

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 11, 2011

In the Matter of KING Minors.

No. 297859
Ingham Circuit Court
Family Division
LC No. 07-002125-NA

In the Matter of KING Minors.

No. 297860
Ingham Circuit Court
Family Division
LC No. 07-002125-NA

Before: MARKEY, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

Both respondents argue that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. They also both argue that the trial court failed to make required findings concerning the children's best interests and that termination of their parental rights is contrary to the children's best interests.

A petitioner is required to establish a statutory ground for termination by clear and convincing evidence.¹ MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's factual findings, as well as its ultimate decision whether a statutory ground for termination has been proven, for clear error. MCR 3.977(K); *In*

¹ Although the Michigan Indian Child Welfare Agency is the petitioner in this case, respondent-mother's tribe declined to exercise jurisdiction. For this reason, the trial court did not apply the Indian Child Welfare Act, 25 USC 1901 *et seq.*

re Mason, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* We must accord deference to the trial court's assessment of the credibility of the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondents argue that termination was inappropriate under § 19b(3)(c)(i) because they successfully resolved the conditions that led to the children's adjudication. We disagree. Respondents correctly observe that the problems with the cleanliness of the home and the head lice were resolved and were no longer an issue. However, the conditions that led to the adjudication also involved respondents' environmental and medical neglect of the children. The older child was not timely enrolled in school. Further, both children had significant medical conditions that required regular attention and frequent follow-up appointments that respondents had neglected. Respondents participated in services for more than two years, including attendance at parenting classes and participation in counseling, but showed little improvement in their ability to understand and address the children's ongoing educational and medical needs. Respondent-mother was also resistant to even acknowledging that there had ever been problems in the home. Both respondents continued to have difficulty understanding the children's medical needs and the seriousness of their conditions, which required regular monitoring and treatment, and they were resistant to accepting services or the advice of professionals. They continued to smoke before visits and live with pets, despite being informed that these conditions aggravated one child's asthma. This evidence shows that it was reasonably likely respondents would continue to neglect the children's medical needs if they were returned.

Although respondents emphasize that they participated in most of the services required by their parent-agency agreements, the evidence showed that they did not benefit from the services. According to their therapist, respondents made little progress in therapy. Further, it was clear that even when working together, respondents continued to have difficulty organizing and managing their own daily lives. Neither respondent had a stable source of income during the pendency of this case; both showed little motivation to change that situation. Respondent-mother had not been approved for disability benefits, and respondent-father made little effort to find employment. Respondents relied mainly on others for financial support and transportation. They attended parenting classes, but respondent-father did not actively participate in visits. At the time of the termination hearing, respondents were living in a one-bedroom apartment that they obtained through subsidized housing. Their occupancy was at risk, however, because they allowed an unauthorized guest to also live there. Although respondents claimed that a three-bedroom apartment would be available to them if the children were returned, they did not know the cost of a three-bedroom apartment and both were unemployed. Further, respondent-father had a history of being jailed for failure to provide court-ordered support for another child. Respondent-mother admitted that if respondent-father were jailed again, which was reasonably likely because he had done nothing to satisfy his child support obligations, she would not be able to support or care for the children on her own. Having no stable income also affected respondents' ability to attend to their children's medical needs, given that respondents had cited their lack of reliable transportation as a reason for not attending certain appointments.

In addition, evidence was presented that one of respondents' children was sexually abused by a relative. Despite the child's statements identifying the relative as the abuser and the child's sexual acting out behavior, both respondents were unwilling to acknowledge the

possibility of abuse. Further, they were unwilling to disallow future contact between their child and the relative absent a court order, thereby placing their child at future risk of harm.

Given the foregoing evidence, the trial court did not clearly err in finding that both respondents failed to provide proper care or custody and that the conditions that led to the adjudication continued to exist. Further, considering respondents' lack of progress despite approximately two years of services, there was no reasonable likelihood that the conditions would be rectified, or that respondents would be able to provide proper care and custody, within a reasonable time considering the ages of the children. Therefore, statutory grounds for terminating respondents' parental rights existed under MCL 712A.19b(3)(c)(i) and (g).

We disagree with respondents' argument that the Department of Human Services (DHS) failed to comply with its statutory obligation to make reasonable efforts to rectify the conditions that caused the children's removal² because therapy was discontinued for a period of time. A court may not terminate parental rights unless both parents are allowed a meaningfully opportunity to participate in services. *In re Mason*, 486 Mich at 156-160. In this case, both respondents were offered therapy services, which respondent-mother began in July 2008 and respondent-father began in September 2008; however, both respondents failed to attend the therapy sessions in November 2008, without notifying their therapist. A funding problem caused the therapy sessions to be discontinued for several months beginning in January 2009, but the sessions were later resumed. This case does not involve a situation where no services were offered at all, but rather one where therapy sessions were discontinued for a period of time due to a funding problem. Further, the record does not support respondents' contention that the interruption in therapy affected their progress. The therapist testified that given respondents' lack of progress before the sessions were interrupted, she did think it reasonably likely that they would have benefitted from the missed sessions.

Respondent-father also complains that it was improper to terminate his parental rights for failure to achieve acceptance into the Intensive Neglect Services (INS) program where that decision was based on outdated information. The INS program is an intensive program that was previously offered to respondents when the children were still in their custody. The program is designed to address issues while the children are still in the parents' home. Because the evidence in this case showed that there was no reasonable likelihood that the children would be returned any time soon, services through the INS program was not a relevant consideration.

Respondents also both argue that the trial court erred in its evaluation of the children's best interests. We disagree.

Petitioner erroneously asserts that once a statutory ground for termination is established, a trial court is obligated to terminate parental rights and lacks discretion in the matter. Rather, under MCL 712A.19b(5), as amended by 2008 PA 199, effective July 11, 2008, once the court finds that a statutory ground for termination has been established, it shall order termination of

² See MCL 712A.18f and MCL 712A.19a(2).

parental rights if it finds “that termination of parental rights is in the child’s best interests[.]” *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). Thus, even after a statutory ground for termination is established, a trial court cannot terminate parental rights unless it additionally finds that termination is in the child’s best interests. This Court reviews the trial court’s determination regarding the child’s best interests for clear error. *Id.*; MCR 3.977(K).

Contrary to what respondents argue, the record indicates that the trial court affirmatively found that termination of respondents’ parental rights was in the children’s best interests, because respondents were unable to provide the stable and safe environment that the children required. Although the trial court’s findings were not extensive, they satisfied MCR 3.977(I)(1), which requires only “[b]rief, definite, and pertinent findings and conclusions on contested matters”

Although the evidence showed that respondents were bonded to their children, they were unable to provide the type of care the children required given their special educational and medical needs. We also disagree with respondent-mother’s argument that termination would not serve her daughter’s best interests because her foster parent did not intend to adopt her. Once a statutory ground for termination is established, a court may consider the advantages of an alternative home for the child in evaluating the child’s best interests. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009). In this case, while termination would lead to the daughter’s leaving her foster home, no reason was offered for why she would not be able to find an appropriate adoptive home. Moreover, the fact that the daughter would have to move to another home did not weigh against terminating respondent-mother’s parental rights when it was otherwise clear that respondent-mother would not be able to provide the type of care and custody that both children required. The trial court did not clearly err in finding that termination of respondents’ parental rights was in the children’s best interests.

We affirm.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens