

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 17, 2012

In the Matter of B. I. C. JOHNSON, Minor.

No. 308172
Saginaw Circuit Court
Family Division
LC No. 09-032273-NA

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

The respondent-mother appeals by right the trial court order terminating her parental rights to the minor child, BJ, under MCL 712A.19b(3)(c)(i).¹ We affirm.

I. BACKGROUND

Saginaw police officers took the respondent-mother's three children into emergency custody on October 13, 2009, after finding P. Perry, BJ's biological father, sexually assaulting the mother in front of one-year-old BJ. All three children were initially placed with a maternal aunt. The older two children were eventually released to their biological fathers and the Department of Human Services (DHS) abandoned efforts to terminate respondent's rights to those children. BJ remained with her aunt, however, and the DHS took jurisdiction on the ground that respondent had "mental health issues that [were] affecting her ability to parent." Specifically, respondent had "been diagnosed with Schizoaffective Disorder," had previously not taken her antipsychotic medications and missed medication review meetings, and suffered from paranoia and depression that "interfere[d] with her ability to parent." Respondent admitted to abusing alcohol and marijuana. DHS workers found respondent's home to have "minimal furniture, no beds, and soiled clothing on the floor." Further, BJ had witnessed her father physically abuse her mother. Perry was a registered sex offender and respondent had "trouble keeping [him] out of the home."

¹ The court terminated the parental rights of the child's father during the same proceedings. The father has not appealed the termination order.

Over the next two years, DHS provided counseling services and substance abuse treatment to respondent. At one point, respondent moved to Detroit and discontinued services. DHS then sought to terminate her parental rights. Respondent reinitiated DHS contact and began services in Detroit, after which the DHS withdrew the initial termination petition. By October 2011, two years after BJ had been taken into custody, the DHS determined that respondent had “failed to sufficiently benefit from the services” provided and it again sought termination of her parental rights. The petition alleged that respondent’s “mental stability . . . fluctuate[d] dramatically” during counseling sessions. The counseling service provider discontinued respondent’s group therapy in September 2011 “due to her inappropriate interaction with other members of the group and her inability to control her behaviors.” Thereafter, respondent failed to attend individual counseling for several weeks. At one point, respondent stated her intent to commit herself for inpatient care to stabilize her mental condition, but she failed to follow through. The DHS indicated that respondent’s “displayed psychotic features . . . raise[d] serious concern for her ability to provide safe and consistent care for” BJ.

The DHS also sought termination of respondent’s parental rights because she had not benefited from substance abuse treatment. Respondent continued to test positive for marijuana through October 2011 and she refused to submit to testing in November 2011. Moreover, the DHS asserted that respondent had not “honestly address[ed] her past involvement with” Perry.

After a two-day termination trial, the court concluded that more than 182 days had elapsed since the initial disposition and the DHS had established by clear and convincing evidence that “[t]he conditions that led to the adjudication continue[d] to exist and there [was] no reasonable likelihood that the conditions [would] be rectified within a reasonable time considering the child’s age.” MCL 712A.19b(3)(c)(i). The court found termination to be in BJ’s best interests and severed respondent’s parental rights.

II. ANALYSIS

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if “termination of parental rights is in the child’s best interests.” MCL 712A.19b(5). This Court reviews for clear error a circuit court’s decision to terminate parental rights. MCR 3.977(K). The clear error standard controls our review of “both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, “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.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes the Court as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356.

The DHS took jurisdiction over BJ, in part, because respondent's uncontrolled mental health issues affected her ability to parent and protect her children. From January 2011, when she began treating in Detroit, until the December 2011 termination trial, respondent missed three monthly medication review sessions with her psychiatrist. Although respondent's thought process had become more organized through counseling, she still had "difficulties with her moods." Respondent's psychiatrist testified that she had "made some slow, limited progress since January" but required continued treatment. The doctor could not predict how much time respondent would need to "become stable" enough to care for BJ.

The DHS also took jurisdiction over BJ because respondent's alcohol and marijuana abuse exacerbated her instability. It appears from the record that respondent has stopped using alcohol. However, the record is clear that respondent continued to abuse marijuana throughout the proceedings. In October 2011, respondent's urine tested positive for marijuana. In November 2011, one month before trial, respondent refused to submit to a drug test. At trial, respondent admitted that she refused the test because she had used marijuana and knew the test would be positive. After refusing the November test, respondent stopped her substance abuse counseling. Respondent's substance abuse counselor testified that if she returned to treatment, it would take at least an additional year to achieve sobriety.

To respondent's credit, she maintained appropriate housing throughout the proceedings and likely had sufficient income to care for BJ. She secured a personal protection order against BJ's father. Respondent participated in supervised visitation with BJ. However, the record evidence clearly and convincingly establishes that respondent had not remedied the major issues leading to court involvement. "A parent must benefit from services in order to provide a safe, nurturing home." *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Two years after losing custody of her children, respondent failed to stop abusing marijuana and had not achieved any level of mental stability. We discern no error in the court's determination that at least one statutory ground for termination was proved by clear and convincing evidence.

We also find no error in the trial court's conclusion that termination was in BJ's best interests. Respondent clearly loves her child. Yet, respondent testified that BJ did not know her "that well" but did recognize her as "her mom." Despite having appropriate housing, respondent never demonstrated sufficient progress in her service plan to gain unsupervised visitation. Given the opinion of respondent's psychiatrist and substance abuse counselor that she would not be

ready to parent alone in the reasonably near future, the court could soundly determine that continued efforts toward reunification would not be in the child's best interest.²

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Henry William Saad

/s/ Jane M. Beckering

² We note that a child's placement with relatives may tip the scales in a parent's interest when considering if termination is in a child's best interests. *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010). The DHS and the court seemingly recognized that factor when withdrawing the termination petition against respondent in relation to her older two children who had been placed with their fathers. However, respondent does not challenge the trial court's best interest decision in relation to BJ on this ground. Moreover, the record establishes that the maternal aunt charged with BJ's care refused to supervise respondent's visitation sessions because of respondent's erratic behavior. Maintaining the aunt's guardianship duties and expecting her to facilitate a relationship between BJ and respondent would not likely be a viable plan.