

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PRESTON CADE JOHNSON,
CLAYTON PATRICK-ALAN JOHNSON,
MADISON JOHNSON, and ASHTON CARTER
JOHNSON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
June 28, 2005

v

CARRIE ELEASE JOHNSON,

Respondent-Appellant.

No. 260277
Grand Traverse Circuit Court
Family Division
LC No. 98-000252

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

I. FACTS

Respondent's children were first removed in 1998, then returned and removed again in 1999. The children were returned to respondent a year later. The children's foster care worker in the late 1990's testified that respondent's lingering issues at that time were alcoholism and her attraction to abusive partners.

In January 2003, petitioner paid for respondent to attend Miracle Manor, an intensive in-house residential treatment center for mothers with substance abuse issues. Respondent left the program in June 2003 without successfully completing it. She voluntarily returned July 16, 2003 and left again August 2, 2003.

Respondent mother lived with Mr. Piper, Ashton's father, for approximately three years. On many occasions, respondent mother and Mr. Piper would have violent altercations, generally with the children nearby. Even though respondent no longer lives with Mr. Piper, the violent episodes have continued.

In June 2003, respondent mother was arrested for third degree home invasion and domestic assault on Mr. Piper. She had a blood alcohol content of .217 and was combative with

police. After this incident, respondent's children, except for Preston, who was living with his father at the time, were placed in foster care. When the worker picked up Madison and Ashton, Madison told her that respondent had cut her with a knife. The worker saw old hash marks on her leg.

When respondent's three children first entered foster care, Madison would curl into a ball in the corner and whimper if she thought she had done something wrong and also chewed a lot of things, including the hands off her Barbie dolls and wood off the bed. Clayton was afraid to be in a room by himself and did not want any doors shut. Both Clayton and Madison were physically fine but claimed Mr. Piper had hit them with a belt when they were bad. Ashton had a ruptured ear drum from ear infections.

The domestic assaults between Mr. Piper and respondent have continued and at least three additional police reports have been filed after the children were removed.

II. STANDARD OF REVIEW

Termination of parental rights is mandatory if the trial court finds that the petitioner established a statutory ground for termination, unless the court finds that termination is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 344; 612 NW2d 407 (2000). This Court reviews termination of parental rights decisions for clear error. Clear error has been defined as a decision that strikes this Court as more than just maybe or probably wrong. *Id.*, 357. Additionally, the trial court's findings of fact may not be set aside unless they are clearly erroneous, and this Court shall give regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(B).

III. ANALYSIS

A. Termination of Parental Rights

The trial court did not clearly err in finding that the statutory grounds for termination had been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 344; 612 NW2d 407 (2000). In the year and a half time period that petitioner provided "prevention" services, respondent mother was unable to resolve her issues of substance abuse, poor choices regarding relationships with men, and domestic violence, which had also caused the earlier removals of respondent's children. Respondent was arrested for breaking and entering the home of Mr. Piper, a former boyfriend and the father of respondent's youngest child, and assaulting Mr. Piper, and the children were again removed from respondent's care. The police were called three more times after this regarding domestic violence between respondent and Mr. Piper. Although respondent's substance abuse counselor and domestic violence counselor testified that respondent could care for her children within a year, respondent had already received extensive services from petitioner for eighteen months. Even assuming that the counselors' estimates of one year were correct, the trial court did not clearly err in determining that the time period it would take for respondent to possibly be able to provide proper care and custody for her children was not reasonable considering the children's ages.

The trial court also did not clearly err in finding that the evidence established that there was a reasonable likelihood, based on respondent's conduct or capacity, that the children would be harmed if returned to her home. Although there was testimony that respondent was a wonderful parent when sober, the testimony regarding the potential harm to the children when respondent was not sober included the children witnessing and hearing domestic violence incidents, respondent drinking and driving with the children in the car, and respondent being out of control after being arrested for breaking and entering. The children had also suffered emotional injury while in respondent's care, but their behaviors improved in foster care.

B. Best Interests of the Child

Furthermore, the evidence did not show that termination of respondent's parental rights was not in the children's best interests. MCL 712A.19b(5). Therefore, the trial court did not err in terminating respondent's parental rights.

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello