

STATE OF MICHIGAN
COURT OF APPEALS

In re ENRIQUE COLON, JR., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

VICKI SUE CLARK,

Respondent-Appellant.

UNPUBLISHED

February 7, 2006

No. 263695

Muskegon Circuit Court

Family Division

LC No. 02-030485-NA

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating her parental rights pursuant to MCL 712A.19b(3)(g), (i) and/or (l). We affirm.

I. FACTS

Respondent is the mother of six children of whom Enrique, Jr. is the youngest. Petitioner filed an original termination petition as to Enrique, Jr. on April 29, 2005, alleging that respondent, who was homeless, had neglected her other children and they were adjudicated wards of the court in 2003. Respondent's parental rights to three of those children had been terminated in 2004. Following a preliminary hearing, the court authorized the petition and placed Enrique, Jr. in foster care. Petitioner withdrew the request for termination as to the putative father, Enrique Colon.

At the May 6, 2005 adjudicatory hearing, Colon entered a plea of admission to the petition and the court took jurisdiction over the child. The court conducted a termination hearing on June 15, 2005. Testimony showed that respondent's parental rights had been terminated as to five other children. Additionally, at the time Enrique, Jr. was born, respondent was either homeless or was living with a friend. She was still living with that person at the time of the hearing. When asked what she had done to improve her situation since the prior termination hearing, she said she had "[b]een helping with everybody else's kids . . ." She had not done anything more constructive because "[n]obody told me what I . . . was supposed to do."

Petitioner sought termination pursuant to § 19b(3)(l), respondent conceded that "there's a statutory basis to terminate do [sic] to the prior termination," but argued that "it could potentially

be in the child's best interest if" she were provided with services to give her a chance to raise the child, especially since the agency was not yet seeking termination as to Colon.

II. TERMINATION OF PARENTAL RIGHTS

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 in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). The trial court's decision is reviewed under the clearly erroneous standard. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). In applying the clearly erroneous standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

B. Analysis

The court may terminate the rights of a parent to a child if the court finds, by clear and convincing evidence, that:

1. 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. [MCL 712A.19b(3)(g).]
2. Parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful. [MCL 712A.19b(3)(i).]
3. The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter [MCL 712A.2(b)] or a similar law of another state. [MCL 712A.19b(3)(l).]

Respondent contends that the court erred in terminating her parental rights because § 19b(3)(i) was not proved by clear and convincing evidence. Respondent conceded below that there was a statutory basis for termination, and she therefore cannot claim error on appeal. "A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994).

The court did not clearly err in finding that a statutory ground to terminate respondent's parental rights existed. Despite the lack of evidence regarding the extent of the neglect and abuse that led to the prior adjudicatory proceedings, respondent does not deny that her parental rights to Enrique, Jr.'s siblings were terminated due to serious and chronic neglect or abuse. She

contends only that prior attempts to rehabilitate her were successful. Given that she was provided services in connection with the prior proceedings and that her parental rights were nonetheless terminated, it can be inferred that respondent was not rehabilitated. Further, respondent still lacked stable housing and admittedly had not done anything to improve her parenting skills. Therefore, the court correctly ordered termination of parental rights where it found that at least one statutory ground for termination had been shown by clear and convincing evidence. *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999).

III. BEST INTERESTS OF THE CHILD

A. Standard of Review

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision regarding the child's best interests is reviewed for clear error. *Id.* at 356-357. A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

B. Analysis

Respondent contends that termination was contrary to the child's best interests because she interacted appropriately with him in the hospital and she had housing, a support system, income, and medical care for the baby. Respondent interacted appropriately in a restricted setting, she had temporary housing, a support system, and income. There was no evidence that she had medical care available. The fact remains that respondent had neglected her other children when left to her own devices, and participation in services failed to make any significant improvement in her parenting skills because her parental rights were ultimately terminated. After learning she was pregnant, respondent did nothing to try to improve her parenting skills, waiting instead for someone to tell her what to do. If, as it appears, respondent intended to rely on others to raise the child and was unable to do it on her own, termination was not clearly contrary to the child's best interests. Therefore, the trial court did not clearly err in terminating respondent's parental rights. *In re Trejo, supra* at 356-357.

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette