STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
September 20, 2011

In the Matter of LUCHT, Minors.

No. 303020
Mason Circuit Court
Family Division
LC No. 10-000022-NA

In the Matter of LUCHT, Minors.

No. 303021
Mason Circuit Court
Family Division
LC No. 10-000022-NA

Before: O'CONNELL, P.J., and METER and BECKERING, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from an order that terminated their parental rights to their two minor children pursuant to MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication not rectified); (g) (failure to provide proper care or custody); and (j) (reasonable likelihood that child will be harmed if returned to parent). We affirm.

The record establishes that respondents have cognitive limitations that affect their ability to function. They have never provided for their children's care. Their son was placed in a guardianship within a month of being born and subsequently placed with a foster family; their daughter was placed with a foster family shortly after her birth. A licensed psychologist evaluated both parents and determined that neither one could sufficiently benefit from services to be able to handle the daily responsibilities of taking care of the children. The circuit court determined that respondents would continue to be unable to care for the children's basic needs, and accordingly found there was clear and convincing evidence of the statutory grounds for terminating respondents' rights.

We review the circuit court's termination decision for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). We afford deference to the court's ability to assess the credibility of witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Respondent-father does not dispute that the statutory grounds for terminating his parental rights were proven by clear and convincing evidence. Respondent-mother, however, argues that the statutory grounds were not proven and that reasonable efforts should have been made to reunify the family. When children are removed from their parent's custody, petitioner is required to report to the court regarding the reasonable efforts made to rectify the conditions that caused the removal. MCL 712A.18f; *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Failure to make efforts at reunification may prevent petitioner from establishing the statutory grounds for termination. *In re Newman*, 189 Mich App 61, 67-68; 472 NW2d 38 (1991). However, the circuit court must consider whether the evidence indicates that the parent would have fared better if petitioner had provided services. *Fried*, 266 Mich App at 543.

Here, the record supports the circuit court's conclusion that respondent-mother would not benefit from services. The testimony confirmed that she is unable to care for herself, and that she cannot carry out parenting responsibilities. Specifically, the psychologist that evaluated respondent-mother indicated that her cognitive limitations preclude her from safely providing child care, and that there is no treatment that would remove these problems. In light of this evidence, the circuit court validly concluded that services would not be appropriate in this situation. See *In re Terry*, 240 Mich App 14, 23; 610 NW2d 563 (2000) (When a parent cannot meet daily responsibilities, petitioner need not provide full-time assistance).

Having found the statutory grounds for termination proven by clear and convincing evidence, the circuit court then had to determine whether termination of respondents' parental rights was in the children's best interests. MCL 712A.19b(5). Both respondents argue that the circuit court should have placed the children in a juvenile guardianship, which would provide for the children's daily care while allowing respondents to maintain contact with them. Contrary to respondents' assertions, however, the psychologist did not specifically advocate for a guardianship. The psychologist acknowledged that a "wonderful" situation would include competent adults that could parent "everybody," i.e., provide care for respondents and for the children. Here, however, the only proposed guardian was a woman who had never met the children and who had met respondents only once. Although the proposed guardian seemed amenable to taking in the children and respondent-mother, she acknowledged that she was unfamiliar with respondent-mother's level of functioning.

The circuit court did not specifically rule regarding the possibility of placing the children in a guardianship, but did find that termination of respondents' parental rights was in the children's best interests. Based upon the facts of this case, the circuit court's decision was not clearly erroneous. Although guardianship was one option available to the court, the facts before the court did not mandate a conclusion that a guardianship was in children's best interests. See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991) (applying an abuse of discretion standard of review). Rather, the facts supported the court's conclusion that termination of respondents' rights would provide stability and continuity of care for the children.

Affirmed.

/s/ Peter D. O'Connell
/s/ Patrick M. Meter
/s/ Jane M. Beckering