

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 12, 2011

In the Matter of L.D. JOHNSON, Minor.

No. 301699
Ionia Circuit Court
Family Division
LC No. 2010-000349-NA

Before: SAWYER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent M. Krompetz appeals as of right the trial court's order terminating her parental rights to her minor son, L.D. Johnson (the minor son), pursuant to MCL 712A.19b(3)(l) (parent's rights to another child were terminated) and (m) (parent voluntarily terminated rights to another child).¹ We affirm.

I. FACTS

Krompetz has a long history of substance abuse and involvement with child protective services reaching back to 1998. Krompetz voluntarily released her rights to twins in 2007 after child protective proceedings were initiated. Though Krompetz several times received numerous services including substance abuse treatment, Krompetz failed to benefit from the services and, as a result, Krompetz's parental rights to a daughter were terminated in November 2009. The minor son was born in August 2010 and the Department of Human Services (DHS) immediately sought termination of Krompetz's parental rights.

In 2001, Krompetz had a relationship with A. McClure, who sexually and physically assaulted Krompetz's daughter. Krompetz continued her relationship with McClure even after the physical abuse, but testified that she ended the relationship after learning of the sexual abuse. In 2005, the daughter was removed from Krompetz's home after Krompetz reunited with McClure. Krompetz again received services including substance abuse treatment.

¹ The parental rights of the minor son's father, C. Johnson, were not terminated, and he is pursuing reunification with the minor son.

Krompetz admitted that she used methamphetamine when pregnant with twins in 2005. She also admitted to using marijuana when her daughter was in her care. In 2007, Krompetz voluntarily released her parental rights to her twins.

In 2008, protective services again became involved with Krompetz after her daughter called 911 because she became alarmed when she could not find Krompetz, who was outside smoking marijuana. Protective services also had concerns regarding Krompetz's housing, substance abuse, domestic relations problems, and concerns that Krompetz was unable to protect her daughter. In June 2009, Krompetz's daughter was again removed from her care after Krompetz permitted a man to have access to the home even though he had only recently been paroled after serving a sentence for raping a woman at knifepoint. Krompetz did not think that her daughter was in danger from the man because "she [Krompetz] was there."

After her daughter's removal, Krompetz continued to test positive for marijuana use and told child protective services worker, Senia Eckelbarger, that she intended to keep using marijuana and saw no harm in it. Foster care worker Sarah Khoury testified that Krompetz received services after her daughter's removal, including individual therapy, family therapy, substance abuse screening, substance abuse counseling, parenting time with her daughter, and team meetings regarding services. But, according to Khoury, Krompetz did not benefit from services. Krompetz continued to lack stability, continued to fail to identify her daughter's needs, and continued to fail to parent her daughter appropriately. While Khoury supervised the case, Krompetz became involved in a relationship with D. Minier, which caused Khoury concern because Krompetz reported that Minier may have been accused of sexual abuse. Krompetz explained that she did not believe the allegations. According to Krompetz, she and Minier were going to build a life together.

It was ultimately determined that Krompetz had failed to benefit from services, and her parental rights to her daughter were terminated in November 2009. This Court later affirmed that decision in 2010.²

Laurie Boussom, outpatient therapist with Ionia County Community Mental Health, testified that she had been counseling Krompetz every other week for approximately 1-1/2 years, beginning while the termination case for her daughter was pending. Boussom testified that Krompetz attended counseling consistently, had benefitted from counseling, appeared eager to learn, and had made significant progress. Similarly, Margery Briggs, mental health and substance abuse counselor, testified that she began counseling Krompetz for substance abuse beginning in June 2009. Krompetz's goals were to attain and maintain a healthy lifestyle and relationships, to learn appropriate coping skills, to not fall back into drug use, and to raise her then unborn minor son in a healthy environment. Briggs met with Krompetz for ten sessions, then discharged Krompetz noting that she had made substantial progress and that there was a favorable prognosis for Krompetz to stay focused on her recovery program. Briggs testified that there was no indication that Krompetz needed additional substance abuse treatment.

² *In re JL Krompetz*, unpublished opinion per curiam of the Court of Appeals, issued August 24, 2010 (Docket No. 295505).

Krompetz testified that she met the minor son's father, C. Johnson, through her husband, who was then incarcerated with Johnson. Krompetz was aware of Johnson's lengthy criminal history and that he had been in and out of prison for 15 years, but nonetheless picked him up from prison on the day that he was released in July 2009. She ended her relationship with Minier in November 2009, immediately after her parental rights to her daughter were terminated, and began dating Johnson in December 2009. Johnson moved in with Krompetz in March 2010, and Krompetz gave birth to the minor son in August 2010. (According to Krompetz, an ultrasound showed that she became pregnant within days of her starting to date Johnson.)

Ashley Oosterbaan, foster care case manager, testified that she had worked on this case beginning in August 2010. Oosterbaan testified that Krompetz had communicated with the agency regularly during the case and that the contacts had been appropriate. Oosterbaan further testified that Krompetz had substantially complied with the parent agency agreement and that the agency would likely not be seeking termination had it not been for the prior terminations. Oosterbaan also testified, however, that if the agency were not seeking termination, a more thorough investigation would have been done before reunification.

Krompetz acknowledged that Johnson had recently pleaded guilty to home invasion and that she was with him on the night of the home invasion. She testified that she dropped him off at a party on the night in question and later picked him up at the end of her street. However, she claimed that she did not know at that time that he had committed the home invasion. She also admitted that she lied to police by telling them that she had not seen Johnson that night.

Krompetz further acknowledged that she twice tested positive for marijuana while pregnant with the minor son, but denied that she had used marijuana since December 2009. She stated that the tests were positive because she had been around Johnson when he was smoking marijuana, which he did daily. (Dr. Michael Smith, technical director of the toxicology laboratory at Sparrow Health System, testified that one cannot test positive for marijuana from second-hand smoke at the levels screened for, but only from smoking it or ingesting it.) Krompetz contended that she no longer used illegal substances and was learning how to cope without them. Indeed, a hair follicle test done in September 2010 was negative for all substances. Similarly, the meconium test done after the minor son's birth was negative for all substances.

Krompetz testified that she no longer associated with violent people—though she made an exception for her partner Johnson's recent home invasion. She also claimed that Johnson stopped his drug use when the minor son was born. Krompetz testified that she and Johnson were living in a two-bedroom mobile home, one bedroom of which was a nursery for the minor son, and that the rent had been paid for two months in advance. DHS worker Stacey Simon confirmed that Krompetz's home and the nursery for the minor son were appropriate. Also, at the time of the hearing, Krompetz had been consistently employed for over three years. Krompetz testified that she and Johnson intended to get married and that they had a "very positive and appropriate relationship."

Khoury testified that she had had recent conversations with Krompetz about her daughter, and, in her opinion, Krompetz still had "some of the same underlying issues as when [Khoury] worked with her as a caseworker" on the daughter's case. According to Khoury, Krompetz

continued to lack stability—even post-termination of her rights to her daughter, Krompetz was still more concerned about herself than what was best for her daughter. And Khoury added that Krompetz was often combative and argumentative during the conversations, leading to Khoury having to end the conversations.

Simon requested that the trial court terminate Krompetz’s parental rights to the minor son and testified that termination was in the minor son’s best interests. Simon believed that Krompetz was still using drugs at least sporadically. (Dr. Smith also testified that it was possible for a person who used marijuana sparingly to clear their system of the chemicals in between weekly tests.) Simon also believed that Krompetz was still associating with people who used substances, like Johnson.

At the conclusion of the termination hearing, the trial court found that the statutory grounds had been demonstrated by clear and convincing evidence. The trial court further found that termination was in the best interests of the minor son. The trial court explained,

[W]hen I look at . . . Krompetz’s past history and the relative short period of time that she claims she has once again^[3] changed her life, and I factor in the—the age of this child, as an infant, which frankly makes it even more crucial to find permanence, and to not mess with the emotional development of this child by introducing him to parents where there might be an attachment or a bonding if—it’s not in his best interests.

* * *

[W]e can’t just sit back and wait and hope that parents are going to finally get things turned around. When I look at these factors, I do conclude that it is in the best interests of [the minor son] to have the parental rights of his mother terminated.

³ In this Court’s opinion regarding termination of Krompetz’s parental rights to her daughter, this Court quoted with approval the circuit court’s findings regarding the best interests factor in that case:

And when I look at the history here and the depth of the services, . . . you said all the right things the last time. You did all the right things. Frankly, you had us fooled. You had [Community Health Services] fooled, that you were a changed woman. You convinced me that you’d fully addressed your drug problem and understood the depth of it. Heck you were even a sponsor for others that were going down the same road that you had traveled and . . . you had convinced us all that you were clean and sober and that you were going to be the mother that [the child] deserves. And what happened within two weeks of the providers getting out of your life, you’re back doing drugs. . . . [*In re JL Krompetz*, unpub op.]

Accordingly, the trial court terminated Krompetz's parental rights. Krompetz now appeals from the order of the trial court.

II. BEST INTERESTS

A. STANDARD OF REVIEW

Krompetz contends that the trial court erred in finding that termination of her parental rights was in the best interests of the son. Krompetz argues that the trial court did not consider the changes that she had made in her lifestyle and improperly focused only upon her past.

Once 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 is required to order termination of parental rights.⁴ 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.⁵ We review the trial court's decision regarding the child's best interests for clear error.⁶

B. ANALYSIS

In determining the child's best interests, a trial court may consider a variety of factors including the parent's history, unfavorable psychological evaluations, the child's age, inappropriate parenting techniques, and continued involvement in domestic violence.⁷ A trial court may also consider the strength of the bond between the parent and child, the visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.⁸ A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.⁹

The trial court on the record considered many of the above-stated factors in determining the best interests of the minor son but found Krompetz's recent past to be particularly compelling. Less than a year earlier, Krompetz had been before the trial court on termination proceedings involving her daughter and had testified that she was no longer using substances and was in a stable relationship with a partner with whom she was purportedly building a life.

⁴ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 351; 612 NW2d 407 (2000).

⁵ *In re Trejo Minors*, 462 Mich at 353.

⁶ *Id.* at 356-357.

⁷ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

⁸ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

⁹ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

However, within days of the termination of her parental rights to her daughter, Krompetz ended the relationship with that partner, resumed her substance use, began a relationship with another man, and became pregnant with the minor son in this case. The new partner had a lengthy criminal record, had been recently released from prison, and had a daily marijuana habit. While engaged in this relationship, Krompetz's new partner committed the felony of home invasion with Krompetz dropping him off shortly before the home invasion, picking him up shortly after the home invasion, and lying to police about whether she had been with him that evening.

The trial court concluded that this undisputed evidence belied the testimony of the therapists that Krompetz was showing increased stability. The trial court noted that in the 2009 proceedings, therapists had testified regarding Krompetz's new-found sobriety, dedication, and stability, and that again in the proceedings regarding the minor son, therapists had again testified about Krompetz's new-found sobriety, dedication, and stability.

The trial court also considered that the young age of the minor son made permanence even more crucial to the emotional development of the son and further considered the risk of permitting a bond to form given Krompetz's lack of stability. Contrary to Krompetz's assertions, a review of the record demonstrates that the trial court did not clearly err in finding that termination was in the best interests of the minor son.

We affirm.

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Donald S. Owens