

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 3, 2013

In the Matter of KMM, PMM, EJM, VMM, WSM,
and JJM, Minors.

No. 308493
Isabella Circuit Court
Family Division
LC No. 2010-000123-NA

In the Matter of BSM, Minor.

No. 310866
Isabella Circuit Court
Family Division
LC No. 2010-000123-NA

Before: HOEKSTRA, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

In Docket No. 308493, respondent appeals as of right from an order terminating her parental rights to her six oldest children based on MCL 712A.19b(3)(c)(i) and (g). In Docket No. 310866, respondent appeals as of right from an order terminating her parental rights to her youngest child based on MCL 712A.19b(3)(i) and (l). For the reasons set forth in this opinion, we affirm termination in both cases.

I. DOCKET NO. 308493.

Following numerous reports to various governmental agencies relative to the minor children and their parents, a referral was made that brought this matter within the jurisdiction of the Isabella County Circuit Court. When the case was initiated, the family was homeless and living in a hotel. The six children were examined and all were found to have suffered psychological trauma, were undernourished, afraid of their mother and father and did not want to return to their custody. It was reported that some of the minors had been subjected to sexual abuse by the father, and there were allegations that the father would take pictures of the female minor children naked and respondent would have the film developed. There were additional allegations of inappropriate sexual behavior by respondent, including subjecting the minors to watch sexual acts. Some of the minors were observed engaging in inappropriate sexual behavior which was opined to have occurred as a result of being subjected to sexual abuse.

All children reported being subjected to violent behavior on the part of their parents. The minor children reported to authorities that they were subjected to beatings, usually by their father striking them with his fists. Additionally, some of the minors reported being injured by their mother, usually as a result of coming between a violent altercation between their mother and father.

While all of the minor children had some form of psychological illness, some also had other serious ailments. One of the minor children had been diagnosed with diabetes and testimony revealed that respondent had been lax, at best, in treating the disease. Some of the children suffered from other illnesses and respondent was unwilling for significant periods of time to get them proper medical care.

Testimony also revealed that while respondent suffered from various forms of psychological illness, she refused to participate in counseling with community mental health. (CMH). She also did not actively participate in parenting classes or any other services offered to her. Having been removed from the care and custody of respondent for a significant time period, at the time of the termination hearing, all of the minor children had significantly advanced both in their mental and physical health. Neither parent appeared for the termination hearing, although respondent appeared for the trial court's ruling where the trial court terminated respondent's parental rights based on MCL 712A.19b(3)(c)(i) (failure to rectify conditions) and MCL 712A.19b(3)(g) (failure to provide proper care and custody).

II. DOCKET NO. 310866.

In this case, the minor child was placed in DHS care the day following his birth by a court order which transferred the case to Isabella County. Following the conclusion of proofs, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(i) (parental rights to sibling terminated due to serious chronic neglect or physical or sexual abuse) or MCL 712A.19b(3)(l) (parental rights to sibling terminated as a result of proceedings under MCL 712A2(b)).¹ This appeal then ensued.

MCL 712A.19b provides in pertinent part as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial

¹ We note that in both cases the order terminating rights simply states that there was clear and convincing evidence of a statutory basis. We use the statutory references in this opinion based on the fact that they were listed on the petitions for termination of parental rights in both cases.

dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) 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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

* * *

(5) If 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.

Respondent argues that reasonable efforts were not made to reunify her with her children.

MCL 712A.19a(2) provides in pertinent part:

(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:

* * *

(c) The parent has had rights to the child's siblings involuntarily terminated.

Since respondent's parental rights to her older children had been terminated at the point when petitioner moved for termination of parental rights as to the youngest child, no reasonable

efforts at reunification had to be made with respect to the youngest child. With respect to the older children, we note that respondent does not take issue with the finding that she has not rectified conditions that led to adjudication or that she has failed to provide proper care and custody and that there is no reasonable likelihood or expectation that she will be able to do so in a reasonable time. Moreover, she has not challenged the trial court's best-interest determination. Rather, she argues that reasonable efforts to reunify were not made since a psychiatric examination was not ordered and respondent was not put on psychotropic medications.

After a psychological evaluation, it was determined that respondent would benefit from medication for depression. While respondent's attorney and a caseworker may have held the opinion that a neuropsychiatric examination should have been ordered, neither possessed the expertise to effectively address that issue. Moreover, respondent did not need a neuropsychiatric examination to pursue pharmacological psychiatric treatment. Nor did she need a neuropsychiatric examination to begin psychological treatment. The record established that respondent was offered a psychiatric assessment at CMH. The psychologist who evaluated her opined that she might need some urging to pursue treatment, but did not think that she was so depressed that she could not pursue recommended services. Further, the record established that respondent contacted CMH once before rights to the six oldest children were terminated, indicating she was capable. Although she rejected CMH as a provider of psychiatric care before termination of parental rights as to the oldest six children, petitioner made reasonable efforts to ensure that the care was available to her. Accordingly, this is not a basis for overturning the trial court's decision.

We cannot glean from the record any error made by the trial court leading to its adjudication of either of these termination proceedings. Accordingly, we affirm the trial court's termination orders in both cases.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra