

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GRIFKA, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AUTUMN MICHALSKI,

Respondent-Appellant.

UNPUBLISHED

April 22, 2010

No. 294346

Sanilac Circuit Court

Family Division

LC No. 00-033643-NA

Before: BANDSTRA, P.J., and BORRELLO and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii) and (g). For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises from numerous allegations that respondent failed to adequately protect her children against sexual abuse, was a frequent user of illegal narcotics, that she failed to participate in services offered to her and that she left the children for extensive periods of time without attempting to contact them.¹

On appeal, respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). For the reasons set forth in this opinion, we disagree.

Pursuant to a mediation agreement reached with respondent, the children were placed in permanent foster care, reunification services were discontinued, and respondent was provided visitation with the children. Respondent admitted that she was aware that the agreement required her to maintain contact with the children through visitation arranged by petitioner. Respondent

¹ This was not the first time that respondent's actions had led to judicial proceedings.

visited the children on January 14, 2009, and February 18, 2009, but failed to appear at an April 2, 2009, visit despite the caseworker providing her gas money, which respondent had indicated was the only obstacle to her attendance. Respondent left the state and contacted the caseworker by telephone on April 15, 2009, stating that she was on her way to a homeless shelter in New Hampshire. A few days later, the caseworker contacted respondent at the homeless shelter, and respondent was unable to offer any plan for visiting the children and did not inquire about them. Respondent did not contact the caseworker again until June 12, 2009, after petitioner filed its May 28, 2009, petition to terminate respondent's parental rights. At that time, respondent was living in Indiana and intended to move to Oklahoma to attend college. Shortly thereafter, respondent told the caseworker that she had changed her mind and planned on returning to Michigan. Although she returned on June 26, 2009, she did not request to visit the children despite the caseworker informing her that she needed to contact her new caseworker to schedule visitation.

Thus, the evidence showed that respondent deserted the children for 91 or more days. A parent's failure to make any substantial effort to visit or communicate with a child for the statutory 91-day period constitutes abandonment. *In re Webster*, 170 Mich App 100, 109; 427 NW2d 596 (1988). The trial court did not clearly err by determining that petitioner had established the statutory basis for termination under MCL 712A.19b(3)(a)(ii).

Because petitioner need establish only one ground for termination, it is unnecessary to address the trial court's termination of respondent's parental rights under MCL 712A.19b(3)(g). *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000). In any event, the trial court did not clearly err by terminating respondent's parental rights on this basis as well. Pursuant to the mediation agreement, visitation was the only means for respondent to provide care for her children. By failing to comply with this requirement, she failed to provide any care whatsoever. Moreover, respondent admitted that she was unable to provide proper care and custody for the children and could not offer any indication of when she would be able to do so. Thus, termination was proper under MCL 712A.19b(3)(g).

Further, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357. Respondent's daughter told her therapist that she could not trust respondent to take care of her and preferred to remain in her foster home. She expressed anger and resentment toward respondent as a result of her current situation and indicated that she preferred that respondent's parental rights be terminated. The child's therapist opined that it was detrimental for the child to continue hoping for reunification. Similarly, respondent's son expressed anger regarding his situation and did not oppose the termination of respondent's parental rights because he could not trust her.

At the time of the termination hearing, the children had been in foster care for more than two years and respondent had not visited them for almost seven months. One child was nearly 14 years old and the other was 11 years old. Moreover, respondent admitted that she was unable to care for the children and could not indicate when she might be able to do so. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Richard A. Bandstra
/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro