

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 21, 2010

In the Matter of VAN BUREN Minors.

No. 296475
Macomb Circuit Court
Family Division
LC Nos. 2008-000345-NA
2008-000346-NA

Before: MURPHY, C.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

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

Respondent first argues that the lower court erred when it failed to notify her of the preliminary hearing. The court can conduct a preliminary hearing in a parent's absence only if the parent was notified or "if the court finds that a reasonable attempt to give notice was made." MCR 3.965(B)(1).¹ However, respondent did not object until after her rights were terminated. She was notified of the next hearing, at which she pleaded no contest without mentioning notice, and the court took jurisdiction over the children. For over one and one-half years, respondent participated in disposition hearings, review hearings, permanency planning hearings, and the termination hearing, without ever raising this issue. Considering that the preliminary hearing resulted in the removal of the children and occurred prior to the adjudication in which the court took jurisdiction without objection and pursuant to a plea, respondent cannot raise this issue for the first time and at this late date when appealing by right the subsequent order terminating her parental rights. See *In re SLH, AJH, & VAH*, 277 Mich App 662, 668; 747 NW2d 547 (2008) ("an adjudication cannot be collaterally attacked following an order terminating parental rights"); *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005); MCR 3.993(A)(1) (orders

¹ At the hearing, the court asked a DHS worker if respondent was provided notice, and the worker responded, "No, I couldn't get notice to her in the jail." The court replied, "All right," and then proceeded with the hearing. The DHS worker's response suggests that she at least made an effort to have respondent served with notice in the jail. However, solely for purposes of this opinion, we shall presume that a reasonable attempt to give notice was not made.

appealable by right include “an order of disposition placing a minor under the supervision of the court or removing the minor from the home” – no such appeal was timely taken here).

Further, any presumed error was harmless. See MCR 2.613(A). Respondent could not have prevented the removal of the children because she was incarcerated, and the children’s father, who was present at the preliminary hearing, waived a probable cause finding and did not challenge the court’s authorization of the petition. And respondent’s rights were properly terminated due to her failure to deal with her longstanding substance abuse problem. Therefore, she has not shown that a substantial injustice occurred here and thus is not entitled to relief. See MCR 2.613(A).

Respondent next argues that the trial court erred when it found that termination of her parental rights was in the children’s best interests. Once a statutory ground for termination of parental rights has been proven, the trial 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 the trial court’s best interests finding for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court’s assessment of the credibility of the witnesses who appeared before it. *Id.*; MCR 2.613(C).

As petitioner’s caseworker testified, and the trial court found, it is in the children’s best interests to be raised in a drug free, safe, and stable environment. Respondent has been unable, or unwilling, to provide such an environment for her children. Apart from minimal effort following the filing of the termination petition, the evidence supports a finding that respondent gave little thought to the children for the lengthy time that they were in placement. Even without consideration of her continued drug usage, respondent could not show that she could meet the children’s basic needs. She continued to remain unemployed throughout the proceedings and was dependent on her mother for housing. Respondent and others testified that respondent loved her children. But she could not, or would not, take any steps to overcome her addiction even when it stood between being able to visit with her children for ten months. Respondent has a lengthy substance abuse history. While it does appear that respondent had entered into a reasonable period of sobriety shortly before the termination hearing, she testified that she had also been able to do so previously, only to later relapse. She even admitted that she had missed drug screen call-ins shortly before and during the termination proceedings. Respondent’s continued failure to address her drug issues, regularly submit drug screens, and maintain suitable employment demonstrates that she would not be a fit caregiver for the children. Asking them to wait another six months, or more, would have been unreasonable, considering the children’s young ages and the length of time that they had already been in care. We thus find that the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray