

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ADAMSON/HERMAN, Minors.

UNPUBLISHED
March 13, 2014

No. 317253
Wayne Circuit Court
Family Division
LC No. 13-511744-NA

Before: *SERVITTO, P.J.*, and *SAWYER* and *BOONSTRA, JJ.*

PER CURIAM.

Respondent appeals by right from the order of the trial court terminating her parental rights to three of her minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent is the mother of four minor children: MA (born March 24, 1999),¹ SA (born March 16, 2001), HH (born December 28, 2002), and SH (born November 29, 2003). Child Protective Services (CPS) discovered evidence that respondent had sexually exploited MA by creating a profile of her on an internet dating site that described her as a 22 year-old female, and by forcing MA to contact men and persuade them to give her money. MA also reported being raped by a man who had given respondent \$150. When MA told respondent, respondent told MA she would go to the police, but she never did. MA was never taken to a doctor about the incident. Respondent made MA meet with several other men and solicit them for money.

Petitioner filed a petition based on this conduct as well as respondent's drug abuse and unstable housing, requesting termination of respondent's parental rights. The children were removed from respondent's care and placed with various relatives.² At the permanent custody hearing, the trial court heard evidence that respondent and the children had lived in various motels and were often homeless because respondent could not pay the rent. MA testified that she had observed her mother in possession of cocaine, and that she frequently became violent

¹ Respondent does not contest the termination of her parental rights with respect to MA.

² MA was placed with her father, while SA was placed with her maternal grandmother and SH and HH were both placed with their maternal grandfather.

after using cocaine, punching both MA and SH very hard and hitting SH with perfume bottles and shoes. MA described being present during drug transactions involving respondent.

MA also testified that respondent took pictures of MA to use on a dating website, and told her to contact several men and obtain money from them. She stated that she had sexual intercourse with at least two of the men. She testified that she was raped in a car by a man that had given respondent \$150, and that the man had threatened to kill her if she resisted. She testified that she believed respondent knew it had happened because the man paid respondent. MA was never taken to a doctor; respondent refused to take her when she requested to go to a doctor. MA also testified that she and her siblings did not always have food to eat and did not go to school regularly.

SA testified that she frequently missed school. She testified that she had seen respondent use cocaine, and that respondent became violent and hit her and MA when she used drugs. She testified that she had been present during many drug transactions involving respondent, and had seen her mother receive Vicodin and Xanax pills. She testified that she lived in different motels and that the children were hungry almost every day. SA also testified to seeing respondent accept money from the man who raped MA, and also saw respondent take money from another man who then took MA with him. SA testified that SH and HH were not well taken care of by respondent and were frequently dirty.

Respondent's foster care worker testified that respondent had not been appropriate during visits and that she agitated the children and caused them to fight one another. The worker testified that a visit with MA had to be cut short due to comments by respondent that MA's father would not want her for long if she was placed with him, and he would either put her out or "whoop" her like he did when she was younger.

Given the severity of the allegations, and concerns about respondent's ability to provide for the children and keep them safe, petitioner was recommending termination of parental rights. The CPS investigator noted that child exploitation, homelessness, truancy and substance abuse were all issues of concern. After closing arguments the trial court took the case under advisement. In a written opinion signed on May 14, 2013, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). The trial court noted that the children were placed with relatives, that no bond existed between children and respondent, and that the children would require many years of services to overcome the neglect and harm caused by their mother.

II. STANDARD OF REVIEW

To terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). This Court reviews the trial court's determination for clear error. *Id.* A finding is considered clearly erroneous if, although there is evidence to support it, the appellate court is left with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). This Court also reviews the trial court's decision regarding the children's best interests for clear error. See *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); MCL 712A.19b(5).

III. STATUTORY GROUNDS FOR TERMINATION

Termination of parental rights to all four of the children was proper under MCL 712A.19b(3)(b)(i) (child or a sibling suffered physical injury or physical or sexual abuse) and (b)(ii) (parent had the opportunity but failed to prevent physical injury or physical or sexual abuse). Respondent was physically abusive to her two oldest daughters. She hit them in the face, punched them, and threw them to the ground. She hit MA so hard that a blood vessel in her eye burst and hit SA in her upper torso with perfume bottles and shoes. The testimony showed respondent hit her daughters at least once a week for the past three years.

Respondent's acts also caused MA, then thirteen, to be sexually assaulted by an adult male. Respondent did not take her daughter for a medical examination or report the assault to the police. Moreover, respondent could have prevented the assault by keeping MA from going out and socializing with adult men. Instead, respondent created a fictitious adult profile on a dating website, using a provocative picture of MA but stating she was 22 years old. Respondent encouraged MA to meet, talk to, and solicit money from unknown men. Respondent invited these unfamiliar men into her home and allowed them near her children. Respondent exploited her young daughter so that respondent could extract money from men. Given respondent's lack of proper parental judgment, and any protective parental instinct for her daughter's safety, there is a reasonable likelihood that any child in her care would suffer from injury or abuse. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re Laflure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). In light of physical abuse and sexual exploitation, termination of respondent's parental rights was proper under MCL 712A.19b(3)(b)(i) and (b)(ii).

Termination of respondent's rights was also appropriate under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (children will be harmed in respondent's care). There was no evidence that respondent could provide proper care and custody of her children in the foreseeable future and, given her history, they would likely be harmed in her care. This family had had several contacts with Children's Protective Services and previously received services, but respondent had not been able to maintain a suitable home for her children. They lived in a variety of locations, including several motels, over the last few years. Respondent also failed to make sure her children regularly attended school.

Additionally, respondent had a prescription drug addiction and regularly used cocaine. The children's maternal grandmother testified at the termination hearing that respondent began abusing drugs three years earlier. Since then respondent frequently became violent and often nodded off to sleep. She began sending the children to ask people for money. The children's appearance also changed as they were hungry, dirty, and smelled bad. Moreover, the children overheard respondent talk about needing drugs, observed a powdery white substance in a bag, and were taken with respondent to buy drugs. They observed respondent's behavior change and noted periods of violence after she was believed to have used drugs. Respondent admitted taking more Vicodin than was prescribed to her and there was no evidence that she had addressed her substance abuse.

Respondent was unable to provide proper care of her children because she abused drugs. She failed to maintain housing or ensure the children were clean or well-fed. The children only sporadically attended school. Respondent also sexually exploited her 13-year-old daughter for money and let men take her without any regard for her safety or well-being. She repeatedly

exposed the children to risk of harm with these strange men. Thus, termination of respondent's parental rights was proper under MCL 712A.19b(3)(g) and (j).

IV. BEST INTEREST DETERMINATION

The trial court also did not err in finding that it was in the children's best interests to terminate respondent's parental rights. MCL 712A.19b(5). These children deserve to grow up in a home where they will not be sexually exploited, emotionally abused, or physically injured. It would not be in the children's best interests to take a risk on their safety and well-being by reunifying any of them with respondent. The safety of these children cannot be assured while they are in respondent's care, given her history of drug abuse, homelessness, and the sexual exploitation of her oldest daughter. Even during visits, when respondent's access to the children was brief and she was not burdened with parental responsibility, respondent failed to behave appropriately. Respondent upset the children, instigated arguments, and had at least one visit cut short by her behavior. Respondent has not demonstrated the ability to be supportive or nurturing to her children, or to protect them from harm, or even to refrain from harming them directly. We conclude that the trial court did not err in its best-interest determination.

Affirmed.

/s/ Deborah A. Servitto

/s/ David H. Sawyer

/s/ Mark T. Boonstra