

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SEXTON/HERBERT/
BROADWORTH/PULLY, Minors.

UNPUBLISHED
December 19, 2013

No. 316033; 316034;
316035; 316036
Saginaw Circuit Court
Family Division
LC Nos. 12-033659-NA
12-033660-NA
12-033661-NA
12-033662-NA

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals by right the orders of the trial court terminating her parental rights to four children under MCL 712A.19b(3)(g) and (j). For the reasons outlined below, we affirm.

I. FACTS

Respondent is the mother of four children, currently ranging in age from one to twelve years old. On December 3, 2012, child protective petitions were filed with regard to all four children. The petitions alleged that the father of the two youngest children had physically abused one of them on more than one occasion, and that the father had continued to share a home with respondent and the children despite the issuance of a no contact order. The petitions also alleged that after the second incident of physical abuse, respondent had declined to take the child to the hospital for an examination. During the trial and dispositional hearings, evidence was presented that the physical abuse had occurred in June 2012 and again in November 2012. Testimony was also presented that respondent was aware of the nature and causes of the child's injuries, although respondent denied this. There was testimony and photographs reflecting that the abused child suffered from bruises to his neck, toes, genitals, collarbone, shoulder, head, back, elbow, forearm, face, and buttocks. Evidence also showed that respondent had a history of unemployment and cocaine abuse. The evidence additionally substantiated that respondent had permitted the abusive father, who had his parental rights to three other children previously terminated, to continue living in respondent's home and caring for the children up until the date that the children were removed. The court found that statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence under MCL 712A.19b(3)(g) and (j). The court also found that termination of respondent's parental rights

was in her children's best interests. Finally, the court found that the oldest two children should remain with their fathers, while the youngest two children should be put up for relative adoption. This appeal followed.

II. TERMINATION PRINCIPLES AND STANDARD OF REVIEW

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proven by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III. STATUTORY GROUNDS

Respondent argues that the trial court clearly erred in finding that the statutory bases for termination, § 19b(3)(g) and (j), were established by clear and convincing evidence. The first statutory ground, MCL 712A.19b(3)(g), provides that a court may terminate a parent's parental rights where "[t]he 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." The evidence showed that respondent had a history of drug abuse and had allowed a child abuser to live in her home and care for her children. The record also showed that respondent denied any wrongdoing before the trial court, and repeatedly attempted to minimize the harm done and the role played by the abusive father in inflicting that harm. The evidence revealed that respondent was more concerned with protecting the abuser than her children. Given such evidence, it was not clearly erroneous for the trial court to conclude that respondent had failed to provide proper care and custody for her children in the past, and that there was no reasonable expectation that respondent would be able to provide reasonable care and custody in the future.

MCL 712A.19b(3)(j) provides that termination is proper where "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Again, the evidence showed that respondent had a history of allowing a child abuser to stay in her home and care for her children, despite witnessing injuries and despite the presence of a no contact order. The evidence also showed that respondent attempted to minimize the allegations against the abuser and had expressed concern, remarkably, over raising her children without his assistance. And again, the evidence revealed that respondent was more concerned with protecting the abuser than her children. Given such evidence, it was not clearly erroneous for the trial court to conclude that there was a

reasonable likelihood that respondent's children would be harmed if they were returned to her home.

IV. BEST INTERESTS OF THE CHILDREN

Respondent also argues that the trial court clearly erred in determining that the termination of respondent's parental rights was in the children's best interests. In deciding whether termination is in a child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Here, the evidence showed that respondent lacked the ability to provide a safe and stable home for her children, that respondent's children needed permanency and stability, and that the respondent's children were currently doing well in their relative placements. We repeat that the evidence showed that respondent had expressed concern over her ability to care for the children without the help of the abusive father and that respondent had a history of allowing this man in her home despite the abuse and the presence of a no contact order. Under such facts, it was not clearly erroneous for the trial court to determine that termination was in the best interests of the children.

Further, despite respondent's arguments to the contrary, respondent was offered numerous services prior to termination, all of which respondent failed to fully comply with miserably. Given this lack of compliance, the trial court's termination of respondent's parental rights was not clearly premature. Lastly, despite respondent's assertion on appeal, the trial court did consider the possibility of guardianship or a change in custody, but rejected the position as contrary to the children's interest in permanency, stability, and finality.

The children had a compelling need for permanency, stability, and finality; the trial court did not clearly err by determining that the termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello