

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 7, 2011

In the Matter of GASTON/FULTZ, Minors.

No. 298923
Wayne Circuit Court
Family Division
LC No. 05-439847

Before: BORRELLO, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

Respondent-appellant Whitman (respondent) appeals by right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

Respondent argues that the trial court erred by finding that each of the statutory grounds for termination had been established by clear and convincing evidence. We disagree. The petitioner must establish at least one statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review the trial court's factual findings, as well as its ultimate decision whether a statutory ground for termination has been proven, for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Respondent contends that termination was improper under § 19b(3)(a)(ii) because, although the evidence showed that she failed to visit the children for substantial periods of time well in excess of the 91-day period prescribed by statute, her absences were not willful and intentional, see *In re B & J*, 279 Mich App 12, 18-19 n 3; 756 NW2d 234 (2008), but rather were attributable to her inability to travel to Michigan because she could not afford to do so and because she lacked reliable transportation. But the record belies respondent's argument that her failure to visit the children was due to involuntary circumstances beyond her control. Although respondent asserts that she did not have reliable transportation, respondent testified that she ran a transportation service to shuttle people between Michigan and Ohio. Respondent also admitted that she had the financial ability to provide for the children's futures and that she frequently drives to Michigan to visit her oldest child. Nor does the record support respondent's contention that she was poverty stricken. Respondent claimed to be running three businesses and to have

established a place of business outside her home. Respondent also testified that she was able to acquire a larger home. Respondent did not remain in contact with her caseworkers and there is no indication that she ever sought help for her economic situation. On the facts before us, we perceive no clear error in the trial court's determination that clear and convincing evidence supported termination of respondent's parental rights under § 19b(3)(a)(ii).

We also conclude that termination was proper under § 19b(3)(c)(i). Respondent began participating in services in 2006. The principal issue in the case was respondent's longstanding history of substance abuse. The evidence showed that respondent failed to make any real progress in addressing that issue. She was given five different referrals for substance abuse assessments and treatment. Drug testing showed that respondent was still using illegal substances in March 2009. Although respondent claims that she successfully completed a drug treatment program in July 2009, she failed to provide competent evidence to support that claim and she repeatedly failed to submit to drug testing after that date. Respondent also failed to provide verification of her alleged attendance at AA/NA meetings, failed to consistently maintain contact with her caseworker, frequently disappeared for periods of time with no notice to her caseworker, and failed to consistently visit the children. The trial court did not clearly err by finding that the conditions that led to the adjudication continued to exist. Further, considering that respondent had almost five years to resolve the conditions and still had not done so, the trial court did not clearly err by finding that the conditions were not likely to be rectified within a reasonable time considering the children's ages. See *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009).

We likewise conclude that the trial court did not clearly err by finding that termination was warranted under §§ 19b(3)(g) and (j). Respondent's failure to complete the terms of her parent-agency agreement, primarily by failing to successfully overcome her substance abuse problem, supported termination under these two subsections. The evidence showed that because of respondent's unresolved issues, she was not in a position to provide proper care and custody for her children, and there was no reasonable expectation that she would be able to do so within a reasonable time. Further, there was a reasonable likelihood that the children would be harmed if returned to respondent's custody.¹

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood

¹ Respondent has not addressed the trial court's best-interests determination, MCL 712A.19b(5), and we therefore decline to consider it on appeal.