

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 29, 2013

In the Matter of LEGGETT, Minors.

No. 310120
Wayne Circuit Court
Family Division
LC No. 08-481494-NA

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

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

We review for clear error the trial court's order terminating parental rights. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds set forth in MCL 712A.19b(3) has been established by clear and convincing evidence. *Id.* at 296. Once this is established, the trial court must order termination of parental rights if it finds that termination is in the children's best interests. MCL 712A.19b(5).

The trial court did not clearly err by finding that the statutory grounds were established by clear and convincing evidence. The condition that led to petitioner's involvement was respondent's physical neglect of her children. The children were removed from respondent's care in August 2008. At the September 2008 adjudication trial, respondent was unemployed and admitted that she used marijuana regularly, lacked housing, and was living from place to place. The children were placed in foster care and respondent was ordered to comply with and benefit from a court-ordered treatment plan that included parenting classes, a psychological evaluation, a drug assessment, individual therapy, random weekly drug screens, and weekly supervised visitation. Respondent was also to complete a GED, obtain and maintain suitable housing and legal employment, and maintain regular contact with petitioner.

The court properly concluded that respondent had not complied with and benefited from her treatment plan. Respondent had more than three years to overcome her substance abuse issue and obtain suitable and stable housing and financial stability. The trial court heard persuasive testimony from two case workers that, despite support services, respondent's problematic

lifestyle remained unchanged. Respondent had made little progress in her treatment plan. Respondent failed to provide weekly random drug screens and complete a substance abuse treatment program. She did not follow through with her psychological evaluation recommendations, including completing individual counseling. The court properly determined that respondent had a chronic substance abuse history and that she failed to address the issues that brought the children into care. The court also found that respondent lacked suitable housing. It was undisputed that, except for a brief four-month period, respondent had not had suitable housing since the children's removal. During the duration of the case, four homes were assessed and only one was determined to be suitable. The court properly considered the evidence and weighed respondent's veracity when she testified that she had a suitable home yet failed to provide any verifying documentation such as a copy of the lease, money order payment receipts, or photographs. Respondent lacked verifiable employment throughout the case proceedings.

The trial court did not clearly err by determining that there was no reasonable likelihood that respondent would be able to resolve the issues that led to the children's removal within a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(i).

The proofs similarly established the grounds set forth in MCL 712A.19b(3)(g) and (j). Respondent was unable to provide proper care of the children because her living circumstances and attitudes remained largely unchanged. Although respondent had found housing just days before termination hearing, the court record, as a whole, supported a finding that respondent would be unlikely to maintain a long-term stable home environment. The evidence squarely supported the trial court's findings that respondent was unlikely to be able to properly care for the children within a reasonable time considering the children's ages. Respondent argues that trial court improperly considered her drug use in determining whether to terminate her parental rights. This claim is meritless. The evidence plainly showed that respondent failed to overcome her substance abuse issue, which was a major component of her treatment plan. Respondent highlights on appeal her termination hearing testimony that she did not believe she had a drug problem because using drugs had "never been a problem for her" and that it was "not hard to stop." Sadly, there was ample evidence to the contrary. The record shows that respondent understood the procedure for complying with random screens and that a missed drug screen was considered a positive screen. Transportation was not an obstacle for submitting drug screens because respondent was provided with bus tickets. Nonetheless, she submitted only 20 out of 52 drug screens in 2010, four of which were positive for marijuana. In 2011, respondent was required to submit 52 drug screens yet provided only four screens, all of which were positive for marijuana. Respondent had not submitted any drug screens since January 6, 2012. Moreover, respondent testified at the termination hearing that there was "no point in doing screens if [they were] going to be positive." She admitted that she had missed drug screens because she was "just giving herself enough time to be able to do a clean screen." This testimony showed respondent's lack of insight into the seriousness of her substance abuse, which would continue to pose a risk of harm to her children if they were returned to her care.

Additionally, the record does not support respondent's argument that petitioner failed to make reasonable reunification efforts. Respondent claims that she did not complete counseling because it was not helpful and petitioner did not make necessary referrals for a psychiatrist to properly treat her mental health issue. The record shows that the court-ordered treatment plan incorporated the recommendations of respondent's 2009 psychological evaluation. There is

nothing in the record to support respondent's contention that psychiatric treatment was necessary. Respondent's failure to fully comply with and benefit from services demonstrated a likelihood of her exposing the children to harm. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005).

Respondent contends that petitioner did not prove that she was unfit to parent her children because, at one point, she had fully complied with her treatment plan and the children were returned to her care. This argument ignores a large part of an extensive court record. The record clearly shows that, except for a brief period in 2010 that led to the children being returned to her care, respondent failed to remedy the issues that led to the children's removal. Between the time of initial disposition in October 2008 and June 2009, respondent marginally complied with her treatment plan. She attended only two parenting classes and failed to participate in any individual counseling. She did not consistently attend supervised visits. Between July 2009 and February 2010, respondent provided only three drug screens, all of which were positive for marijuana. Her visits with the children continued to be sporadic. By June 2010, she was visiting with the children less than 50 percent of the time. Respondent's lack of progress with her treatment plan prompted the court to order petitioner to file a supplemental petition to terminate respondent's parental rights. While a termination petition was pending, respondent began to comply with her treatment plan. As of August 2010, she had completed parenting classes, was participating in individual counseling, and had obtained suitable housing. Respondent provided six weekly drug screens that were all negative. The court dismissed the supplemental petition, retained jurisdiction over the children, and ordered reunification services to continue.

Regrettably, respondent was unable to maintain suitable housing and returned to her transient lifestyle shortly after the children were returned to her in December 2010. Respondent moved within a week to another of four different residences, failed to inform petitioner of her frequent moves, and in early February 2011 would not allow her case worker, the GAL, or the CPS worker to see the children. After the children returned to her, respondent did not participate in any services, did not enroll her oldest child in school, and left the children in the care of others. Additionally, respondent failed to maintain regular contact with petitioner, prompting petitioner to file a missing person report for the children and an AWOL Writ for respondent in March 2011. After a CPS investigator located respondent and the children, the children were returned to foster care in April 2011.

There was abundant evidence that respondent did not substantially comply with her treatment plan from the time of the children's second removal and the termination hearing in April 2012. Respondent failed to provide any drug screens after the children were returned to her care and admitted that she was again using marijuana. She was referred for individual therapy but was terminated from services for noncompliance. During the 43 months that the children were in care, respondent failed to complete individual counseling. Respondent never reported transportation problems and the individual therapist was coming to her. Respondent had not complied with drug screens and substance abuse treatment. She was given bus tokens so that she could participate in her treatment plan. Further, respondent admitted that she did not have suitable housing between March 2011 and January 2012. She acquired housing just days before the termination hearing but did not indicate that she was ready to have a home assessment. Respondent testified that she had a one-year lease for a three-bedroom house. Although she understood that suitable housing was a major issue in her case, she did not provide

documentation of her lease, rent payments, or photographs of her then-current home. Respondent admitted that she relied on help from friends to pay approximately 30 percent of her housing costs. Respondent completed her GED, which was an educational component to her treatment plan, but she did not obtain a legal income source and failed to follow through with work placement referrals. Respondent testified that her sole income source was money earned “under the table” braiding and weaving hair approximately 20 hours a week. Respondent admitted that she did not make enough money to support herself and the children if they were returned to her care.

Lastly, there was sufficient evidence to support the trial court’s best-interest determination. “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). Respondent contends that she loved her children, consistently visited with them, and would bring snacks and candy to visitation. Thus, respondent argues, the court clearly erred by terminating her parental rights. It was undisputed that from May 2011 to January 2012, respondent was fairly consistent in attending parenting time and brought snacks and candy for the children. However, the record also supported a finding that respondent had a tenuous bond with the children. Except for the brief time the children were returned to respondent’s care, parenting time did not move beyond supervised visits. Both case workers testified that they had observed respondent behaving very inappropriately during supervised visits. She talked on her cell phone, sat in the corner while the children played in the play area, and constantly yelled and screamed saying that she would not come back to visit the children. Despite discussions after visitation with the case workers, respondent never adjusted her behavior. Both case workers opined that termination was in the children’s best interests because the children needed stability and permanency that respondent was unable to provide. The trial court did not clearly err by finding that the existence of a parent-child bond was outweighed by the children’s clear need for permanence and stability, which was best achieved by terminating respondent’s parental rights.

We perceive no clear error in the trial court’s decision to terminate respondent’s parental rights to the minor children in this case. MCR 3.977(K).

Affirmed.

/s/ Michael J. Talbot
/s/ Kathleen Jansen
/s/ Patrick M. Meter