 2003), EW (born September 3, 2005), and IW

(born August 22, 2006). Barnes concluded that IW had attention-deficit hyperactivity disorder (ADHD), depression, and anxiety, and that he was angry, hostile, in need of power, and preoccupied with food. He opined that these behaviors were caused by a lack of stability in the home, as well as a history of witnessing violent behavior. Barnes also testified that EW suffers from ADHD and has difficulty with impulse control, regulation, and attention. He testified that EW was “markedly” distressed, anxious, depressed, fearful, and worried. He opined that these characteristics were indicative of EW being exposed to a level of violence in his household. He further concluded that EW loves his parents, but has indicated that he believes he must protect himself. As for JW, Barnes testified that he does not suffer from ADHD and is in fact “very, very bright.” He said JW’s reading scores place him in a category just “below genius.” He suggested that JW has used reading as a way to escape the harsh conditions in which he lives. Barnes testified that JW did not report any domestic violence, but clearly demonstrated a history of living in chaos. Finally, Barnes said JW expressed a desire to return to his home, but referred more to his family than to respondents in particular.

A foster care worker testified that the three older children frequently misbehave at the foster home and school, including fighting and stealing, but that they are currently in good health. She described the three younger children as “thriving.” She testified that respondent-mother had told the children not to cooperate with service providers, and that the children became emotionally distressed after visits with respondents. She further testified that respondent-mother often acted inappropriately during parenting time, including one instance where respondent-mother showed the children a picture of her stillborn baby.

The trial court found that petitioner had established grounds for termination of respondents’ parental rights by clear and convincing evidence, stating:

But I think clearly that [respondents] are unable to place the children’s needs above their own, and which is really critical for parents. And, again, the likeliness of change, I think in this condition – Again I point out it’s a chronic condition, over many years, in fact over the entire lives of the children.

And again I cannot list all the services that have been provided. I think I’ve gone through some of them with regard to parenting classes, in-home parenting services, family-reunification services, basic services regarding housing, rent, food, allowing for a dumpster to help clean places up, WIC, in-home homemakers, Families First program, infant services.

And that I think, based on a – the clear and convincing standard, I think that MCL712A.[19]b(3)(g), the failure to protect and provide services for a child can certainly be recognized, and I think that’s been shown, and that the children could be harmed if they’re returned, that their healthy environment will be at risk.

So I think both standards . . . , MCL 712A.19b(3)(g) and 712A.19b(3)(j) have all been proven based on a clear and convincing standard.

Thereafter, the trial court found that termination of respondents’ parental rights was in the best interest of the children, stating:

But all the children, all six of the children, need a home, need food, need clothing, need a clean environment. And I believe with the chronic conditions we're talking about, even though I think it can be improved for a short period of time, it's going to relapse back to where we are now. So I'm looking at the long-term situation.

The fact that the testimony is the parties really cannot empathize and provide the needs for these children, and that given the age of the children, I don't believe – it's been going on for at least ten years – that I don't think that's going to change, given the age of the children.

* * *

And, again, I think that given the circumstances, the history of the case is that a Band-Aid could be provided here. But looking at the long-term, I think it . . . would be in the best interests of the children.

This appeal followed.

II. STANDARD OF REVIEW

A trial court's findings regarding the statutory grounds for termination and a child's best interests are reviewed for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "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." *In re Jenks*, 281 Mich App 514, 517; 760 NW2d 297 (2008).

III. STATUTORY GROUNDS FOR TERMINATION

Once a trial court has assumed jurisdiction over a child, it may terminate a respondent's parental rights if it finds clear and convincing evidence that at least one statutory ground for termination exists under MCL 712A.19b(3). *In re McIntyre*, 192 Mich App 47, 50; 480 NW2D 293 (1991). In this case, the trial court found that petitioner had established grounds for the termination of respondent's parental rights under MCL 712A.19(b)(3)(g) and MCL 712A.19(b)(3)(j). Under MCL 712A.19(b)(3)(g), a court may terminate a respondent's parental rights if the parent fails "to provide proper care or custody" for the children, and if "there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering" the children's ages. Under MCL 712A.19(b)(3)(j), the lower court may terminate a respondent's parental rights if there "is a reasonable likelihood," based on the conduct or capacity of respondent, that the children will be harmed if returned to respondent's home.

We find no clear error in the trial court's holding. Contrary to respondents' assertion, petitioner did not rely exclusively on evidence of respondents' past history with petitioner. A CPS worker testified that respondents' most recent living conditions were deplorable. Their home had no glass in the windows and holes in the floor, the children's mattresses had holes and no sheets, tobacco was strewn about a coffee table, there was clutter on the floor, there was old food in the kitchen and on the highchair, and BW, a newborn, was found lying in a car seat on

the floor. In addition, the children were huddled around an electric space heater for warmth. Five service providers all testified that respondents have kept their children in unsafe living conditions, with improper personal hygiene and clothing, and often without utilities, since petitioner began its involvement in this current case.

In addition, petitioner established that respondents' failure to provide a proper home has negatively impacted the children's well being. There was testimony that the three oldest children suffer from anxiety and depression, which was linked to an unstable home environment. Additional evidence established that the children have behavioral issues and often come to school inappropriately dressed, dirty, and hungry. Moreover, there was testimony that the children are fighting and stealing, and have been known to eat trash and cat food. And a foster-care worker testified that the children are distressed after visiting with respondents.

Finally, petitioner established that there is no reasonable expectation that respondents would be able to provide proper care and custody for their children within a reasonable time, which, in turn, establishes that there is a reasonable likelihood that the children would be harmed if returned to respondents' care. Despite being offered a significant number of services, including financial assistance, parenting classes, and homemaking, respondents remain unable to provide a proper home environment for their children, as is evidenced by their entire history with petitioner. Two psychologists concluded, based on psychological evaluations, that neither respondent is capable of providing appropriate care for their children. The evidence presented at trial clearly established the statutory grounds for termination.

IV. BEST INTEREST DETERMINATION

“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). In making that determination, it must consider the record as a whole. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). The court may consider respondents' parenting ability, as well as the children's need for permanency, stability, and finality. *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012).

The lower court did not err in finding that termination of respondents' parental rights is in the best interests of the children. Petitioner established that respondents are unable to provide a stable home for the children, and have been unable to provide such a home for almost ten years. The evidence at trial showed that the children were forced live in filthy and unhealthy conditions for most if not all of their lives. The homes in which they have resided are often without power or water. The children have a multitude of behavioral issues, and they suffer from anxiety and depression. Moreover, a foster-care worker who had worked with the children since November 2013 and one of the examining psychologists both testified that termination is in the best interests of the children. Respondents presented evidence suggesting that they have a bond with their children. However, respondents' bond with their children does not mitigate the unsafe conditions to which the children were subjected. Respondents were unable to correct their behavior despite the extensive and varied nature of the services provided to them.

Affirmed.

/s/ Mark T. Boonstra
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher