

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 29, 2013

In the Matter of WALKER/MCINTYRE, Minors.

No. 310880
St. Clair Circuit Court
Family Division
LC No. 11-000014-NA

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her two minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

After respondent was evicted from her apartment in October 2010, she began leaving the minor children to the care of her mother for extended periods of time. Petitioner intervened and attempted to assist respondent with her housing and employment problems, as well as offered counseling and life skills assistance. In January 2011, after respondent failed to participate in these services, a petition for temporary wardship was filed. At the subsequent hearing, respondent admitted to the allegations and the petition for temporary wardship was granted. Respondent was ordered to find suitable housing and employment, as well as to complete a psychological evaluation, abstain from alcohol and controlled substances, successfully complete parenting classes, and visit the children. During the next several months, respondent failed to adhere to the court's orders, did not comply with multiple referrals, and failed to make any progress in alleviating the conditions that led to this adjudication. Consequently, in March 2012, a petition for termination of respondent's parental rights was filed.

A bench trial was conducted in June 2012. The testimony was consistent; respondent failed to participate in the numerous services that she had been offered, including a parent mentoring program, a life skills program, counseling services, and parenting classes. Although referred several times to various services, respondent was repeatedly terminated for non-compliance. The counselor testified that respondent only attended six sessions and there was "a total lack of progress." During the pendency of these proceedings, respondent had served 30 days in jail for uttering and publishing, and had a history of substance abuse. Visitation with the children had been suspended because respondent repeatedly failed to attend scheduled visits. In September 2011, respondent was also the subject of an arrest warrant for violating her probation, but she refused to turn herself in until May 2012, at which time she tested positive for marijuana. At the time of trial, respondent had not seen the children in ten months. Respondent also never

obtained stable housing or employment. At the end of May 2012, respondent was ticketed for driving on a suspended license. Respondent testified that she was living in a homeless shelter and remained unemployed. She also testified that when she “was on the run from my probation,” she smoked marijuana. Respondent also admitted that she had not complied with the court’s service plan during the pendency of this case.

At the close of the termination trial, the court issued its ruling. The court noted that the children’s placement with respondent’s mother “was designed to be a short term situation and it was put in that situation under a safety plan that was never followed through with,” which led to this adjudication. The court also noted the numerous referrals that were made for services to prevent removal of the children, and that respondent was non-compliant with those services causing their cancellations. Respondent also did not appear at several court hearings regarding this matter, and failed to attend scheduled visits with the children. Further, Child Protective Services had also been involved in 2009, apparently because of domestic violence, and respondent did not comply with the service plan then either. The court noted that the children had lived with respondent’s mother most of their lives and respondent was “not even around by her own choice.” Respondent did not secure housing and remained unemployed, continued to use marijuana, and continued to be involved in domestic violence relationships. Accordingly, the court concluded that clear and convincing evidence existed to terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g). Further, the court held that it would be in the best interests of the children to terminate respondent’s parental rights because “these children are so young, and have been away from their mother for a good portion of their young life, essentially looking to their grandmother in the role of a parent.” Subsequently, an order consistent with this ruling was entered and this appeal followed.

Respondent argues that the trial court’s decision was clearly erroneous because the statutory grounds for termination were not established by clear and convincing evidence. We disagree.

A trial court must terminate parental rights if one or more of the statutory grounds for termination listed in MCL 712A.19b(3) have been proven by clear and convincing evidence and the court finds from evidence on the whole record that termination is in the child’s best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354, 356-357; 612 NW2d 407 (2000). This Court reviews for clear error the trial court’s determination that a statutory ground for termination has been established by clear and convincing evidence, as well as the court’s decision regarding the children’s best interests under MCL 712A.19b(5). MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357; *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

Termination of parental rights under MCL 712A.19b(3)(c)(i) is appropriate if 182 days have elapsed since the issuance of the initial dispositional order and there is clear and convincing evidence that the conditions that led to the adjudication continue to exist with no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age. Termination is also appropriate under MCL 712A.19(3)(g) if there is clear and convincing evidence that the parent, without regard to intent, failed 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.

Respondent argues that her tardy participation in court-ordered services was sufficient evidence to preclude the court from finding, by clear and convincing evidence, that the above statutory grounds were satisfied. She also argues that she was attempting to find housing and secure employment. However, as the trial court noted, the conditions that led to this adjudication were respondent's homelessness, unemployment, substance abuse, and her abandonment of the children to her mother's care for extended periods of time. Further, despite repeated attempts by petitioner to assist respondent, respondent persistently failed to participate in the numerous offered services, continued to use marijuana, and failed to visit the children. She also was involved in several legal problems during the pendency of this action, including that she was incarcerated for a period of time, was subject to an arrest warrant for probation violations—which she ignored for several months, and was ticketed for driving on a suspended license. Respondent also remained homeless and unemployed. Accordingly, the trial court properly concluded that clear and convincing evidence supported termination of respondent's parental rights on the asserted statutory grounds.

Respondent also argues that termination of her parental rights was not in the children's best interests because she had been taking classes and was actively seeking employment, as well as a home. However, the trial court took these claims into consideration and noted that petitioner's involvement dated back to 2009 and then again in 2010, even before this adjudication was commenced. This matter had been pending since January 2011 and did not conclude until June 2012, with respondent showing little to no progress or participation. The court held that respondent "has made a lot of promises that she is going to do something and then never follows through with it." The court acknowledged that respondent was participating in services required for her probation, but concluded that there was "no reason to believe . . . that she will fully comply with that as well." The court also considered the fact that the children were living with respondent's mother during these termination proceedings as required by MCL 712A.19a(6)(a). See, also, *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Nevertheless, the court concluded that termination was in the children's best interests because respondent had been absent from the children's lives "for a good portion of their young life" and the children looked to their grandmother as their parent. In light of the record evidence, we conclude that the trial court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra