

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 8, 2012

In the Matter of K.C.P., A.L.O., A.M.O., and
J.R.B., Minors.

No. 306369
St. Clair Circuit Court
Family Division
LC No. 10-000295-NA

In the Matter of K.C.P., A.L.O., A.M.O., and
J.R.B., Minors.

No. 306428
St. Clair Circuit Court
Family Division
LC No. 10-000295-NA

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

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from order of the family division of the circuit court terminating their parental rights to their minor children.¹ We affirm.²

I. FACTS

Respondent Carrie Wood had been under investigation since March 2010, when her youngest child, then two years old, was discovered wandering around town alone while clad in only a diaper. The investigation brought to light that Wood's home was in very poor condition. The home contained fly-infested open garbage cans, clutter everywhere, dirty dishes piled up in the kitchen, and messy bedrooms. The original petition noted these concerns. It also noted that

¹ Respondent Carrie Wood is the biological mother of all four children involved in this case. Respondent William Osgood is the biological father of A.L.O. and A.M.O. only. Accordingly, this case involves him in connection with those two children only.

² The trial court also terminated the parental rights of K.C.P.'s biological father, respondent Kristopher Plummer, but Plummer has not appealed that decision. The record further indicates that the biological father of J.R.B., whose parental rights have not been put in jeopardy, was seeking custody of that child.

an allegation that Wood had kicked one of the children in the chest was substantiated, and that respondent Osgood was in jail “for child support and failure to appear.”

The children were made wards of the court in September, 2010, and respondents were ordered to maintain suitable housing for themselves along with legal sources of income, to participate in programs to improve their parenting skills, and to address substance abuse and anger management issues.

Wood complied with all of her court orders, but three out of four therapists who had worked with her opined at the termination hearing that her parenting skills remained extremely poor. Of particular concern were a lack of supervision and consistency, a failure to follow through on matters of discipline, and a tendency to defer to the older children to attend to the younger ones. An additional concern was Wood’s consistent refusal to accept responsibility for the plight of the children.

Osgood completed a substance abuse assessment and a psychiatric evaluation, but attended just half of the classes for one parenting course, only a few for a second such course, and none for a third to which he was referred. Osgood otherwise failed to provide proof of having completed any of his other requirements. A therapist reported that Osgood admitted that he had been in jail approximately ten times; the charges against him including uttering and publishing, and driving on a suspended license. Osgood also admitted that he owed over \$28,000 in child support. At the time of termination hearing, Osgood was again incarcerated, this time for retail fraud.

Under examination by the trial court, Osgood testified that he took no measures to care for the children, despite Wood’s obvious difficulties in doing so, because he did not have a suitable place for them to stay. He explained that largely because of his multiple incarcerations he had difficulty finding a job. Osgood credited Wood with always providing a roof over head for the children, but admitted that the environment was nonetheless not appropriate for them. Asked what he did to remove the children from that bad situation, Osgood replied that he did some maintenance work at their home, but admitted he did nothing to remove them, and had never himself sought custody.

The trial court ruled from the bench that grounds for termination of the parental rights of both respondents were established, then followed with a written order reflecting that ruling.

II. STANDARD OF REVIEW

An appellate court “review[s] for clear error both the [lower] 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). A finding is clearly erroneous if the reviewing court is left with a “definite and firm conviction that a mistake has been made.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

III. RESPONDENT WOOD

“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).

The lower court terminated respondent Wood’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide as follows:

(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 [that]:

(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.

Wood emphasizes that the recent indications were that she was now keeping a clean house, and asserts that she has thus corrected one of the key conditions of the adjudication. The trial court, however, observed that Wood had been receiving services from petitioner, the Department of Human Services, for several months before a petition was filed, but that her home was consistently “filthy” throughout. The court acknowledged that Wood had been keeping a clean house of late, but took pains to distinguish the present accomplishment of keeping clean a house that is bereft of children from the earlier failure to keep a clean house while the children were present. The trial court did not clearly err in declining to regard Wood’s recent improvements in this regard as dispositive of how she would perform if she again had custody of the children.

Wood argues generally that the amount of parenting time available to her while this case was pending, and the places where it took place, added up to insufficient reunification efforts. But Wood does not assert that she had less opportunity in these regards than did others similarly

situated, and cites no authority for the proposition that the parenting time she was in fact allowed was insufficient to allow her to progress toward reunification. We thus find this argument unpersuasive.

Wood emphasizes that one of her therapists, the last one to work with her, opined that she had well addressed her issues. The therapist, after continued therapy and further progress on her part, further opined that returning the children to her would not be inappropriate. However, the trial court noted that all the other therapists consistently expressed continuing concerns regarding Wood's failure to make progress in her parenting abilities. In particular, the other therapists were concerned with Wood's deficiencies in supervising and disciplining the children, and her failure to take responsibility for her situation. Further, the court expressly discounted the credibility of the therapist who provided testimony favorable to Wood on the ground that the other therapists supported their opinions with "factual statements," in contrast to Wood's preferred therapist, who relied principally on Wood's self-reporting. Again, we defer to the trial court's credibility determinations. See *Miller*, 433 Mich at 337. Accordingly, that the trial court did not find one of several therapists credible does not warrant reversal.

Wood argues that her parenting skills could improve further if she had more time and opportunity. However, "the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991).

For these reasons, we are not left with a "definite and firm conviction that a mistake has been made." *Miller*, 433 Mich 331 at 337. We accordingly conclude that the trial court did not clearly err in finding that termination was appropriate under subsections 19b(3)(c)(i) and (g).³

In challenging the trial court's best interest determination, Wood only summarizes her arguments concerning her cooperation with her case service plan, along with selected testimony favorable to her. In light of what the court had to say about Wood's continuing problems with basic parenting skills, her perfunctory argument concerning best interests fails to show that the court's determination in that regard was clearly erroneous.

IV. RESPONDENT OSGOOD

Petitioner sought termination of respondent Osgood's rights on the same three statutory grounds as put forward in connection with respondent Wood, but the trial court found that only

³ The trial court did not provide any elaboration in stating that termination was also appropriate under subsection (j). It's applicability to other than perhaps the youngest child is not obvious from the record. However, even assuming, arguendo, that the trial court erred in finding subsection (j) applicable, two valid statutory bases for termination are still applicable, and petitioner needs only to prove one statutory ground in order to terminate a respondent's parental rights. MCL 712A.19b(3). See also *In re Powers*, 244 Mich App 111, 120; 624 NW2d 472 (2000).

subsection (g) (failure to provide proper care and custody) came to bear. The court explained as follows:

Mr. Osgood . . . was aware that the conditions that were in the home existed but he didn't do anything to correct it. He didn't try to get the children out of that environment. He made no effort, Friend of Court or otherwise, to make arrangements for those children to be in another environment. . . . He was aware of issues . . . about discipline . . . but he really didn't do anything about that either.

* * *

[H]e didn't file a complaint . . . seeking the children himself. Maybe that was because he had no place to put them because he had no environment for them either. Or, as he said, maybe it's because of his own legal problems, warrants for this arrest, problems with the law, in and out of jail a lot, that's the reason he doesn't have a place for the children. Because he doesn't have a job, he's in and out of jail, he can't maintain a home. . . .

. . . So, recognizing that his children were living in the condition that was not proper care for them and doing nothing about it, and not being capable of doing anything about it, it is a situation where the parent, without regard to intent, fails to provide proper care or custody for the child. And, given his circumstances of in and out of jail, no job, no prospect for employment No place to stay when he gets out of prison and given his history of being in and out of the children's lives there's no reasonable expectation that he'll be able to provide proper care and custody for these children within a reasonable time considering the child's age.

Osgood protests that he is now out of jail, and is on parole. We have verified through the Department of Corrections' website that he has indeed earned parole, with a supervision discharge date of November 23, 2012. However, it remains unclear whether Osgood's long history of engaging in behavior that has earned him incarceration has finally come to an end. Further, Osgood boasts that he now has a suitable home for his children, but obviously no such subsequent development was in evidence at the time of the termination decision. Nor did Osgood move the trial court for reconsideration, or relief from judgment, or move this Court to allow him to enlarge the record,⁴ in order to show that subsequent events have indeed proved false the trial court's concern that Osgood would be in no position to provide proper housing upon his release from prison.

Osgood protests that he never needed help with parenting skills, anger management, or substance abuse. We agree that the record provides no indication that he ever had problems with anger management or substance abuse. But if Osgood's position was that such services bore no relation to his circumstances, he should have lobbied for relief from those obligations, not simply

⁴ See MCR 7.216(A)(4) (permitting expansion of the record where this Court deems it just).

ignored them. It is well-established that “[f]ailure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child’s life, physical health, or mental well being.” *Trejo*, 462 Mich at 346 n 3 (internal citations omitted).

As for Osgood’s protests that he never needed help with parenting skills, the trial court’s observations that Osgood stood idly by while his children lived in squalor brought to light a rather serious deficiency in Osgood’s parenting.

For these reasons, Osgood has failed to show that the trial court clearly erred in concluding that termination was warranted under MCL 712A.19b(3)(g), or that termination was in his children’s best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro