

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 22, 2013

In the Matter of N. S. SHIELDS, Minor.

No. 310721
Genesee Circuit Court
Family Division
LC No. 11-127670-NA

In the Matter of N. S. SHIELDS, Minor.

No. 310778
Genesee Circuit Court
Family Division
LC No. 11-127670-NA

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (l), and (m). For the reasons set forth in this opinion, we affirm the termination of parental rights of both parents.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the child. MCL 712A.19b(5); *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 632-633. 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 JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A); *Miller*, 433 Mich at 337.

Respondent-mother's and respondent-father's parental rights were terminated under the following subsections of MCL 712A.19b:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

* * *

(m) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state and the proceeding involved abuse that included 1 or more of the following:

(i) Abandonment of a young child.

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

(iii) Battering, torture, or other severe physical abuse.

In Docket No. 310721, we conclude that termination of respondent-mother's parental rights was proper under MCL 712A.19b(3)(c)(i), (g), and (l). Respondent-mother did not demonstrate the ability to maintain a substance free lifestyle, and her alcohol abuse prevented her from being able to properly care for her child. At the time of the adjudication respondent-mother admitted to having a problem with alcohol. Respondent-mother participated in three treatment programs but did not complete treatment or benefit from her involvement in any of the programs. Respondent-mother also had a long history of alcohol use, which led to the termination of her parental rights to four other children.

Respondent-mother's psychological evaluation revealed that she had cognitive impairments that limited her ability to safely parent. Her intellectual limitations interfered with her ability to make good parenting decisions on a daily basis. She was prone to impulsively act out without consideration of consequences. Testimony at the termination hearing showed that respondent-mother did not appear comfortable during visits with the child, was unable to interact in a nurturing and growth promoting way, and brought the minor child food that was inappropriate. Thus, in light of this evidence, we cannot conclude that the trial court clearly erred by concluding that the statutory grounds for termination under MCL 712A.19b(3)(c)(i) and (g) were proved by clear and convincing evidence.

Respondent-mother argues that she was in substantial compliance with the parent-agency agreement at the time of the termination hearing. However, respondent-mother downplays her alcohol use, the main issue in the case. She was given ample time to participate in treatment and demonstrate a sustained period of sobriety but had not done so. Moreover, her interactions with the child demonstrated that she did not benefit from parenting classes. A parent must benefit from the services offered so that he or she can improve parenting skills to the point where the child would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Therefore, we find respondent-mother's argument that she was in substantial compliance with the parent-agency plan at the time of the termination of her parental rights unavailing.

Respondent-mother also argues that petitioner failed to make reasonable efforts to assist with reunification. Despite respondent-mother's assertion, there is no evidence that she specifically sought petitioner's assistance with alcoholism, lack of bonding with the minor child, or her cognitive limitations. The record shows that respondent-mother understood that she needed to stop drinking. Although respondent-mother's caseworker was on medical leave for several months during the case, another caseworker managed the case during her absence. There was no evidence that any accommodations and services were not made while the original caseworker was on leave. Further, respondent-mother fails to suggest what services could have been put in place to accommodate the weakened bond she had with the minor child and her cognitive impairments. Respondent-mother was given the opportunity to develop a bond with the minor child during visits but was unable to bond with the minor child. Even if services had been put in place to improve respondent-mother's cognitive impairments and bonding issues, she still would have needed to overcome her alcohol addiction to prevent the termination of her parental rights. Respondent-mother was offered services, but failed to take full advantage of the services offered to her. Thus, we conclude that petitioner did not fail to provide services to facilitate reunification.

Respondent-mother also argues that cancellation of her visitation because of positive drug screens interfered with her ability to bond with her child. We disagree. Respondent-mother had no right to visitation as required under MCL 712A.18f(3)(e) because the parties specifically agreed that visitation was not appropriate. Under normal circumstances, petitioner's withdrawal of its original petition would trigger the administration of services and parenting time would be required, if appropriate. However, here the parties agreed as part of their plea agreements that visitation would be suspended until respondent-mother produced three negative drug screens and the court would have jurisdiction over the child in the interim.¹ A validly entered plea agreement binds the parties to abide by its terms. See *People v Arriaga*, 199 Mich App 166, 168; 501 NW2d 200 (1993). Thus, respondent-mother's argument is unavailing, and the evidence supports the trial court's conclusion that termination under MCL 712A.19b(3)(c)(i) and (g) was proper.

Termination of respondent-mother's parental rights was also proper under MCL 712A.19b(3)(l). Respondent-mother's parental rights were previously terminated to three other children in November 2000. One year later her parental rights were involuntarily terminated to her son who was born in April 2001. To the extent that the trial court also relied on MCL 712A.19b(3)(c)(ii) and (m) to terminate respondent-mother's parental rights, any error was harmless because the court properly found MCL 712A.19b(3)(c)(i), (g), and (l) were established by clear and convincing evidence, and only one statutory ground for termination need be proved. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Further, we conclude that the trial court did not err in its determination of the child's best interests, MCL 712A.19b(5); *Sours*, 459 Mich at 632-633, given respondent-mother's extensive alcohol use and cognitive limitations. Respondent-mother was unable to provide the minor child with a safe and appropriate home environment. On appeal, respondent-mother argues that her bond with the minor child was never assessed by a professional, services were never provided to improve the bond, and she was not provided parenting instruction that was appropriate to her limitations. However, respondent-mother mistakes the main issues in this case. Although there was concern about the lack of bonding between respondent-mother and the child, a weakened bond was not the basis for termination of parental rights. Further, contrary to respondent-mother's assertions, petitioner attempted to monitor her sobriety by facilitating drug screens and drug treatment but respondent-mother did not consistently or successfully benefit to the point where she could remain alcohol free. Additionally, respondent-mother was given additional time and opportunity to develop and strengthen the bond with her child because visitation was not suspended once the termination petition was filed, as required by law. Any compromise to the bond was the result of the way respondent-mother related to and treated her child. Given respondent-mother's cognitive limitations, her inability to bond with the minor child, and her alcohol addiction, the trial court did not err by concluding that termination of her parental rights was in the child's best interests.

¹Petitioner also agreed to withhold its immediate request for termination of parental rights and to provide services to respondents.

In Docket No. 310778, we find that termination of respondent-father's parental rights was proper under MCL 712A.19b(3)(c)(i) and (g). To the extent that the trial court also relied on MCL 712A.19b(3)(c)(ii), (l), and (m) with regard to respondent-father, any error was harmless because only one statutory ground needs to be established. *Powers*, 244 Mich App at 118.

At the time of the adjudication respondent-father had a problem with alcohol and did not demonstrate the ability to maintain a substance free lifestyle. His alcohol use prevented him from being able to properly care for his child. There was no evidence that he had suitable housing or employment. Further, respondent-father's psychological evaluation revealed that he was at a high risk for continued alcohol abuse because he had a long history of addiction. His intellectual deficiencies compromised his ability to provide proper care and custody.

Although respondent-father argues on appeal that he faithfully attended parenting classes and corrected his behavior after redirection, the evidence does not support this contention. Respondent-father did not consistently visit the minor child and, when he did visit, he often demonstrated bizarre behavior. During parenting time he spoke too loudly, bounced the child too high, and woke the minor child from sleep. He appeared to be intoxicated at one of the visits. Respondent-father also argues that the trial court erred by finding that he had abandoned his child. Despite this assertion, there were never any allegations that respondent-father abandoned his child. The trial court did not terminate respondent-father's parental rights based on findings of abandonment.

Respondent-father further argues that he was required to enter into rehabilitation by the termination hearing date and did so. He contends that he was denied a reasonable adjournment so that he could participate in alcohol treatment even though he was in rehabilitation in order to be a better parent. This argument is without merit. Respondent-father did not provide any evidence of his participation in a drug or alcohol treatment program. Assuming he was in treatment at the time of the termination hearing, his efforts were too little too late. Respondent-father was expected to enter into alcohol treatment at the time of adjudication and demonstrate that he could maintain sobriety. There was no evidence on the record that respondent-father had done this. The young minor child could not be expected to wait indefinitely while respondent-father took his time to address the problems preventing him from parenting.

Although respondent-father argues that he never received recommendations, and that he was never given an opportunity to rectify any conditions other than those that brought his child into care, the record in this case does not support his assertions. The order of disposition shows that respondent-father was ordered to participate in parenting classes, psychological evaluation, and substance abuse evaluation and follow the recommendations made. Thus, the record demonstrates that respondent-father was given recommendations and opportunities to rectify the conditions leading to the court's jurisdiction over the minor child.

Finally, respondent-father argues that the trial court never obtained jurisdiction and proceeded to initial disposition based on respondent-mother's prior terminations. He argues that only legally admissible evidence could be used to terminate his parental rights. Contrary to respondent-father's assertion, the trial court asserted jurisdiction after respondent-mother entered a plea of admission and not at the initial dispositional hearing. The trial court's jurisdiction is tied to the children, and petitioner is not required to sustain the burden of proof at an adjudication

with regard to every parent of the child involved in a child protective proceeding. *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2001). Thus, because the trial court asserted jurisdiction over the child following respondent-mother's plea, clear and convincing evidence was the appropriate standard for the termination hearing. Moreover, respondent-father does not identify any evidence that was improperly admitted. Accordingly, there is no basis to conclude that the trial court applied the wrong evidentiary standard in determining whether termination was warranted.

The trial court also did not clearly err by finding that termination of respondent-father's parental rights was in the child's best interests. MCL 712A.19b(5); *Sours*, 459 Mich at 632-633. Respondent-father had not remedied his extensive use of alcohol or his failure to bond with the minor child. His bizarre behavior during visits demonstrated his lack of awareness of the child's needs, and his failure to consistently visit showed his lack of commitment to the minor child. It is in the child's best interests to have a caregiver who can provide proper care and meet her needs, which respondent-father did not demonstrate that he could do.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering