STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MICHAEL L. KOTHE, JR., SHAWN RICHARD KOTHE, and PHILIP ANDREW KOTHE, Minors.

UNPUBLISHED
May 21, 1996

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

No. 181610
LC No. 92-010059-NA

JEANNE WONDERS,

Respondent-Appellant.

Before: Jansen, P.J., and Hoekstra and D. Langford-Morris,* JJ.

PER CURIAM.

Respondent appeals as of right from a November 3, 1994, order of the Monroe Probate Court terminating her parental rights to Michael L. Kothe, Jr., (dob 4/23/82), Shawn R. Kothe (dob 5/11/83), and Philip A. Kothe (dob 1/19/85) pursuant to MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii) (desertion) and MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) (failure to provide proper care and custody). We affirm.

Respondent first argues that the trial court erred in finding under § 19b(3)(a)(ii) that she failed to seek custody within 91 days and deserted the three boys. On review of the record, we find that the trial court's factual finding that respondent deserted Philip and Shawn is not clearly erroneous. MCR 5.974(I). There was clear and convincing evidence presented that respondent deserted Philip and Shawn for 91 or more days and that she did not seek custody of those two boys during that period. MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). However, we agree with respondent that the trial court clearly erred in finding that she deserted Michael. The lower court record indicates that respondent had sporadic visits with Michael, as testified to by social services workers.

* Circuit judge, sitting on the Court of Appeals by assignment.

Respondent also argues that the probate court clearly erred in terminating her parental rights under § 19b(3)(a)(ii) because, even if she did desert the boys, she did so because DSS made it too onerous for her to maintain contact and there was no rationale for the DSS's requirements. We find that the probate court did not clearly err in considering respondent's failure to contact the three boys after June 1994 as part of its determination that respondent had deserted the boys for 91 or more days. The DSS changed visitation from respondent's home in Toledo, Ohio, to Monroe. The nature of visitation was changed because of the death of the boys' father in May 1994. The boys' father had originally had physical custody of them. Further, the DSS arranged for transportation to Monroe for respondent to visit the boys, yet respondent did not take advantage of that arrangement. Accordingly, we do not agree that the DSS made it too onerous on her to maintain visitation with the boys when the DSS provided for transportation. There is no error in this regard.

Respondent also contends that the probate court clearly erred in finding that she failed to obtain counseling as ordered by the court, and by finding that she deserted her children based on her testimony that she did not know when the children would be ready to return to her home.

First, we fail to see how the probate court clearly erred in considering respondent's own testimony at trial that she was not yet ready to have custody of the boys. It was entirely proper for the probate court to consider this testimony. Second, we do not agree that the probate court placed undue emphasis on the fact that respondent failed to follow through with counseling. In reviewing the probate court's reasons to support its decision to terminate respondent's parental rights under the statutory provisions, the probate court articulated numerous reasons regarding why termination of parental rights was met by clear and convincing evidence. We find no error in this regard.

Although we agree that the probate court clearly erred in finding clear and convincing evidence existed to terminate respondent's parental rights to Michael under § 19b(3)(a)(ii), any error is harmless because there was sufficient evidence to terminate her parental rights to Michael under § 19b(3)(g). Only one statutory ground need be proved by clear and convincing evidence to terminate parental rights. MCL 712A.19b(3); MSA 27.3178(598.19b)(3). There was also sufficient evidence to terminate respondent's parental rights as to all the boys under § 19b(3)(g). The probate court's factual findings that there was clear and convincing evidence to terminate respondent's parental rights under § 19b(3)(g) are not clearly erroneous. MCR 5.974(I). We find no abuse of discretion in the probate court's determination that termination of respondent's parental rights was in the best interests of the boys. *In re Vasquez*, 199 Mich App 44, 52; 501 NW2d 231 (1993).

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Denise Langford-Morris