

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 23, 2013

In the Matter of JETER/THOMAS, Minors.

No. 311710
Wayne Circuit Court
Family Division
LC No. 10-492989-NA

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), (h), (j), and (n)(i).¹ We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been proven by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

At the time of the adjudication respondent was unable to properly care for her children due to severe neglect. She did not have a suitable home and her parenting skills were deficient. Although respondent engaged in her treatment plan, she was unable to complete her parent/agency agreement after she was arrested and incarcerated. She never obtained suitable housing or a legal source of income. Furthermore, respondent's convictions for first-degree and third-degree criminal sexual conduct against a minor while her children were temporary court wards showed that she did not sufficiently benefit from parenting classes or therapy. "[A] parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich

¹ The referee's report and recommendation, signed by the court, also lists MCL 712A.19b(3)(n)(ii) and (iii). Any error in finding these grounds established is harmless because only one statutory ground needs to be proven by clear and convincing evidence to terminate parental rights. See *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

App 668, 676; 692 NW2d 708 (2005), superseded by statute on other grounds *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated by 486 Mich 1037 (2010). For each of her convictions, respondent was sentenced to a minimum of nine years and six months, and will not be able to care for her child for quite some time.² Although respondent suggested a guardianship for the children, her proposed caregiver did not want to be a guardian for all three children. Moreover, the trial court has the discretion to appoint a guardian only where it is in the children's best interests to do so. MCL 712A.19a(7)(c); MCR 3.979(A), (B). Here, guardianship was not in the children's best interests because they are young and guardianship is not a permanent, secure arrangement.

Given the nature of respondent's criminal convictions, it is clear that her judgment is questionable and she is not a suitable caregiver. In the two years that the children were temporary court wards, respondent was unable to demonstrate that she could properly care for her children because she did not have suitable housing or income. Respondent argues that she can still provide proper care and custody while in prison and that this was demonstrated by the prison visit between respondent and her children. Contrary to respondent's assertion, she has never demonstrated the ability to provide proper care and custody of her children. A positive visit cannot be compared to the responsibility involved in raising and caring for three children.

Respondent also argues that there was no factual evidence to support a finding that the children would be harmed if returned to her care. This assertion is without merit as there is factual evidence that she committed heinous acts against a minor. MCL 712A.19b(3)(j) considers whether the children would be at risk of harm in her care, not whether she has harmed them already. Moreover, respondent has offered no assurances that the children would be safe with her. Given the nature of respondent's crimes, which are among the offenses enumerated in MCL 712A.19b(3)(n)(i), that the crimes were committed against a minor, and that respondent will be incarcerated for a very long period of time, it also would be harmful to continue the parent-child relationship.

Respondent argues that the issue of her being unable to rectify the sexual abuse she committed was never raised during the termination hearing. She also argues that this conclusion would require the testimony of an expert. Respondent's contention is without merit. Contrary to respondent's assertion, her criminal sexual conduct was raised many times throughout the case.

² The record is unclear whether respondent's convictions run concurrent to each other, in which case her earliest release date would be in 2021, or whether they run consecutive to each other, in which case her earliest release date would be in 2030. Both respondent and the foster care worker testified that respondent had to serve a minimum of nine years and six months. However, Michigan Department of Corrections Offender Tracking Information System states that respondent's earliest release date is May 2, 2030, which implies her sentences run consecutive to each other. In any event, respondent will be incarcerated for at least nine years and six months, which would deprive the children of a normal home for a period exceeding two years and prevents respondent from being able to provide proper care and custody within a reasonable time. See MCL 712A.19b(3)(h).

Moreover, the issue here was not whether she would be able to rectify the sexual abuse but whether she would be able to rectify the conditions that brought her children into care so that she will be able to provide proper custody of her children. Serious physical neglect and lack of supervision were what first brought this case to the trial court's attention. Under MCL 712A.19b(3)(c)(i), these were the issues that needed to be rectified, not respondent's criminal sexual conduct.

Respondent argues that caseworker White recognized that she benefited from services and therefore contends that without expert testimony the referee's conclusion regarding whether she benefited from services was erroneous. White testified that respondent had not been referred for additional parenting classes because she was believed to have benefited from parenting classes. Under MRE 701, a lay witness may offer an opinion or inferences that are rationally based on the witness's perceptions and are helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. Here, the trial court found that it had serious concerns about whether respondent actually benefited from parenting classes and therapy based on her criminal convictions. Although White's opinion was based on her perceptions from her personal involvement with the case, the court drew an appropriate legal conclusion based on the entire record. Moreover, the record is not entirely clear about whether White was referring to the time before respondent's arrest and incarceration when she stated that respondent benefited from parenting classes. Further, even if respondent benefited somewhat from services, any benefit achieved was compromised by her criminal actions, which rendered her unfit to parent.

Respondent's criminality supports the trial court's finding that the children would be exposed to risk of harm in her care. The purpose of parenting classes and therapy was to improve respondent's parenting skills so that she could be an appropriate caregiver. Her criminal actions against a minor demonstrate impaired judgment and show that she cannot provide safe or suitable care for her children. Expert opinion is not required to form the legal conclusion that respondent's criminal actions demonstrate that she did not sufficiently benefit from services. Thus, the trial court did not clearly err in finding statutory grounds established to terminate respondent's parental rights.

The trial court also did not clearly err in finding that termination of respondent's parental rights was in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 355-357. Respondent did not prioritize her children's best interests when she sexually assaulted a minor. Her actions were especially troublesome because she committed this crime while her children were under the trial court's jurisdiction. Moreover, respondent's imprisonment is not temporary, as her minimum prison sentence is for nine years and six months. The trial court weighed the evidence and correctly found that the oldest child had waited long enough for a permanent, safe home, which can only be achieved through adoption. Likewise, the younger two children, who were placed with their father, will be well into adulthood when respondent is released from prison. Respondent's sexual assault of a minor, and the resulting guilty plea and protracted sentence, demonstrate that maintaining the relationship between the children and respondent is not in the children's best interests. Given that respondent cannot provide the children with a safe, stable home life in a reasonable time, termination of parental rights was in the children's best interests.

Respondent argues that the referee drew conclusions based on his own biases and not based on the evidence presented. She argues that a child's placement with relatives weighs against termination of parental rights and the trial court must specifically make findings about why termination of parental rights is in the children's best interests even though the children are with relatives. Contrary to respondent's assertions, the trial court's findings are based on the evidence and the court made specific best-interest findings. The trial court specifically found that the children had been in foster care for a significant period of time, they were at an age where permanent planning was essential for continued growth and development, and guardianship was not appropriate. We find no error in the court's best-interest determination.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens