

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JUANITA SAVOIE and MEGALE
WRIGHT, JR., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KIZZY PITTS,

Respondent-Appellant,

and

JEREMY SAVOIE and MEGALE WRIGHT,

Respondents.

UNPUBLISHED

September 18, 2003

No. 247172

Genesee Circuit Court

Family Division

LC No. 98-110167-NA

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM

Respondent-appellant Kizzy Pitts appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (c)(ii), and (j). We affirm.

I. Basic Facts And Procedural History

Pitts is the mother of Juanita Savoie, born August 23, 1996, and Megale Wright, Jr., born March 25, 2000.¹ Pitts is deaf but is able to speak and, with a hearing aid and using lip-reading skills, she can hear and understand to a limited degree. Pitts suffers from depression, posttraumatic stress disorder (PTSD), dissociative identity disorder (DID), and possibly schizophrenia, and had been physically and sexually abused by her own parents.

¹ Pitts's daughter Johanna, who was born in 1997, was not involved in these proceedings and is not at issue in this appeal.

Pitts's history with protective services dates to October 1997, when she was referred for leaving thirteen-month-old Juanita Savoie and newborn infant Johanna, unattended. Protective services again became involved with the family in April 1998 after Pitts was arrested for threatening a police officer with a knife. Pitts left the children with a neighbor while she spent the weekend in jail, and did not immediately pick them up after she was released. After two years of attempts by several agencies to provide services to help with parenting, housing, finances, and therapy, which Pitts participated in only intermittently, Pitts was again referred to protective services in June 2000 after she had physically abused Juanita Savoie and had herself been abused by Megale Wright, Sr.

On September 14, 2000, after the case monitor observed continued domestic violence between Pitts and Wright, Pitts's lack of patience with Juanita Savoie, the occasional lack of food in the house, that Pitts' utilities had been shut off and that an eviction was pending, the monitor filed a petition initiating the instant child protective proceedings, and the children were removed from the home. On November 13, 2000, protective services received a referral that Juanita Savoie had been sexually abused by Wright after Juanita Savoie disclosed the abuse to her therapist. The trial court took jurisdiction over the children on November 28, 2000 after Pitts entered a plea. The children were placed in foster care and the court ordered the parents to comply with the case service plan.

On March 22, 2001, a supplemental petition requesting termination of Pitts's parental rights was filed, and her parenting time with Juanita Savoie was suspended in May 2001. The trial was scheduled to begin July 20, 2001, but the parties agreed to allow Pitts an additional three months to complete her requirements. When the court reconvened in December 2001, the matter was again delayed so Pitts could receive a psychological examination, and the petitioner's attorney asked the court to instruct Pitts not to have any contact with Wright.

When the termination hearing began on March 22, 2001, several workers who had been involved in Pitts's case testified that, because of her psychological problems and unwillingness to break off contact with Wright, Pitts was unable to provide adequate care or a safe environment for her children. According to the children's therapists, Juanita Savoie was a very traumatized child who exhibited signs of post-traumatic stress, anxiety, aggression, developmental delays, and behavior problems that included smearing her feces, which is a sign of sexual abuse. Megale Wright, Jr. also exhibited behavioral problems, including severe temper tantrums, destroying property, and aggressive behavior. The therapists agreed that it would be in the children's best interests to have respondent's parental rights terminated because the children were at substantial risk of being abused and neglected again.

Pitts told the trial court that the FIA did not understand her mental health issues, was not very patient with deaf people, and did not want to provide her with an interpreter. Pitts stated that although the foster care worker regularly provided an interpreter, including all but two or three of her parenting-time visits with the children, there was no interpreter present when protective services came to her home in August 2000. Pitts testified that she had asked Juanita Savoie about the allegations of sexual abuse by Wright, and Juanita Savoie told her that nothing happened. Pitts explained Juanita Savoie's testimony by stating that "you all tried to put words in her mouth." Pitts testified that she last saw Wright in jail in June 2002, and told him she did not want to see him again. Pitts stated that she had not seen Wright since.

In January 2003, the trial court entered its order terminating parental rights.

II. Clear And Convincing Evidence

A. Standard Of Review

Pitts argues that there was insufficient evidence to prove the statutory grounds for termination of her parental rights. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.² Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests.³ We review the trial court's decision for clear error.⁴ A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made.⁵ To be clearly erroneous, a decision must be more than maybe or probably wrong.⁶ In applying the clearly erroneous standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses.⁷

B. The Evidence

Juanita Savoie testified at trial that Wright sexually abused her and that when she told Pitts about the abuse, Pitts did not care. Pitts' relationship with Wright involved domestic violence, which at one point caused Pitts to seek a personal protection order against him. However, Pitts continually denied that Wright had sexually abused Juanita Savoie and continued her relationship with him even after the termination proceedings began. Moreover, two therapists testified at trial that Pitts' prognosis for becoming an appropriate parent was poor. Pitts did not consistently take her prescribed psychotropic medications and had not resolved her victimization issues.

C. The Best Interests Of The Children

Further, the evidence did not show that termination of Pitts' parental rights was clearly not in the children's best interests.⁸ The children had been in foster care for approximately two years when the termination proceedings concluded, and Juanita Savoie had also spent

² *In re Sours Minors*, 459 Mich 624; 593 NW2d 520 (1999); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

³ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

⁴ *Id.* at 356-357.

⁵ *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

⁶ *In re Sours Minors*, *supra* at 633.

⁷ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁸ MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357.

approximately eighteen months out of her mother's care during a prior child protective proceeding, which began in 1998.

D. Reasonable Efforts To Accommodate Disability

Pitts argues that the FIA did not make reasonable efforts to accommodate her disabilities, including mental illness and deafness.⁹ To the contrary, the FIA offered many services to Pitts, including counseling through a specific program aimed at hearing impaired individuals and sign language interpreters at parenting times. The FIA clearly took into account Pitts' disability in its efforts to reunify the family.¹⁰

Affirmed.

/s/ William C. Whitbeck

/s/ Michael J. Talbot

/s/ Brian K. Zahra

⁹ Pitts has waived any claim that the Americans with Disabilities Act (ADA), 42 USC 12101, *et seq.*, was violated by failing to raise such a claim in a timely manner. *In re Terry, supra* at 26, n 5.

¹⁰ *In re Terry, supra* at 25-26.