

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TAYLOR WHITE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBIN RENEE KESSLER, a/k/a ROBIN RENEE
SALDANA,

Respondent-Appellant.

UNPUBLISHED

November 27, 2007

No. 275043

Oakland Circuit Court

Family Division

LC No. 06-716244-NA

Before: Servitto, P.J., and Sawyer and Murray, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (g), and (j). Because the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence, and the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests, we affirm.

The minor child came under the jurisdiction of the trial court upon allegations that the child was a victim of abuse and/or neglect in his biological father's home, that the father pled guilty to 4th degree child abuse involving the child in 2004, that the father pled guilty to 4th degree criminal sexual conduct involving his step-daughter in 2005, and that respondent had abandoned the child. At the conclusion of a dispositional hearing, at which respondent was not present, the trial court found that a statutory basis for terminating respondent's parental rights had been established by clear and convincing evidence. The trial court thereafter held a hearing to determine if termination was in the child's best interests, which respondent participated in and at the conclusion of which her parental rights were terminated. Respondent now contends that the requisite statutory grounds for termination of her parental rights were not established by clear and convincing evidence and that termination of her parental rights was not in the minor child's best interests.

We review the trial court's finding that a statutory ground for termination was proven by clear and convincing evidence for clear error, giving deference to the trial court's superior opportunity to determine the weight and credibility of witnesses who appear before it. MCR

3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). “Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests.” *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

MCL 712A.19b(3)(a)(ii) provides that a parent’s parental rights may be terminated if the child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period. Other statutory grounds for termination include where the 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 (MCL 712a.19b(3)(g) and when there 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 (MCL 712A.19b(3)(j)).

Here, the minor child resided with respondent and his stepfather with no child protective intervention for nearly nine years, after which respondent left him with his legal father in January 2003. During the next three years, the minor child became the subject of child protective proceedings in Wayne and Oakland Counties due to his father’s actions, and he resided in several different homes.

The evidence showed that respondent loved the minor child, he was bonded to her, had telephone communication with her when he was not in placement with his uncle or stepfather, and received the benefit of child support until June 2005 through respondent’s income withholding. However, the evidence also showed that respondent’s physical contact with the child was non-existent for three years, telephone communication was sporadic and lapsed for long periods of time when the child was placed with his uncle or stepfather, financial support was inconsistent, and respondent first sought the minor child’s custody mere weeks before her best interests hearing. Based upon the above, the trial court did not err in finding that respondent had deserted the child for more than 91 days and had not sought custody of him during that time.

Respondent had three years to resolve her substance abuse issue, two years to address her Michigan warrant for probation violation, and ample time to obtain stable employment and establish a stable home life, but the evidence clearly showed that she did not do so even though the minor child’s distress and lack of stability during the two child protective proceedings should have served as strong motivation. Although respondent had parented the minor child without intervention for nearly nine years, she had failed since January 2003 to address and resolve her issues, and they still existed at the time of termination in November 2006. Despite knowing that the child was physically abused in 2004 and removed from his father’s care during 2005 and 2006, and despite the child’s requests to see her and live with her, respondent remained in Florida where she incurred criminal convictions related to alcohol abuse and domestic violence with a new husband. The trial court did not err in finding no reasonable expectation that respondent would become able to provide proper care within a reasonable time. Given respondent’s long-standing propensity to place her own issues, needs, and wants first while the minor child lacked proper care, the trial court did not err in finding that he would likely be harmed if returned to respondent.

While respondent argues on appeal that the child's father and agency personnel did not adequately inform her about the proceedings, her lack of awareness concerning the child's whereabouts and involvement with protective services emphasized the fact that respondent remained out of touch and had abandoned him. Respondent made some attempts to gain information just before the adjudication trial and returned to Michigan one month before the best interests hearing, but her efforts were too late to help the minor child during this proceeding. At the time of the best interests hearing, she had not had any contact at all with the minor child for nearly six months.

Respondent also argues on appeal that if the child's abusive, sexually inappropriate father was given an opportunity to engage in a treatment plan, she should be, too. The legal father's situation, relationships, and level of involvement during the proceeding were different from those of respondent, and formed the basis for the agency changing its request from permanent custody to temporary custody. The evidence was clear that respondent's situation had not improved in the past three years and that she remained out of touch, so a request for termination at the initial disposition was warranted in her case.

Further, the evidence did not show that termination of respondent's parental rights was clearly contrary to the child's best interests. MCL 712A.19b(5); *In re Trejo, supra*, at 356-357. The evidence showed that the child was bonded to respondent, loved her, and wanted to maintain communication with her, but did not necessarily want to live with her. He was in a stable placement with his stepfather. While many parents suffer from addictions and make mistakes, this minor child had endured three years of continual upheaval, anxiety, and emotional distress caused by respondent's and his father's mistakes, and the evidence on the whole showed that respondent would not be in a position to provide him with stability in a reasonable time.

Affirmed.

/s/ Deborah A. Servitto
/s/ David H. Sawyer
/s/ Christopher M. Murray