

Court of Appeals, State of Michigan

ORDER

In re Scott Minors

Docket No. 300780

LC No. 08-001378 NA; 09-002225 NA

Pat M. Donofrio
Presiding Judge

Stephen L. Borrello

Jane M. Beckering
Judges

The Court orders that the May 12, 2011, opinion is hereby AMENDED. The opinion caption contained a clerical error as to one of the lower court numbers. LC No. 08-001377 NA should be LC No. 08-001378 NA.

In all other respects, the May 12, 2011 opinion remains unchanged.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAY 26 2011

Date

Larry S. Royster
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 12, 2011

In the Matter of SCOTT, Minors.

No. 300780
Ingham Circuit Court
Family Division
LC Nos. 08-001377-NA
09-002225-NA

Before: DONOFRIO, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Respondent J. Diggs appeals as of right from a circuit court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). For the reasons set forth in this opinion, we affirm.

The trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were both established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); MCR 3.977(H) and (K). Contrary to what respondent argues, the trial court did not rely on the doctrine of anticipatory neglect to find that respondent was likely to harm or neglect her children. The doctrine of anticipatory neglect recognizes that a parent's treatment of one child is probative of how that parent is likely to treat another child. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993); *In re Andeson*, 155 Mich App 615, 622; 400 NW2d 330 (1986). Nothing in the record suggests that the trial court found that respondent's children were likely to be harmed or neglected based on respondent's treatment of another child. Rather, the court relied on evidence concerning respondent's capacity and circumstances to find that there was no reasonable expectation that she would be able to provide proper care and custody, and given the children's medical needs were reasonably likely to be harmed if returned to respondent's home.

The evidence showed that the children had been in foster care since birth. During that time, respondent complied with some aspects of the parent-agency agreement, but never demonstrated a commitment to full-time parenting. She did not attend family visits on a regular basis and was not open to extended overnight visits when offered. At times respondent indicated to foster care workers and the guardian ad litem that she was thinking of moving away from the area and hence would not be able to care for the children. Following the birth of her last child, respondent was ambivalent about adoption and did not have supplies necessary to care for an infant. Respondent also had difficulty finding housing and employment. At one point during the proceedings, respondent found employment but was not able to go to work because she failed to attend an orientation session. Once she secured housing and was allowed unsupervised visits,

she would get evicted and would have to return to supervised visitations because she did not have adequate housing in which to meet with the children.

Psychological examinations revealed that respondent suffered from numerous psychological disorders leading the screeners to conclude that the chances of her being able to parent her children was “guarded at best.” Though respondent was offered services to learn how to manage these conditions, she failed to attend the necessary sessions or failed to get enrolled into a particular program. Respondent admitted that she had declined extended visitations with the children. Hence, respondent did little, if anything, to overcome the conditions that led to the court taking jurisdiction over the minor children.

Most troubling is that the minor children in this case required special medical attention. Beyond the normal course of treatment for infants, the minors in this case also required medical care for the monitoring of congenital health problems. One of the children also required therapy due to the effects of Down Syndrome. Respondent was provided with notices of the children’s various appointments but rarely attended. She became involved with one child’s Early On program only when sessions were held at the same time as family visits. Respondent stated that she was unable to attend these medical visits because she did not have transportation, but nothing in the record leads us to conclude that respondent made any effort to secure transportation. At best she was negligent as to the care of her children, seemingly satisfied to allow others to assume responsibility for their well-being, leading the trial court to conclude:

The Court also finds that there’s a reasonable likelihood, based upon their capacity, that if the children, especially the ones with specialized needs, are returned to their care, they will not be able to protect these children from risk of harm by following through with appointments, ensuring that these children get the medical care and treatment that they require.

We concur with the trial court that the record leads inescapably to the conclusion that respondent was unable to demonstrate that she would ensure that the children in this matter received proper medical care. We also concur with the trial court’s finding that the minor children would likely be harmed if returned to respondent’s care. Accordingly, the trial court did not clearly err in finding that both statutory grounds for termination were established by clear and convincing evidence.

Finally, considering that the children had been in foster care their entire lives, and respondent’s unwillingness to attend to the children’s special needs, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests.¹ MCR 3.977(H)(3)(b); MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357.

¹ Contrary to what respondent asserts, the statutory best interest factors in the Child Custody Act, MCL 722.23, are not applicable to child protective proceedings. *In re Schejbal*, 131 Mich App

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Jane M. Beckering

833, 835; 346 NW2d 597 (1984); *In re Atkins*, 112 Mich App 528, 540-541; 316 NW2d 477 (1982).