

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JACKSON/CONWAY, Minors.

UNPUBLISHED
December 3, 2013

No. 315405
Wayne Circuit Court
Family Division
LC No. 10-496379-NA

Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (c)(ii), (g), and (j).¹ For the reasons set forth in this opinion, we affirm.

In July 2010, a petition was authorized in this case and the children were placed with a relative. The petition alleged that one of the children had been subjected to sexual assault by a relative of respondent, that respondent was aware of the incidents, but failed to report any of the incidents to police or anyone else. After the trial court took jurisdiction of the matter, it developed a plan for respondent to follow. Numerous review hearings thereafter were held, with respondent not participating in some of the hearings. The trial court then scheduled a permanent custody hearing which had to be adjourned at least twice because the whereabouts of respondent were unknown. After being able to locate and properly serve respondent, a permanent custody hearing was held. Following the close of proofs and arguments, the trial court found that the statutory grounds as listed above for termination of parental rights were established by clear and convincing evidence. The trial court also found that termination of parental rights was in the children's best interest. This appeal then ensued.

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 children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision to terminate parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341,

¹ The parental rights of the father were also terminated. He is not a party to this appeal.

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; 455 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.

The trial court did not clearly err in finding the statutory grounds to terminate respondent's parental rights were established by clear and convincing evidence. The children were removed from respondent's care when she failed to protect her young daughter from sexual abuse by the child's maternal grandfather. Subsequently, other issues of respondent's substance abuse and inability to support her children came to light. By the time of the termination hearing respondent had not addressed either of these issues. Respondent never obtained suitable housing. She failed to submit the majority of drug screens requested of her, was terminated from substance abuse therapy for noncompliance and never completed it, and never demonstrated that she had addressed her alcoholism.

Respondent had not seen or communicated with her children or the caseworker for a period of over 91 days by the time of the termination hearing, and her whereabouts were then unknown. Moreover, respondent never made any financial contribution toward the children's care or provided any emotional support to the children while they were in protective care. She did not participate in individual counseling or complete parenting classes ordered by the trial court. Because respondent never obtained suitable housing or employment, there was no evidence that she could provide for her children, and her alcohol abuse would put the children at risk of harm.

Respondent argues that little was done to assist her and that transportation should have been arranged for her. Despite this contention there was no evidence that respondent asked for more help from the caseworkers or that transportation issues were what prevented her from complying with her treatment plan. In fact, respondent informed the caseworkers that her boyfriend was committed to transporting her to visits. In over two years of being provided services in a treatment plan, respondent was never found to be in substantial compliance with any component of her treatment plan. The record does not support respondent's claim that transportation issues prevented her from complying with services. A parent's failure to comply with a treatment plan is evidence of a parent's failure to provide proper care and custody of the child. *JK*, 468 Mich at 214.

Based on the whole record, the trial court correctly found that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). It was not in the children's best interests to be reunified with a parent who deserted them, was unable to protect them from sexual assault from someone with whom respondent forced the minor children to reside. Respondent failed to visit the minor children while they were in the care and custody of another relative, and made no effort to assist the minor children either financially or emotionally. Perhaps this was due to respondent's unaddressed alcohol abuse problem, however such untreated substance problems which put the minor children in harm's way, provide grounds for the trial court's best interest finding rather than excuse respondent's behavior. We therefore

concur with the trial court that it was not in the children's best interests to be reunited with a parent who cannot provide for their emotional or material needs.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Henry William Saad

/s/ Stephen L. Borrello