

STATE OF MICHIGAN
COURT OF APPEALS

In re SMITH/LOGAN, Minors.

UNPUBLISHED
February 20, 2018

No. 339148
Newaygo Circuit Court
Family Division
LC No. 16-008880-NA

Before: MARKEY, P.J., and M. J. KELLY and CAMERON, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court order terminating her parental rights to her minor children, AL, LL, and RL under MCL 712A.19b(3)(g) and (j).¹ For the reasons stated in this opinion, we affirm.²

I. BASIC FACTS

¹ The lower court record reflects that the court's order terminating respondent-mother's parental rights was entered in June 2017. In addition to terminating respondent-mother's parental rights to the above children, the court also terminated her parental rights to her oldest daughter, SS. However, in November 2017—after the claim of appeal was filed in this case—the court entered an order that effectively restored respondent-mother's parental rights to SS. Thus, although respondent-mother requested that this Court reverse the trial court's order terminating her parental rights to all her children, that request, as it pertains to SS, has been rendered moot by the trial court's subsequent order. In a supplemental brief, respondent-mother suggests that the irregularity surrounding the court's post-termination orders mandates that we reverse with respect to all four children in order to protect respondent-mother's due process rights. Such relief, however, is not warranted. The trial court corrected the error. Moreover, the confusion with regard to whether respondent-mother's parental rights were terminated does not affect the decision to terminate her parental rights to AL, LL, and RL. For these reasons, we will only address the termination of respondent-mother's parental rights to her three younger children.

² Respondent-father was the father of AL, LL, and RL. His parental rights to two of the three children were terminated in an earlier proceeding. The trial court's June 2017 order terminated his parental rights to the youngest child, RL. Respondent-father did not appeal that decision.

In September 2016, petitioner filed an amended petition seeking removal of the children from respondent-mother's home. According to a caseworker, the protective services case arose following investigations into two incidents. The first incident involved an altercation between respondent-mother and SS that resulted in SS being sent to a juvenile detention facility. The second incident involved allegations that SS's step-grandfather had repeatedly sexually abused her and that, despite knowledge of the abuse, respondent-mother had failed to protect SS.

In November 2016, petitioner filed an amended petition seeking termination of respondent-mother's parental rights to SS, AL, LL, and RL. The petition contained detailed allegations, including allegations of ongoing domestic violence in the home, failure to protect SS from ongoing sexual abuse, failure to provide proper care and supervision for the children, and allegations of physical abuse against the older children. It also asserted that respondent-mother had ongoing mental health issues that negatively impacted her parenting abilities. Respondent-mother requested a jury trial to determine whether the trial court should take jurisdiction over the children.

The trial was held in March 2017. Multiple witnesses, including SS and a friend of hers (also a minor child), testified that SS's step-grandfather had sexually abused both SS and her friend over the course of several years. There was testimony that SS told respondent-mother about the abuse and was instructed not to say anything. There was also testimony that respondent-mother was unaware of the allegations of sexual abuse until after SS disclosed the abuse to others. Nevertheless, it was undisputed that SS's step-grandfather admitted to sexual contact with SS. Evidence was presented that on at least one occasion after SS disclosed the abuse, her step-grandfather was allowed in or near the home so that he could drop off a dog.

There was also significant testimony at the trial regarding police interactions with the family. Officers testified to responding to calls that the minor children were outside the home without proper supervision, that there was domestic violence incidents in the home, and that SS had incidents of suicidal ideation. One officer testified to finding SS downtown at approximately 1:00 a.m. She had drugs and alcohol in her possession. When the officer went to respondent-mother's home, she stated that she thought SS was at a friend's house. There was also testimony that respondent-mother's home was a "hoarder's home," that smelled of ammonia and kitty litter and that was very cluttered. A caseworker testified that numerous services had been offered to help the family, but that the conditions had not been rectified. There was testimony about SS providing care for her younger siblings because of respondent-mother's failure to provide appropriate supervision.

Multiple witnesses testified regarding respondent-mother's and SS's mental health issues. Although the mental health professionals could not agree on a diagnosis for respondent-mother, they made clear that she had significant mental health issues, which included psychosis. A psychologist testified that he evaluated respondent-mother in 2006 and again in 2008. He opined that there was virtually no change in respondent-mother's condition, save for the fact that respondent-mother had become "better at masking some bizarre thoughts." The psychologist testified that, if the children were returned to respondent-mother's care, "the future would be bad for those children" because of her issues and limitations.

At the close of proofs, the jury returned a unanimous verdict that one or more of the statutory grounds alleged in the petition had been proven by a preponderance of the evidence, as to all four children. Therefore, the trial court took jurisdiction over the children and continued the children's placement with petitioner for care and supervision.

A dispositional hearing was held in June 2017. At that time, petitioner presented additional testimony in support of terminating respondent-mother's parental rights. In particular, a psychologist testified that he saw respondent-mother for a psychological examination in October 2016. He diagnosed mother with schizoaffective disorder with generalized anxiety disorder. He also opined that if respondent-mother let go of her animosity toward petitioner and received appropriate services that she could be an appropriate caregiver to the children. However, he felt that respondent-mother's attitude toward petitioner was a problem. In addition, a caseworker testified that respondent-mother had engaged in counseling since January 2010. The caseworker testified that her participation in the counseling was minimal and that she continued to lack insight into her current issues. Despite that testimony, respondent-mother's counselor testified that respondent-mother and the children were well bonded, that she believed respondent-mother was a "good mom," and that respondent-mother appeared to take care of the children better than she took care of herself.

Following the dispositional hearing, the trial court found grounds to terminate respondent-mother's parental rights to AL, LL, and RL under MCL 712A.19b(3)(g) and (j) and that termination was in their best interests.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent-mother argues that the trial court erred by finding clear and convincing evidence that termination of her parental rights was proper under MCL 712A.19b(3)(g) and (j). "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). This Court reviews for clear error a trial court's factual determination that statutory grounds exist for termination. *Id.*; MCR 3.977(K). "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

B. ANALYSIS

Termination is proper under MCL 712A.19b(3)(g) if "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." The trial court determined that respondent-mother, without regard to intent, failed to provide proper care for her three younger children and that there was no

reasonable expectation that she would be able to provide proper care within a reasonable time considering the ages of the children. We agree. The mental health professionals who testified at the adjudicative trial and disposition hearings concurred that respondent-mother suffered from significant mental health conditions, even if they disagreed about a precise diagnosis. The evidence also indicated that, although respondent-mother received mental health treatment services for many years, her condition failed to improve. Witnesses presented by the Department of Health and Human Services (DHHS) concluded that respondent-mother would not benefit from further services. Dr. Jim Van Tresse, in particular, testified that respondent-mother lacked the capacity to provide a safe environment for her children. In addition, the record also indicated significant law enforcement contacts with the household and approximately 22 police reports chronicling those contacts were admitted into evidence. Multiple police officers provided evidence showing that respondent-mother's household was chaotic, that the children were exposed to recurrent episodes of domestic violence, and that these conditions continued unchanged over the course of many years. The testimony also indicated that respondent-mother was frequently found to be sleeping during the day and that the children were left unsupervised. Given this record, the trial court did not clearly err by finding that respondent-mother failed to provide proper care or custody for the children and that she was unable to provide proper care and custody within a reasonable time considering the ages of the children. Therefore, we affirm the trial court's termination of respondent-mother's parental rights to AL, LL, and RL pursuant to MCL 712A.19b(3)(g).³

III. ADMISSION OF EVIDENCE

Respondent-mother also argues that the trial court erroneously admitted into evidence a videotaped confession from the man who sexually abused SS. Further, in a supplemental brief, respondent-mother notes that the video recording played for the jury had "many lapses," which casts doubt on what the jury did or did not hear. She contends that her due process rights were, therefore, jeopardized.

Generally, we review for an abuse of discretion a trial court's decision to admit evidence. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). However, at the adjudication trial, respondent-mother expressly stated that she did not object to the admission of the video recording into evidence. Furthermore, respondent-mother was offered the opportunity to play the entirety of the two-hour video for the jury, but she declined that offer. Therefore, respondent-mother waived this issue. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Waiver is "the intentional relinquishment or abandonment of a known right." *Id.* (quotation marks and citation omitted). "It differs from forfeiture, which has been explained as 'the failure to make the timely assertion of a right.'" *Id.* (citation omitted). "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights,

³ Because we conclude that the trial court did not clearly err by finding that termination of respondent-mother's parental rights was proper under MCL 712A.19b(3)(g), we need not address termination of respondent-mother's parental rights to the children pursuant to MCL 712A.19b(3)(j). See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (1999).

for his waiver has extinguished any error.” *Id.* Thus, by agreeing to the admission of the exhibit in the trial court, respondent-mother has waived this issue, leaving nothing for this Court to review.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Thomas C. Cameron