

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 24, 2012

In the Matter of A. C. POZENEL, Minor.

No. 304913
Midland Circuit Court
Family Division
LC No. 10-003738-NA

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), (j), and (l). We conclude that the trial court did not err in finding proper grounds for termination nor in concluding that termination was in the best interest of the child. Accordingly, we affirm.

Minor child was removed from respondent's custody the day after his birth, before he left the hospital. He is respondent's fifth child. The petition alleged that respondent's two eldest children had been removed from respondent's care due to improper supervision, neglect and physical and sexual abuse and that respondent released her parental rights to those two children after two years of failing to comply with the case services treatment plan. Respondent's parental rights as to the next two children were terminated on the grounds of non-compliance with service plans and that she had failed to protect them from domestic violence perpetrated by her romantic partner and father of the then-youngest child. The petition also alleged that respondent lived in a shelter with no permanent housing plan.

At a preliminary hearing two days after the child's birth, the court found probable cause and suspended parenting time in light of the termination request. On September 24, 2010, respondent admitted to allegations in the petition. Petitioner withdrew the request for termination and the court referred the matter to Baby Court¹ and for various services until the matter could be heard by Baby Court. The child's placement in foster care was continued and supervised visitation ordered. Although respondent attended Baby Court services, petitioner again sought termination after six months because respondent failed to make substantial progress

¹A program of intensive services intended to eliminate barriers to reunification.

despite the intensive services provided. The termination hearing was held on June 2, 2011 and on June 21, 2011, the court issued an opinion and order terminating the respondent's parental rights.

The record supports the trial court's findings and conclusion. Testimony of service providers revealed that among other things, respondent: (a) failed to progress during supervised visitation so as to increase visitation time and move to unsupervised visitation as is the norm in cases receiving this level of services; (b) became easily overwhelmed with simple suggestions, and could not implement parenting techniques at appropriate times; (c) had limited insight into the effect of domestic violence on her children; (d) had little likelihood of maintaining permanent housing; and (e) refused assistance from her caseworkers and engaged in lying to, and arguing with them. A psychological evaluator reported that respondent's extreme defensiveness would prevent her from taking responsibility for her actions and she was at high risk of neglecting a child's psychological condition. In addition, at the termination hearing respondent acknowledged that her parental rights to the two older children had been involuntarily terminated.

In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and its best-interest determination are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent argues that she made progress during the review period preceding the termination hearing, complied with all requirements and should have been allowed to continue to participate in services. A review of the record reveals that respondent did make some progress. However, the trial court's factual finding that termination under MCL 712A.19b(3)(c)(i); 19b(3)(g); 19b(3)(j) and 19b(3)(l) was proper was supported by clear and convincing evidence and we find no clear error.

The trial court also did not clearly err in its best-interest determination. MCL 712A.19b(5). The psychological evaluator expressed fear that respondent would neglect a child's psychological condition, which was demonstrated by her failure to make eye contact with the child or take cues from his behavior. Further telling was respondent's failure to recognize that she needed assistance, evidenced by her testimony that there was no reason that the child could not be with her. Considering the length of time the matter was pending, respondent's failure to make substantial progress, and the child's failure to bond with respondent, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests and in terminating her rights.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro