

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 26, 2013

In the Matter of MURPHY/IRELAND, Minors.

No. 310692
Bay Circuit Court
Family Division
LC No. 11-010972-NA

Before: STEPHENS, P.J., and HOEKSTRA and, RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to her two children pursuant to MCL 712A.19b(3)(b), (c), (g), and (j). For the reasons set forth below, we affirm.

I. BASIC FACTS

Respondent is the biological mother of PM, age 14, and KI, age 12. On September 20, 2011, petitioner submitted a petition alleging that respondent allowed her partner to physically abuse the children, that respondent moved to Missouri in July of 2011 and left the children with her mother, and that respondent left only a bridge card for the children's support.

A termination hearing was held nearly eight months later, at which time respondent had neither returned to Michigan nor completed the case service plan ordered by the court. Substantial evidence of serious abuse and neglect by respondent and her partner was introduced at the termination hearing. Respondent, who appeared by telephone while traveling by bus to Michigan, denied the allegations of abuse, testified that she and her partner had separated, and stated that she was moving back to Michigan, but had no home and no employment. She averred that she had engaged in counseling, completed parenting classes and signed the parent-agency agreement. She also justified never returning to Michigan in 6 months by stating that she had suffered an allergic reaction at some point in time. Although there was independent evidence that respondent participated in parenting classes, no corroboration was presented regarding the other aspects of her testimony.

The court issued an opinion from the bench terminating respondent's parental rights to PM and KI. The court noted that it found respondent's testimony to be "totally not believable" and that it was clear that the children had "been traumatized, beaten, tortured, emotionally abused by their mother and their mother's various partners." The court found that the evidence

supported termination under MCL 712A.19b(3)(b), (c), (g), and (j), and that termination was in the best interests of the children as it would allow respondent's mother to adopt them.

II. ANALYSIS

In a case regarding the termination of parental rights, a petitioner must establish a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3). Only one statutory ground need be proven in order to terminate parental rights. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). This Court reviews both the lower court's factual findings and its ultimate decision whether a statutory ground 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 [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (citations and quotations omitted).

Once a statutory ground for termination has been proven, the court shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5). This Court reviews for clear error a lower court's findings with regard to whether termination was in the best interest of the child. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

A. Reunification''

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

Once a petition is filed in a termination proceeding, the Department of Human Services (DHS) is required to adopt a service plan and make reasonable efforts to rectify the conditions that caused the child's removal. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). "The service plan must address what the parent must do to achieve reunification and what the supervising agency must do to support parental objectives." *In re Rood*, 483 Mich 73, 97; 763 NW2d 587 (2009) (citations and quotations omitted).

Petitioner, DHS, adopted a service plan requiring respondent to take a parenting course, obtain a psychological evaluation, and attend counseling. Petitioner placed a request through the Interstate Compact so that respondent could complete the service plan in Missouri, but stayed in contact with respondent and Missouri DHS to assist respondent with accessing services before the Interstate Compact was finalized. In addition, the lower court required respondent to return to Michigan at some point to see her children before custody could be restored.

It is clear from the evidence that 'petitioner provided a manageable service plan and rendered substantial assistance to respondent in completing the plan. Therefore, we conclude that petitioner made reasonable efforts to reunite respondent with her children.

B. Statutory Grounds for Termination

Next, respondent argues that the lower court erred by finding that grounds for termination had been established under MCL 712A.19b(3)(b), (c), (g), and (j). We disagree.

MCL 712A.19b(3)(b) states that termination is proper if:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

Testimonial evidence established that both PM and KI had been physically abused by respondent and respondent's partner, and that respondent was aware of the physical abuse administered by her partner. This testimonial evidence was supported by the photographic evidence of injuries sustained by PM. The sole evidence contradicting this testimonial and photographic evidence was the testimony of respondent herself, which the lower court rejected as "totally not believable." "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). Moreover, the lower court was unconvinced that respondent's attitude towards discipline had changed since the proceedings commenced, and also doubted respondent's assertion that she and her partner had separated. Accordingly, we conclude that the lower court did not clearly err in finding that petitioner established by clear and convincing evidence that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(b).

MCL 712A.19b(3)(c) states that termination is proper if:

(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 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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The instant proceedings began because respondent moved to Missouri and left her children with her mother in Michigan without granting power of attorney to her mother, and because the children allegedly suffered abuse at the hands of respondent and her partner. At the time of the termination hearing respondent had not substantially complied with the service plan, had never signed the parent-agency agreement, and had not returned to Michigan to see her children. Respondent had also not informed the court that she had separated from her partner as late as 2 days before the termination hearing. Moreover, respondent had been the subject of DHS proceedings concerning at least one of the children since as far back as 1998. Accordingly, it was not clearly erroneous for the lower court to conclude that there was clear and convincing evidence that the conditions leading to adjudication had not been rectified and would not be rectified within a reasonable period of time given the age of the children. MCL 712A.19b(3)(c).

MCL 712A.19b(3)(g) states that termination is proper if:

(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.

Respondent failed to complete the service plan in spite of the fact that she was given assistance in doing so by both Michigan and Missouri. Respondent stated that she intended to return to Michigan, but admitted that she would be without housing or employment when she arrived. Respondent did not admit to any abuse or neglect on her part during the termination hearing. Given these facts, it was not clearly erroneous for the lower court to conclude that there was clear and convincing evidence that there was no reasonable expectation that respondent could provide proper care and custody for the children within a reasonable period of time. MCL 712A.19b(3)(g).

Termination of parental rights is proper under MCL 712A.19b(3)(j) if:

(j) 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.

The evidence established that respondent abused her children, had been the subject of DHS proceedings and continued issues with DHS for many years, failed to complete the case service plan, refused to admit to any wrongdoing, and had a history of relationships with partners who were abusive to her children. Given the nature of the evidence presented during the hearing, the lower court did not clearly err by concluding that there was a reasonable likelihood that respondent's children would be harmed if they were returned to her home. MCL 712A.19b(3)(j).

C. Best Interest of the Children

Finally, respondent argues that the lower court erred by failing to make individual best interest findings for each child in question, and by failing to consider the fact that the children were placed with a relative when making its best interest determination. We disagree.

The lower court made an explicit finding that termination was in the best interest of PM and KI. Respondent claims error and relies on *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012), in which this Court held that a court has a duty to decide the best interests of each child individually. *Id.* at 42. *Olive/Metts*, however, involved three children who were in foster care as well as three children who were placed with a relative. *Id.* at 38, 43-44. As such, individual determinations were appropriate and necessary. By contrast, in the instant case the children were placed together with respondent's mother. This case is distinguishable from *Olive/Metts*, and individual best-interest determinations would have been redundant in the instant proceedings. Moreover, the lower court expressly discussed the children's placement with a relative, as required by *In re Mason*, 486 Mich 142, 163-165; 782 NW2d 747 (2010). The lower court did not clearly err when determining that termination was in the best interests of the children.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Joel P. Hoekstra

/s/ Amy Ronayne Krause