

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 10, 2011

In the Matter of KOPSI, Minors.

No. 298958
Marquette Circuit Court
Family Division
LC No. 08-008881-NA

In the Matter of KOPSI, Minors.

No. 299023
Marquette Circuit Court
Family Division
LC No. 08-008881-NA

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father appeals as of right in Docket No. 298598, and respondent-mother appeals as of right in Docket No. 299023, from the trial court's order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

I. STATUTORY GROUNDS FOR TERMINATION

Both respondents argue that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. They both contend that, in light of their recent separation, the trial court should have found that each was now in a better position to resolve the issues that led to the children's removal and to be able to provide proper care and custody for the children.

A statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(G)(3)(a). The trial court's findings of fact, and its determination whether a statutory ground for termination has been established, are reviewed for clear error. MCR 3.977(K). The trial court's findings may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is given to the trial court's

special opportunity to judge the credibility of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Turning first to § 19b(3)(c)(i), the condition that led to the initial adjudication involved a lack of supervision of the children. The evidence showed that there had been numerous referrals to Child Protective Services (CPS) dating back to January 2002 for respondent-father, and to June 2003 for respondent-mother. Both respondents were provided with services in August 2005, May 2006, August 2007, and July 2008. The children were removed from respondents' care in August 2008 because of continuing problems with a lack of supervision, after which respondents were again provided with services. A Family Health Educator worked with them until July 2009, teaching them parenting skills and appropriate discipline. Respondents made inconsistent progress and regressed several times. When their youngest child was removed for the second time in February 2009, the educator had to essentially start the course over. When services were terminated in July 2009, respondents had not progressed beyond the basic level.

Respondents were eventually permitted overnight visits, but the children reported that respondents stayed in bed or watched movies during the visits, allowing the children to do what they wanted. Respondents did not make the children go to bed, bathe, or brush their teeth. After the youngest child was returned home, respondent-mother abused alcohol, had an affair, and was physically assaulted by respondent-father. The child was again removed and supervised visitation was reinstated. Respondents requested that in-home visits be reinstated, but in May 2009, the caseworker found a convicted felon and a sex offender in respondents' home.

At the termination hearing, respondent-mother maintained that the children were always properly supervised and made excuses for their escapades. She also made excuses for her inability to apply appropriate discipline during visits. Respondent-father similarly maintained that the children had always been properly supervised, although he conceded that he needed help learning to discipline them. He claimed that he had learned a lot working with the Family Health Educator, but felt that she was being controlled and manipulated by the caseworker.

The trial court did not clearly err in finding that there was clear and convincing evidence that neither respondent admitted responsibility for the children's removal, and that both continued to maintain that the children were always properly supervised, despite clear evidence to the contrary. Further, the court did not clearly err in finding that neither respondent had benefited from the services provided since 2003. Given respondents' failure to make progress during this time period, the trial court did not clearly err in finding that there was no reasonable likelihood that either respondent would be able to rectify the conditions that brought the children into care within a reasonable time considering the ages of the children. Thus, termination was warranted under § 19b(3)(c)(i).

With respect to § 19b(3)(g), there was clear and convincing evidence that, despite being provided with services, respondents had not learned to properly discipline their children. Additionally, respondents continued to maintain that the children had always been properly supervised, and neither admitted responsibility for the conditions that led to the children's removal. There was evidence of domestic violence, but respondents minimized or denied it. Respondent-mother unreasonably maintained that respondent-father was not a violent person, despite his history of involvement in many physical altercations.

Respondents' counselor stated that it would take a very long time for respondents to make progress with their relationship issues. Despite their volatile relationship, respondents married because they thought it would help their case. They later separated, but respondent-father wished to reconcile. Although both respondents appeared to be doing better financially since their separation, and respondent-mother had regained her driver's license, neither had appropriate housing. Respondent-mother declined the opportunity to take additional parenting classes, electing instead to await the outcome of the termination hearing.

The trial court did not clearly err in finding that the evidence clearly and convincingly showed that both respondents failed to provide proper care for their children, and that there was no reasonable expectation that either would be able to provide proper care and custody within a reasonable time considering the children's ages.

We disagree with respondent-mother's argument that the trial court unfairly imputed respondent-father's shortcomings to her. Respondent-mother chose to stay with respondent-father, she chose to deny that domestic violence was an issue, and she turned down help that she was offered. She maintained that the children were always properly supervised and denied any responsibility for the conditions that caused their removal. Her psychological evaluation confirmed that her personality traits were well entrenched and that she was unlikely to change.

For these reasons, we affirm the trial court's determination that the statutory grounds for termination were established by clear and convincing evidence as to each respondent.

II. BEST INTERESTS

Both respondents also argue that termination of their parental rights was not in the children's best interests. We disagree.

MCL 712A.19b(5) provides that "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." The trial court's best interests decision is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Although there was evidence that respondents and the children loved each other and that there was a strong bond between them, the children had been the subject of numerous referrals for lack of supervision throughout their lives. At the time of the termination hearing, the children had been in care for 22 months (although the youngest child had been placed in respondents' home for three months). After receiving services, respondents were granted overnight visits, but continued to fail to supervise the children. Other issues involving alcohol abuse and domestic violence existed and were not resolved. After respondents requested that in-home visits be reinstated, a convicted felon and a registered sex offender were found in their home. Respondents married, but separated a few months later. Neither had appropriate housing. Respondent-father continued to live in a dangerous neighborhood in which he was involved in physical confrontations. Respondent-mother declined to attend additional parenting classes. The evidence showed that the children's behavior improved significantly after entering foster care,

and regressed while respondents had overnight visits, during which respondents did not make the children go to sleep, bathe, or brush their teeth.

The trial court did not clearly err in finding that, despite the likelihood of some emotional hardship if respondents' parental rights were terminated, termination of each respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ William C. Whitbeck/
/s/ Donald S. Owens