STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RICHARD FARRAR, JOSHUA FARRAR, JEREMIAH FARRAR, AMIE LOU READER, and FRANK READER, JR., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AMIE L. READER, a/k/a AMIE L. TULLER,

Respondent-Appellant,

and

FRANK READER, SR., and CLIFFORD FARRAR,

Respondents.

UNPUBLISHED
December 18, 2008

No. 286118
Kalkaska Circuit Court
Family Division
LC No. 05-003784-NA

Before: Hoekstra, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Respondent Amie L. Reader appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

I. Renewed Visitation

Respondent argues that it was improper for the trial court to find that a statutory ground for termination was established, having found during the termination hearing that her visitation rights should be restored. We disagree.

The trial court reinstated respondent's visitation after receiving positive reports on the first day of the multi-day termination hearing[1] that respondent was making an effort and had benefited from some services. However, the trial court had not yet been appraised of the failure-to-protect allegations. The termination hearing continued with the understanding that respondent's parental rights might be terminated despite the court's decision to resume visitation. The court made its ultimate decision on the whole record, not on the limited evidence received during the first day of the hearing. The court's previous decision to restore visitation did not prevent it from later finding, at the conclusion of the hearing several months later, that petitioner had established at least one statutory ground for termination by clear and convincing evidence.

II. Statutory Grounds for Termination

The petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(J); *In re Miller, supra* at 337; *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is to be given to the trial court's special opportunity to judge the credibility of witnesses. *In re Miller, supra*.

The trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were each established by clear and convincing evidence. The evidence showed that despite more than ten years of services, completion of parenting classes, a prior experience with the children being sexually abused in foster care, and respondent's own personal experience in being a victim of abuse, respondent failed to credit and investigate her daughter's allegations of abuse by a sibling, thereby allowing the abuse to continue. Respondent persisted in not believing her daughter even after being advised by the children's foster parents that the sibling had again abused her daughter while the children were in foster care, and instead claimed that the allegation was part of a plot to terminate her parental rights. Respondent's daughter felt the need to make sure that her sibling confessed to respondent to ensure that respondent would believe her, and ended up comforting respondent during their joint therapy session instead of being supported and comforted by respondent. At trial, respondent continued to make excuses for her failure to protect her daughter, and continued to deny that she had called her daughter a liar. The trial court did not clearly err in finding that there was clear and convincing evidence that respondent failed to provide proper care and would not be able to provide proper care within a reasonable time considering the ages of the children. Therefore, termination was appropriate under § 19b(3)(g).

Additionally, this same evidence supports the trial court's determination that termination was also appropriate under subsection (j), because it shows that if the children were returned to respondent's care, there is a reasonable likelihood that she would fail to protect them.

[1] We note that the termination hearing stretched over several months, beginning on May 18, 2007, and concluding on November 29, 2007, with written closing arguments submitted in March 2008.

Because the trial court did not clearly err in terminating respondent's parental rights under §§ 19b(3)(g) and (j), it is unnecessary to determine whether termination was also warranted under §§ 19b(3)(c)(i) and (c)(ii).

III. Best Interests of the Children

Once a statutory ground for termination is established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5).[2] That determination is made from evidence on the whole record and is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000).

Respondent had been receiving services since 1995. The family repeatedly moved from state to state, and many protective service referrals were made. The children had been removed at least three times since respondent's daughter was born, including for a three-year period between 1999 and 2002. Some of the children were abused in foster care. Even when respondent had appropriate housing, she struggled with the upkeep of the home. She divorced the father, but then soon became pregnant by a man who had a criminal record and had slapped her oldest child in 1997, when that child was four years old. Although the children loved respondent and she loved them, four of the five children did not want to return to respondent's care. They instead preferred the structure and predictability in their lives that they were provided while in foster care and which they had not received from respondent. Two of the children did not feel safe in respondent's care, and both felt that they were responsible for taking care of respondent, instead of expecting her to care for them.

Viewing the record as a whole, the evidence did not clearly show that termination of respondent's parental rights was not in the children's best interests. *In re Trejo, supra* at 354.

IV. Bad Faith

Respondent also argues that termination of her parental rights was improper because the caseworker acted in bad faith, and never truly viewed reunification as a goal. We disagree.

Regardless of the good faith or bad faith of the caseworker, the record discloses that respondent was provided with ample services, from which she failed to sufficiently benefit to allow for reunification, and that there was clear and convincing evidence of at least one statutory ground for termination. Additionally, the evidence did not show that termination was clearly contrary to the children's best interests. Therefore, respondent's parental rights properly were terminated. In any event, the record does not support respondent's argument that the caseworker acted in bad faith. In particular, there is no indication that the failure-to-protect allegation was

[2] MCL 712A.19b(5) was amended, effective July 11, 2008, to require that, in order to terminate parental rights, a court must affirmatively find that termination is in the children's best interests. However, because the order terminating respondent's parental rights was issued June 2, 2008, the prior version of MCL 712A.19b(5), quoted above, remains applicable to the determination whether termination of respondent's parental rights was appropriate in the instant case.

added in bad faith. That allegation was substantiated before it was added, and was supported by clear and convincing evidence at trial.

We affirm.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio