

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 15, 2011

In the Matter of
PILGRIM/CRAWFORD/CULBERTSON, Minors.

No. 303570
Oakland Circuit Court
Family Division
LC No. 2009-757747-NA

Before: SERVITTO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). Because statutory grounds for termination were established by clear and convincing evidence, we affirm.

These proceedings began after respondent's then six-year-old daughter alleged that her oldest brothers had sexually abused her in respondent's home. Petitioner investigated the allegations and established a safety plan requiring respondent to remove her oldest son from the family home and obtain counseling and medical examinations for the children. Thereafter, it was discovered that respondent had allowed her oldest son to return to the family home, where he slept in the same room as his siblings, and that she had not obtained counseling for the children in contravention of petitioner's safety plan. Because of respondent's apparent failure to adequately protect her children, petitioner filed a petition requesting the trial court to take temporary custody of the children and the children were removed from her care.

The trial court then assumed jurisdiction over the children pursuant to respondent's no-contest plea admitting the petition's allegations, including her failure to adequately protect her children, her history of Protective Services involvement, her criminal history, and that she had allowed a substantiated perpetrator of child abuse to reside in her home. At the time of the adjudication, respondent was unemployed and in the process of being evicted from her home.

Respondent initially complied with services as required by her parent-agency agreement by undergoing a psychological evaluation and substance abuse assessment, which raised concerns about her parenting, alcohol abuse, and mental health issues. As recommended, respondent then participated in a substance abuse treatment program, during which she attended individual counseling, utilized support groups, and completed parenting classes. Respondent also regularly attended the visits with her children, during which she was appropriate. After successfully completing the treatment program, respondent was ordered to submit random

drug/alcohol screens and her therapist recommended that she continue with psychiatric services, individual counseling, and Alcoholics Anonymous.

Thereafter, respondent failed to follow through with services. Instead, during the almost two-year proceedings, she missed over half of the required drug/alcohol screens, continued to consume alcohol on occasion, including less than one month before the termination hearing, and failed to attend Alcoholics Anonymous. Further, due to her nonattendance, respondent was terminated from individual counseling intended to address her mental health and substance abuse issues. Despite her therapist's and caseworker's opinion that she needed additional therapy, she never reengaged in counseling. Respondent also failed to participate in family counseling with her oldest son. However, she regularly attended psychiatric appointments and took her prescribed medication for depression during the proceedings. She also obtained housing suitable for herself and her daughter at the end of the proceedings, but she never obtained employment or secured disability income.

Citing her lack of progress with services and compliance with her parent-agency agreement, petitioner eventually filed a supplemental petition requesting the trial court to terminate respondent's parental rights. After conducting a termination hearing, the trial court found that clear and convincing evidence supported the statutory grounds for termination under MCL 712A.19b(3)(c)(i) and (g).¹ The trial court heard additional testimony regarding the best interests of the children and concluded that termination of respondent's parental rights was in their best interests under MCL 712A.19b(5).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). This Court must also give regard to the "special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*

Here, respondent remained unable to provide proper care and custody for the children. The record clearly evidenced a lack of significant effort on respondent's part. Her lack of compliance with the requisite services to address her issues was indicative of a continued inability to provide proper care and custody for the children and continued neglect. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *Trejo*, 462 Mich at 361 n 16. Testimony by the caseworker indicating that respondent was inconsistent with and had not benefited from services, lacked emotional stability, minimized her responsibility for the children being in care, was not "ready" to parent the children, and could not provide proper care and custody for them further evidenced her need for additional services to be able to adequately parent the children. Although respondent made some limited progress by attending her psychiatric appointments, taking her

¹ Although petitioner also sought termination under MCL 712A.19b(3)(j), the court did not rely on it as a basis for termination.

prescribed medication, and attaining some physical stability by obtaining housing suitable for her and her daughter, her other issues remained largely unaddressed.

The evidence also clearly and convincingly established that respondent would not likely be able to rectify her issues to be able to provide proper care or custody for the children within a reasonable time, notwithstanding the children's older ages. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). Respondent's failure to meaningfully and consistently participate with services during the lengthy proceedings demonstrated an unwillingness or inability on her part to work toward reunification with the children. By the time of the termination hearing, the children had been outside of respondent's care for almost two years without significant progress toward reunification and had gained stability in their placements with their fathers and grandmother. In light of the children's stability and progress outside of respondent's custody and the uncertainty of whether she could make progress with services in the future, we disagree with her contention on appeal that the children could wait an additional one to two years for respondent to address her issues. Therefore, we find no clear error in the trial court's findings terminating respondent's parental rights under subsections (c)(i) and (g).

The trial court also did not err in finding that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *Trejo*, 462 Mich at 356-357. Given respondent's lack of progress during the proceedings, her continued failure to engage in services following the termination hearing, her need for future services and a substantial amount of additional time to possibly address her issues, the stability and permanency of the children should not be compromised any longer for the mere possibility of reunification with respondent. The children all expressed a desire not to return to respondent's care and to remain in their placements with their respective fathers and grandmother, who provided them with stability and permanency. Considering that future reunification between respondent and the children was largely uncertain, it would be unfair to upset or delay their permanency and stability any longer.

Respondent argues that in lieu of termination of her parental rights, a custodial order awarding physical custody of her sons to their fathers and a guardianship appointing her daughter's grandmother as her guardian would better serve the children's best interests. In light of the older ages of the children, some contact with respondent might be favorable, and all the children except the oldest expressed a desire to have some contact with respondent. However, leaving respondent's parental rights intact could potentially jeopardize the children's stability and future permanency as well as their emotional wellbeing, which would not serve their best interests. Under these circumstances, the trial court did not err in finding that termination of respondent's parental rights would better meet the children's needs.

Affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens