

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 23, 2011

In the Matter of S. GOANS, Minor.

No. 301934
Oakland Circuit Court
Family Division
LC No. 08-752245-NA

In the Matter of GOANS/HARDIMAN, Minors.

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Before: MARKEY, P.J., and SAAD and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father appeals by right the trial court order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i), (g), and (j). Respondent-mother appeals by right the orders terminating her parental rights to all seven of her children under MCL 712A.19b(3)(g) and (j). We affirm.

I. BACKGROUND

In October 2008, Department of Human Services (DHS) petitioned the court to take temporary custody of L. Goans, S. Goans, I. Goans, R. Goans, and C. Hardiman based on respondent-mother's neglect and abuse of the children. The petition also alleged that respondent-father had failed to protect his child, S. Goans, from respondent-mother's neglect and abuse. The court removed all of the children from respondent-mother's care, including V. Hardiman, who was born on November 13, 2008, and took them into its temporary custody.

DHS provided both respondents with parent-agency agreements. Respondent-mother complied with all of the terms of her agreement. Because of her compliance, the court did not take M. Hardiman, who was born on January 29, 2010, into its custody. Rather, the child was placed in respondent-mother's care. In order to prevent respondent-mother from being overwhelmed, petitioner returned the other six children to respondent-mother's care in stages, with three children returned in January 2010. After the caseworker informed the court that

respondent-mother had three pit bulls in her home, which had produced a litter of 15 puppies, the court ordered respondent-mother to remove all of the dogs from her home as a condition to return of the remaining children. After it was informed that all the dogs had been removed, the court ordered the remaining three children returned to respondent-mother's care in February 2010. Petitioner provided at-home services to respondent-mother through its Family Reunification Program (FRP) to assist her with the transition.

In March 2010, respondent-mother's home was the subject of a police drug raid. An undercover narcotics officer had purchased drugs from respondent-mother at her home on three separate occasions, and some of the children were at home during the transactions. The police subsequently obtained a search warrant for the home. When the police executed the search warrant on March 4, 2010, officers found drugs and drug paraphernalia in the home and the home in disarray, dog feces on the floor in several spots, and laundry strewn about. While in the home, officers had to shoot an aggressive, threatening pit bull.

Petitioner filed an original petition seeking termination of respondent-mother's parental rights to M. Hardiman and supplemental petitions seeking termination of respondent-mother's parental rights to her other six children and termination of respondent-father's parental rights to S. Goans. The petitions alleged that respondent-mother had been charged with three counts of delivering cocaine and other narcotics in connection with the raid and that three of the children were home during the raid. The petition also alleged that, during the raid, a dog was found on the premises in violation of the court's order and that dog feces were found on the floor. The petition further alleged that respondent-father had not visited S. Goans since October 2009. Respondent-mother admitted the allegations in the petition. At her plea hearing, in response to the court's questioning, she also admitted that a search warrant was executed on her home on March 4, 2010, that three of the children were in the home when it was searched, that there was a dog in the home in violation of court orders, that officers shot a pit bull in the home, that she was charged with delivery, manufacturing, and possession of narcotics, and that more than 182 days had passed since the initial dispositional order. The court concluded that there was clear and convincing evidence that one or more facts alleged in the petition were true and that there was a statutory basis for terminating respondent-mother's parental rights.

The best interests hearing for respondent-mother and the termination hearing for respondent-father took place on October 18, December 9, and December 10, 2010. Respondent-mother testified that she had started dealing crack cocaine out of her home after the first set of children had been returned to her care in order to raise extra money. She admitted that she had a pit bull in her home, explaining that one of the individuals who had taken the dog from her had unexpectedly returned it to her just three days before the drug raid. She denied the children were involved in her drug sales but admitted that L. Goans, then 14 years old, had taken money from the undercover officer during a drug sale. Respondent-mother claimed that she had completed an inpatient 90-day drug treatment program for alcohol abuse in connection with her sentencing on the drug charges and was in a better position to care for the children. She produced many character witnesses who testified regarding her strong parenting skills and her improved state of mind since completing the inpatient program. The caseworker testified that respondent-mother loved the children, and she was bonded with them. While the older children, particularly L. Goans, were bonded with respondent-mother, the caseworker was unsure about the younger

children's bond with her. Both L. Goans and S. Goans testified that they wanted to be placed back with respondent-mother.

During his testimony on October 18, 2010, respondent-father admitted that he had last visited S. Goans the previous year, in October 2009. Between January 2010 and April 2010, when visits were suspended following the filing of the supplemental petition, respondent-father had arranged two visits with the child but cancelled both visits. He explained that he had to cancel certain scheduled visits with the child because he had to fulfill obligations under his probation terms, which he claimed he had successfully satisfied. He admitted that, as of the termination hearing, he was not in a position to financially support the child. The caseworker testified that, while respondent-father completed parenting classes and submitted requested screens, he failed to comply with any of the other requirements under the parent-agency agreement: he failed to provide documentation evidencing his compliance with domestic violence counseling or individual therapy and he missed two scheduled psychiatric evaluations. The caseworker testified that S. Goans was not bonded with respondent-father.

The court concluded that respondent-father's limited contact with his child justified termination of his parental rights to the child under §§ 19b(3)(c)(i), (g), and (j) and that termination was in the child's best interests. Focusing on respondent-mother's decisions to sell drugs from her home shortly after the children's return to her care, to allow pit bulls back into her home in violation of the court's order, and to allow the home to degrade into a filthy condition, the court concluded that termination of respondent-mother's parental rights was in the children's best interests.

II. RESPONDENT-FATHER'S APPEAL

In Docket Number 301934, respondent-father challenges the court's decision to terminate his parental rights. This Court reviews the trial court's findings on appeal from an order terminating parental rights under the clearly erroneous standard. MCR 3.977(K); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Respondent-father's limited contact with S. Goans during the nearly two years the child was in the court's temporary custody and his failure to produce evidence showing his substantial compliance with his parent-agency agreement establishes that the trial court did not clearly err in terminating his parental rights under §§ 19b(3)(c)(i), (g), and (j). MCR 3.977(H)(3); *In re Miller*, 433 Mich at 337. Further, the evidence showed that termination of his parental rights was in the child's best interests. MCL 712A.19b(5); *In re Jones*, 286 Mich App at 129.

Respondent-father argues that petitioner is somehow to blame for his inability to manage his responsibilities to his probation officer and under his parent-agency agreement. However, petitioner indicated a willingness to allow respondent-father to use services he participated in for his probation to satisfy the requirements under the parent-agency agreement. The burden was on respondent-father, however, to provide proof to the court showing compliance with the terms of his probation that would evidence compliance with the requirements of the parent-agency

agreement. Respondent-father failed to present such proof. Respondent-father also failed to explain why he was unable to schedule visits with S. Goans on days that did not conflict with his probation obligations.

III. RESPONDENT-MOTHER'S APPEAL

In Docket Number 301935, respondent-mother raises three issues: (1) that the trial court abused its discretion when it refused to order a new psychological examination for her and the children for use in the best interests hearing, (2) that the evidence did not support the statutory grounds for termination of her parental rights, and (3) that the trial court clearly erred in finding that termination of her parental rights was in the children's best interests.

Respondent-mother first argues that the trial court should have ordered a psychological exam for her and the children. The trial court's evidentiary rulings in a child protection proceeding are reviewed for an abuse of discretion. *In re Jones*, 286 Mich App at 130. The relevancy and admissibility of evidence depends on the purpose for which it is offered. *Id.* An abuse of discretion occurs when the outcome is outside the range of principled outcomes. *Id.*

In this case, the court explained that it was not going to order a new psychological examination of respondent-mother and the children because (1) respondent-mother had completed a psychological examination in February 2009, (2) the termination petition was based on respondent-mother's criminal conduct and violation of court orders and not on any psychological issues, and (3) the children and the children's therapists were available to testify at trial regarding the children. On appeal, respondent-mother fails to explain what information she anticipated the psychological examination would reveal that was not available from the children, their therapist, or from respondent-mother's prior examination. Because respondent-mother could not explain the purpose of a new exam, the trial court did not abuse its discretion in refusing to order the requested examination.

Next, respondent-mother challenges the statutory grounds the court cited in support of termination of her parental rights. While the court relied on §§ 19b(3)(g), (i), (j), (l), and (m) in support of termination in its findings on the record, in its orders terminating respondent-mother's parental rights, the court cited only §§ 19b(3)(g) and (j). Because the court speaks through its orders, §§ 19b(3)(g) and (j) are the only grounds properly considered on appeal. See *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009).

In challenging the statutory grounds in support of termination, respondent-mother contends that "none of the allegations made against her had been proved as the trial court ruled." Respondent-mother's argument ignores the fact that she admitted the allegations in the petitions seeking termination of her parental rights to her seven children and made other admissions at her plea hearing. The court justifiably relied on these admissions in finding the statutory grounds for termination. When entering her plea, respondent-mother clearly acknowledged that she was aware that her plea could serve as the basis for the court's finding that statutory grounds for termination of parental rights were established. Because respondent-mother did not challenge her plea below, our review is limited to determining whether a plain error occurred that affected substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Respondent-mother's admissions, that she sold crack cocaine from her home, that she had a pit bull on the premises in violation of the court's order, and that she was charged with delivery, manufacturing, and possession of narcotics in connection with the police raid on her home, supported the statutory grounds for termination of respondent-mother's parental rights under §§ 19b(3)(g) and (j). Accordingly, there was no plain error that affected respondent-mother's substantial rights.

Finally, respondent-mother argues that the trial court clearly erred in finding that termination of her parental rights was in the children's best interests. The caseworkers testified at respondent-mother's best interests hearing that the children loved respondent-mother and that the older children were bonded to her. Respondent-mother produced several character witnesses who testified that respondent-mother was a good parent and that her mental state had improved since she had completed the inpatient substance abuse program following her criminal sentence. But in finding that termination of respondent-mother's parental rights was in the children's best interests, the court focused on respondent-mother's behavior once the children were placed back in her care. Despite services petitioner provided respondent-mother and her compliance with these services for over a year, once the first set of children were returned to her care, respondent-mother engaged in criminal activity to raise money rather than seek further assistance from petitioner. Although she denied that the children were affected by her criminal behavior, she admitted that L. Goans once accepted money from the undercover officer who purchased drugs from her. Furthermore, the officer testified that when he purchased drugs from respondent-mother at her home on three occasions, there were always children in the home. When the home was searched, there were drugs and drug paraphernalia visible in the kitchen and within reach of the children. The officers had to shoot one of the pit bulls in the home who was acting aggressively. In light of this evidence, the trial court did not clearly err in finding that respondent-mother's criminal enterprise had adversely affected the children and that termination was in the children's best interests.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Elizabeth L. Gleicher