

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HS and MS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NICHOLAS SOMMERFIELD and ASHLEY
ROCHEFORT,

Respondents-Appellants.

UNPUBLISHED

June 3, 2010

No. 294671

Berrien Circuit Court

Family Division

LC No. 2007-000150-NA

Before: WHITBECK, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Respondents Nicholas Sommerfield and Ashley Rochefort appeal as of right the termination of their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

HS (d/o/b 7/25/04) and MS (d/o/b 9/9/05) were initially removed from the home on December 5, 2007. Respondent father had left the children home alone and gone to a neighbor's house, stating that he was overwhelmed and did not know how to deal with the minor children. He had cuts on his arm that were self-inflicted. According to the petition, the family already had an open child protective services case regarding the children, and respondent mother had been instructed not to leave the children alone with respondent father because he has mental health issues and it was believed that he posed a serious risk to the minor children. Despite this, respondent mother had left the minor children alone with respondent father. The petition stated that respondent mother admitted that she had not been staying with the minor children at the home and that she had been staying with her boyfriend.

The conditions of the home were deplorable. There were only two light bulbs in the entire home, and there was trash, including food, all over the floors. The children were filthy. Their hair was matted and unwashed. There were no clean clothes for them to wear, and they had no shoes. The children also were suffering from medical conditions that had not been treated, including sores on their heads, blisters on their feet, and a large gash on HS's ankle.

Although respondents were not living together at the time the minor children were removed from the home, they moved into an apartment together in February 2008, and they remained together during the proceedings. Respondent father testified that they loved each other and had no plans to separate or divorce. Respondent mother similarly testified that they loved each other and were back together. According to respondent mother, their apartment rent was \$0 per month because it was based on their income. At the time of the termination proceedings, respondent mother was not working so that she could take the minor children to all of their medical and therapy appointments. Respondent father, who had an organic personality disorder due to organic brain damage, as well as recurring depression and mild cognitive impairment, had just begun a new job at Culver's.

When the children were initially placed into foster care, they were two and three years old. HS had no communication skills, and MS had very limited communication skills. They did not have any understanding of boundaries and they did not have age appropriate social skills. Both children put themselves in situations that were physically dangerous. After they were placed in foster care, it was discovered that the minor children both have special needs. MS has developmental delays, including language difficulties. As a result, she was required to attend speech therapy. HS also had language and communication difficulties and was diagnosed with autism. Dr. Janene Donarski, a clinical psychologist who conducted a neuropsychological examination of HS, testified that a child with autism requires the constant assistance of specialists like occupational therapists and physical therapists to give her a better chance of progressing and developing and functioning at as high a level as she possibly can, in terms of education, self-function and daily routines. Dr. Donarski testified that a child at HS's level of autistic disorder was "practically a full-time job" and that she required "constant supervision" to ensure her safety and make sure that she followed routines.

II. ANALYSIS

A. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Once the lower court determines that a statutory ground for termination has been established "and that termination of parental rights is in the child[ren]'s best interests, the court shall order termination of parental rights . . ." MCL 712A.19b(5). We "review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(J). A finding is clearly erroneous if, 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (quotations and citations omitted). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*, citing MCR 2.613(C).

B. STATUTORY GROUNDS FOR TERMINATION

The court did not clearly err in finding that the statutory grounds existed to terminate the parental rights of both respondents. There was clear and convincing evidence to support the trial court's termination of respondents' parental rights under MCL 712A.19b(3)(c)(i), (g) and (j).

MCL 712A.19b provides, in relevant part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Termination of respondents' parental rights was proper under MCL 712A.19b(3)(c)(i) and (g). As noted by the trial court, one of the conditions that led to the adjudication was respondents' parenting skills, i.e., their ability to properly parent and care for the children. Because of their special needs, the minor children must attend numerous medical appointments, including speech, occupational and physical therapy appointments. Therefore, the minor children's caregivers must have the organizational ability to make and keep such appointments, as well as the ability to transport the minor children to the appointments. At the time of the termination proceedings, respondents did not have a working vehicle of their own, but they had access to a family member's vehicle to use to transport the children to their various appointments. Even with the family member's vehicle, however, respondents were unable to make and keep appointments that were so critical to the development and well being of the children. For several months during late 2008 and early 2009, respondents were given the opportunity to demonstrate that they could properly care for the children. During this time, respondents were responsible for making medical and therapy appointments for the minor children and transporting the children to those appointments. However, respondents were

inconsistent in making and attending therapy appointments that were so important to the development and well being of the minor children. During this time, MS missed four speech therapy appointments, and respondent mother¹ admitted that she did not call the therapy provider regarding those missed appointments. Respondents were also supposed to make dental appointments for the children during this time. Respondent mother insisted that she made dental appointments for the children, but the dental office that she said she called did not have a record of any such appointments. Respondent mother indicated that she had difficulty finding a dentist that accepted Medicaid and acknowledged her failure to follow through with making the dental appointments. Ultimately, the children's foster mother ended up making the appointments and transporting the children to those appointments. Respondent mother also admitted that she missed two appointments for HS and that she had not called the service provider to let them know that they would not be attending the appointment. She acknowledged that service providers explained to her that there was a possibility that services for the children would cease if respondents failed to call the providers if they were unable to make it to appointments. Respondent mother also stated that during the time respondents were responsible for making and transporting the children to their various appointments, some service providers had difficulty contacting respondents because they frequently changed telephone numbers.

A specific example of respondents' failure or inability to deal with HS's special needs concerns a condition with HS's leg, a condition for which she was receiving physical therapy. To supplement the physical therapy, HS was to engage in daily stretching activities at home. During their visitations with the minor children, respondents were expected to engage in stretching activities with HS's leg. These exercises were minimal and did not require a great deal of effort on the part of respondents. Despite this, respondent father was unable to successfully complete the exercise with HS. According to Robin Zollar, a counselor who observed respondents with the children, respondent father attempted to do the exercise, but he failed to focus on HS's foot and was "kind of looking around the room doing other things. He never completed the exercise." She described respondent father's attitude about the exercise as "lackadaisical" and stated that he did not seem to understand the importance of the exercise. Because respondent father could not complete the exercises with HS, respondent mother was given primary responsibility to do so. However, respondent mother consistently failed to perform the stretches properly or for the proper duration.

The evidence revealed that respondents' ability to care for the minor children would not improve in a reasonable time, given the ages of the children. Respondent father's organic brain disorder and cognitive impairment will always be an issue, and he will always have deficits. According to Dr. Donarski, because of respondent father's condition, even with intensive services and hard work by respondent father, it would be years before he would be able to care for the minor children.

¹ Respondent mother did not work outside the home so that she could make medical and therapy appointments for the minor children and transport the children to those appointments. Of course, both respondents are ultimately responsible for ensuring that the children receive proper medical care and attend the therapy appointments that are so crucial to their development and well being.

Despite the provision of services for about eighteen months, both respondents were unable to progress to a level where they were able to properly care for the children. Respondents were provided with numerous services, including psychological evaluations, parenting classes, and individual counseling for respondents and the minor children and marital counseling for respondents, from various individuals and service providers. However, the evidence revealed that although they were offered and provided these services, respondents did not always avail themselves of these services, and they did not benefit from the services enough to improve their parenting skills so that the children could be returned to their care and custody. Although there was evidence that respondents made some minimal progress and even made some efforts to educate themselves about autism on their own, they were unable to sustain this progress, and they would regress. Respondents were defensive and in denial of problems in their relationship and problems with their parenting abilities. There was also evidence that respondents refused to acknowledge problems and were unreceptive to feedback.

The consensus among the counselors, therapists and specialists who had worked with respondents and the minor children was that while the minor children had made significant progress, respondents had not. Lisa Cole, a therapist who had worked with respondents and the minor children, stated:

I am not aware of other services out there that would assist [respondents] . . . until they're able to become more upfront and honest and accept some—the issues that are going on. . . . I mean . . . until they're able to be upfront and honest with people and be forthcoming and recognize that they have some major issues to work on, they're not going to do any work on those issues. You can't help people that don't want help.

Similarly, counselor Robin Zollar testified that she did not have ideas of other services that could help respondents given their minimal progress in spite of the tremendous amount of services that had been provided:

[Respondents had] pretty much been given a huge gambit of services and didn't seem to be able to make progress necessary for the kid's [sic] best interests. . . . I didn't see that the parents had made progress enough to be able to effectively parent these kids. Particularly given the amount of service they've been provided.

Foster care specialist Stacy Kunkle also testified that more time would not help respondents get into a position to be able to properly and safely parent the minor children and that there were no other services that could be utilized to assist respondents. Kunkle characterized respondents' progress as "minimal" and stated that it was not sufficient to allow "for the safe return" of the minor children.

Termination of respondents' parental rights was also proper under MCL 712A.19b(3)(j) because the minor children would be at risk of harm if returned to respondents' care. The demands on parents of children with special needs are much greater than with children without special needs, and these demands are even more heightened when it comes to ensuring the physical safety of such children. Zollar testified that the minor children put themselves in physical danger more than other children their age and that respondents' parenting skills had not improved enough that the children would be safely or appropriately parented by respondents.

Respondent father's cognitive impairment limited his ability to safely parent the minor children. According to Zollar, respondent father did not appear to be aware when the children created dangerous situations and was not "cognizant of the danger the kids were putting themselves in." Similarly, there was evidence that respondent mother also failed to intervene to stop dangerous activities that HS engaged in and that on some occasions, respondent mother unknowingly reinforced negative behaviors, resulting in HS engaging in dangerous behaviors again. In addition, returning the children to respondents' care could also result in the loss of the significant gains and progress that HS had made. According to Zollar, gains that an autistic child makes can be lost, and the child's behavior will regress. Zollar stated that autistic children require intense and constant participation by parents and that if that is lacking, the child's behaviors will become negative again and the child will "become more autistic."

C. BEST INTERESTS

Respondents also argue that it was not in the children's best interests to terminate their parental rights. If the lower court finds that a statutory ground for termination has been established, and that termination or parental rights is in the children's best interests, it shall terminate parental rights. MCL 712A.19b(5); *Trejo*, 462 Mich at 352-354. At the time of the termination proceedings, the minor children were four and five years old; they had been in foster care for approximately twenty-one months. In light of the heightened parenting skills necessitated by the children's special needs, the enhanced need for permanency and consistency for the minor children because of their special needs, respondents' lack of progress in improving their ability to parent the minor children despite the abundance of services provided to them, and the length of time the minor children had been in foster care, we find that termination was clearly in the children's best interests.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Stephen L. Borrello