

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 19, 2011

In the Matter of BOYD-HAMILTON/BOYD-
MILLER/UNDERWOOD/MINGO, Minors.

No. 302067
Macomb Circuit Court
Family Division
LC Nos. 2009-000264-NA
2000-000265-NA
2009-000266-NA
2009-000267-NA
2009-000268-NA

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to her five minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Before terminating a respondent's parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Although respondent had a Children's Protective Services (CPS) history dating back to at least 2005, the events that give rise to the instant appeal occurred in May 2009. At that time, respondent was living alone with her five children, who were then ages ten, eight, five, and nearly one-year-old twins. A passerby found one of the twins sitting in a bouncy-chair unsupervised on the porch of the family's home and called the police. Respondent admitted to the police that she had taken Vicodin and fallen asleep on the couch. Her five-year-old son had apparently taken the baby out on the porch. The police found respondent's home in disarray. Beer bottles littered the home and respondent's diabetic syringe was within the children's reach. Both of the twins were dirty and unkempt. CPS permitted the children to remain in respondent's home with a safety plan pending further investigation. The plan required that the children not be left alone with respondent; respondent's estranged husband agreed to stay in the home with respondent and the children. Two days later, CPS made an unannounced visit and found

respondent alone with her children. The children were removed from the home and a neglect and abuse petition was filed seeking temporary custody of the children. Respondent entered a no contest plea to the petition, the children were made temporary court wards, and respondent was ordered to comply with her Parent-Agency Agreement (PAA).

After the children's removal, the extent of respondent's and the children's mental health issues surfaced. The older children were aggressive, hoarded food and had issues with bedwetting. The children were referred to Community Mental Health for trauma therapy. A psychological assessment of the children in January 2010 revealed that "[t]here did not appear to be an emotional connection between this mother and her children." This conclusion was based on an observation of respondent with the children, during which all but one of the children did not seek physical contact with respondent, engage in reunion behaviors, or approach her, suggesting a lack of emotional connection and an ambivalent attachment to her.

All three school-age children had severe and significant cognitive and emotional disorders that were going to require ongoing treatment. The three oldest children were diagnosed with Reactive Attachment Disorder, and the oldest child showed signs of depression and potential psychosis. The twins were placed in early-on intervention programs by DHS. Nevertheless, prior to the termination hearing, respondent consistently denied these issues and refused to acknowledge the need for services. It was also determined that respondent had been hospitalized at least 25 times, and possibly near 50, for mental health issues between 1999 and 2008.¹

By March 2010, respondent's visits with her three oldest children were suspended after the court found out that the visits had become harmful to the children—the visits were chaotic, respondent was unable to recognize safety issues, and she ignored redirection by Department of Human Services staff. In August 2010, respondent received a psychological re-evaluation. The doctor concluded, "Given her cognitive and academic limitations, it is difficult to imagine [respondent] independently caring for five children. In the event that the children are re-united with her, [respondent] would require considerable in-home assistance and support to be able to adequately care for her children." Despite the multitude of services DHS offered to respondent, DHS concluded that, although respondent was participating, she was not benefitting from the services.

Respondent contends that because she engaged in services under her PAA, had a legal source of income, and had suitable housing, there was not clear and convincing evidence to support termination of her parental rights. However, it is not enough that a respondent simply participate in services pursuant to her PAA, she must also benefit from the services offered so that she can improve her parenting skills to the point where the children would no longer be at risk of harm in her custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). In

¹ Respondent's uncontrolled diabetes was also an issue during these hospital admissions and frequently precipitated the initial presentation to the hospital.

this case, there was no indication that respondent benefited from the many services she was offered. At the time of the termination hearing, respondent had not adequately addressed her mental health issues or improved upon her parenting skills.

Respondent continued to deny that she had any mental health issues that needed to be addressed. Furthermore, she denied, or claimed that she could not recall, her history of mental health related hospitalizations. Even the physician who testified on respondent's behalf admitted during cross-examination that respondent had not given him an accurate history of her mental health issues and prior drug use. Because respondent minimized her problems, evaluating psychologists concluded that her prognosis was guarded. In addition, respondent informed her case worker that she did not believe that she required or could benefit from the services offered, but was only participating in them to appease the agency. Despite nearly 18 months of treatment, respondent had no insight into why the children came into care and continued to blame her son for taking one of the twins out on the porch while she slept due to Vicodin ingestion. Because respondent did not understand or admit that her neglect caused the children to come into care, it was unlikely that respondent would recognize when her children were at risk of harm if they were returned to her home.

Respondent's own testimony established that she did not truly understand her children's special needs. Respondent could not state, even in a general sense, the nature of the children's conditions, the treatment they were receiving, or the identity of their current health care providers. She also tended to minimize her children's special needs. The children's school records prior to DHS's intervention indicated respondent's failure to recognize the issues, such as the oldest child's long history of behavioral problems, as well as missing 123 days of school in the year before removal and having attended 10 different schools by the age of 10. Her inability to appreciate the nature of her children's problems made it unlikely that she would recognize and respond to their needs and provide them with the means to receive the treatment they so desperately required. Respondent also failed to create a realistic plan in the event that the children were returned to her care. Respondent could not identify the school she planned for the children to attend.

Based upon the foregoing, we conclude that the trial court did not err when it found clear and convincing evidence to support termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). There was clear and convincing evidence that the conditions that led to adjudication continued to exist, and would not be rectified within a reasonable time, that respondent could not provide the children with proper care and custody, and that the children would likely be harmed if returned to respondent's care.

Respondent also argues that the trial court erred when it determined that termination of respondent's parental rights was in the children's best interests. We disagree. The trial court must make an affirmative finding that termination of parental rights is in the child's best interests. If a statutory ground for termination is established and termination of parental rights is in the child's best interest, the court must terminate parental rights. MCL 712A.19b(5). This Court reviews the trial court's determination regarding a child's best interest under the clearly erroneous standard. *In re Jenks*, 281 Mich App 514, 516-517; 760 NW2d 297 (2008).

The children had been severely damaged by their mother's neglect. The three oldest children suffered from, among other things, reactive attachment disorder, PTSD, and ADHD. They required extensive psychiatric and psychological treatment. Despite respondent's termination hearing testimony to the contrary, respondent, throughout the case, denied that her children had these conditions and minimized their problems. Considering this, it is unlikely that respondent would provide her children with the care they required to address their special needs. Furthermore, there existed very little, if any, bond between respondent and her children. Simply put, respondent could not meet her children's emotional, environmental, social or medical needs. Consequently, the trial court did not err when it concluded that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro