

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 14, 2011

In the Matter of MORGAN, Minors.

No. 302352

Eaton Circuit Court

Family Division

LC No. 09-017246-NA

Before: SAAD, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

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

The trial court did not clearly err by finding that clear and convincing evidence supported the statutory grounds for termination of respondent's parental rights and that termination of her parental rights was in the children's best interests. MCR 3.977(H)(3); MCR 3.977(K); MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

The original petition in this case contained allegations that the children's father had sexually abused the children. Respondent had already filed for divorce from the children's father, and Children's Protective Services did not initially see a need to remove the children from respondent's care. Forensic interviews were conducted, at which time respondent agreed to attend parenting classes, attend counseling, and submit to a psychological examination. Respondent also agreed to take the oldest child, LPM, to counseling and to make an appointment for a psychological evaluation. While respondent took LPM to her counseling sessions, respondent failed to obtain a psychological evaluation for her. During the continued investigation, LPM and the other children revealed that respondent had used a cattle prod on LPM as a form of discipline. An amended petition adding respondent as a party was filed three months after the original petition. The children were removed on the basis of respondent's initial denial of the allegations and subsequent admission, as well as her failure to obtain the services agreed upon for LPM.

Respondent was offered, and engaged in, services for approximately 16 months, from the time she pleaded to the petition until the termination hearing. However, respondent did not appear to benefit from those services. At the beginning of counseling with Sandra Burdick, respondent was overwhelmed and depressed. Even after several months of therapy, and although respondent had been a victim of abuse herself as a child, she had limited insight and lacked empathy for the children. Respondent blamed others for her behavior, including her ex-husband

and LPM. About 14 months after the children were removed from her care, respondent reported that she was still overwhelmed. Burdick testified that this was significant because respondent had four children and a history of inappropriate discipline. Burdick believed that, without finding a way to control respondent's stress, the children were at continued risk of harm. Burdick believed that respondent's depression and personality disorders prevented her from properly assessing what she could have done differently and preparing for future times. When asked if respondent could rectify the conditions, Burdick indicated that she did not believe it would be likely within a reasonable time.

In addition to counseling respondent, Burdick also counseled the three older children. She testified that the children suffered from depression, anxiety, low self-esteem, and nightmares. LPM's nine-year-old brother felt guilty for not being able to protect her from the abuse. The two older children did not trust respondent to protect them and did not want to return home. Only the third child expressed that she missed respondent and looked forward to visits with her.

Foster care worker Jessica Riley agreed with Burdick that respondent failed to benefit from services. Riley observed the visits and found respondent to be impatient, frustrated, and inconsistent. Riley expected that the lapse of 16 months should have resulted in a greater improvement in respondent's behavior. At the time of the termination hearing, respondent was in jail after pleading no contest to child abuse charges for her use of the cattle prod. She was going to live with her boyfriend after her release.

Respondent points to Dr. Ruben's psychological evaluation as evidence that she was capable of benefiting from additional services, but even Dr. Ruben found that the testing had revealed that respondent was under-reporting. Moreover, he cautioned against accepting testimony from respondent without corroboration. Dr. Ruben suggested continued weekly individual counseling, twice weekly monitored sessions with the children in a controlled environment, and an investigation of respondent's boyfriend to determine his effectiveness as a co-parent. Dr. Ruben recommended another year of services. Neither Burdick nor Riley believed additional services would be beneficial to respondent.

The foregoing evidence demonstrates that the conditions leading to adjudication continued to exist and there was no reasonable likelihood that the conditions would have been rectified within a reasonable time. Additionally, respondent was without the ability to provide the children with proper care and the children would have been at risk of harm if returned to her care. Respondent lacked insight and empathy. The children had been in care for 16 months and respondent had not demonstrated sufficient progress. The trial court did not err by finding that the statutory grounds for termination had been established by clear and convincing evidence. MCR 3.977(K).

Respondent also argues that the trial court erred by conducting an in camera interview with LPM after the close of proofs and the parties' arguments, at the child's request. This Court has held that "a trial court presiding over a juvenile proceeding has no authority to conduct in camera interviews of the minor children." *In re HRC*, 286 Mich App 444, 446; 781 NW2d 105 (2009). During the hearing on respondent's motion for a new trial, the trial court admitted that respondent's attorney had objected to the interview and that the court "was not aware of the *In re HRC* case. If I were fully aware of the case of *In re HRC*, I would not have had the in camera

conversation.” Nevertheless, the trial court found *In re HRC* to be factually different because the court did not interview LPM for purposes of factfinding but “for the sole purpose of letting the affected child tell the judge in person what she told all of us through her letter which was admitted into evidence as Petitioner’s Exhibit #1.” Still, because there was no opportunity for cross-examination, the trial court believed the proper remedy was to re-open the proofs. The trial court reserved ruling on respondent’s motion until LPM testified. A separate hearing was held at which the child expressed, on the record, her desire not to return to her mother’s care. The court denied the motion for a new trial.

Although the trial court erred by conducting the in camera interview, we consider the error to be harmless. See MCR 3.902(A); MCR 2.613(A). This case is distinguishable from *In re HRC*, wherein the court used the interviews to help determine whether to terminate the parents’ rights. Here, the trial court used the interview more as a therapeutic opportunity to allow LPM to voice her opinion. Unlike in *In re HRC*, respondent has been made aware of what actually took place at the in camera interview, and this Court has been provided with an adequate record to review the trial court’s ultimate decision. Additionally, LPM’s desires were made known through other documentary evidence and the testimony of other witnesses. Burdick was present when LPM typed a letter to the court regarding respondent, which clearly stated the child’s preference to remain with her foster family because she feared respondent could not protect the children. This letter was admitted into evidence. In addition to this letter, LPM told Burdick, her counselor, and foster care worker Riley that she did not want to return to respondent’s care. Thus, even though the trial court erred by conducting the in camera interview with LPM, we conclude that the error was harmless because it elicited opinions that were already clearly stated on the record through documentary evidence and witness testimony. Respondent’s due process rights were not violated.

Nor did the trial court clearly err in its best-interests determination. MCL 712A.19b(5). There is no doubt that respondent loved the children and that the children loved respondent; nevertheless, the evidence demonstrated that their relationship had become strained due to lack of trust. The two older children expressed their clear desire not to return to their mother’s care. The children had been in care for over a year. They feared respondent would not be able to protect them in the future, a fear that was well-founded as respondent had not demonstrated any increased insight or empathy. Respondent was also living with a man who had only supervised visitation with his own children because of his anger issues. Respondent failed to put the children’s needs first. Given the amount of time that had passed, the children were entitled to permanency and stability. We perceive no clear error in the trial court’s finding that termination of respondent’s parental rights was in the children’s best interests. MCR 3.977(K).

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Pat M. Donofrio