

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of P.M. and B.M., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NANCY LYNN PEUGH,

Respondent-Appellant,

and

PATRICK BRIAN McWAIN,

Respondent.

In the Matter of P.M. and B.M., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

PATRICK BRIAN McWAIN,

Respondent-Appellant,

and

NANCY LYNN PEUGH,

Respondent.

UNPUBLISHED

June 18, 2009

No. 288573

Wexford Circuit Court

Juvenile Division

LC No. 07-020314-NA

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Before: Fort Hood, P.J., and Cavanagh and K. F. Kelly, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the order terminating their parental rights to their two minor children, P and B. We affirm.

I. Basic Facts

Petitioner initiated this child protection proceeding after receiving allegations that respondent-mother had physically abused one of her minor children. When these proceedings were commenced, respondent-mother had two children, P and D. Respondents are the parents of P, while D was born to respondent-mother and a different father. Respondents conceived a third child, B, who was born sometime after the trial court had assumed jurisdiction over P and D. B was removed from respondents' care shortly after birth. After failing to comply with the treatment plan, petitioner moved to terminate respondents' parental rights to all three children. The trial court found sufficient grounds for termination and terminated respondents' parental rights with respect to P and B. The trial court found that it was not in D's best interests to terminate respondent-mother's parental rights. Respondents now appeal the trial court's determination with respect to P and B.

II. Standard of Review

We review for clear error a trial court's decision to terminate parental rights. *In re Roe*, 281 Mich App 88, 95 ; ___ NW2d ___ (2008). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

III. Analysis

Respondents argue that clear and convincing evidence did not support the trial court's findings in support of the grounds for termination and that termination was not in the children's best interests. We disagree. A court may terminate parental rights if the petitioner establishes at least one of the statutory grounds enumerated in MCL 712A.19b(3) by clear and convincing evidence and if it finds that termination of parental rights is in the children's best interests. *Id.* at 210; MCL 712A.19b(5).

A. Grounds for Termination

In the present matter, the trial court found that several grounds for termination existed to support termination of respondents' rights, as provided:

- (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(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 either of the following:

(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. [MCL 712A.19b(3)(b)(ii), (3)(c)(i), (3)(g), and (3)(j).]

After our review of the evidence presented, we cannot conclude that the trial court clearly erred by finding at least one ground existed in support of termination. The record demonstrates that over the course of these proceedings, respondents failed to comply with the case service plan and failed to benefit from the services provided. As the trial court noted, respondents continually failed to regularly visit the children during these proceedings and purposely did not make it a priority to comply with the case service plan. Although both parents were referred to parenting classes, respondent-mother never attended a class, despite attempts to accommodate her, and respondent-father attended only one. When asked if respondent-father had benefited from this class, the foster care worker testified that he had not benefited. Additional testimony revealed that both psychological evaluations and bonding assessments were performed and counseling was recommended, but respondents disagreed with the results, insisted they had done nothing wrong, and refused to attend counseling in order to address their problems. The foster care worker also testified that respondents interacted poorly with P and D at the visits that did occur and respondent-mother admitted that she had had no contact with B. Given respondents' refusal to address the issue that led to adjudication or to improve their parenting skills through classes or counseling during the pendency of this case, we cannot conclude that the trial court clearly erred by finding that there is no reasonable likelihood that the conditions that led to adjudication will be rectified within a reasonable amount of time. Because petitioner adequately established

grounds for termination under § 19b(3)(c)(i), respondents' contrary contention is unavailing, and we find it unnecessary to consider the remaining grounds for termination.

B. Best Interests

Respondents also argue that it was inconsistent for the trial court to terminate respondent-mother's parental rights to P and B, but not to D. This argument lacks merit. As the trial court acknowledged, P and B are differently situated than D. The court appropriately recognized that P and B were at an adoptable age without parents able to provide them with a safe and healthy environment, whereas D, at eight years old continued to remain in the care and custody of a fit parent, his biological father. The trial court also properly considered the fact that D would not be able to receive any child support or possible inheritance from respondent-mother if her rights were terminated and that it would be in D's best interests for the court to continue its jurisdiction over the matter, not for reunification purposes, but for the protection of D. With respect to the latter, we note that with the proper custody orders in place, there would be no need for the trial court to continue its jurisdiction, as the state has no interest in interfering in the parent-child relationship in the absence of certain compelling circumstances.¹ See *In re AP and BJ Minors*, ___ Mich App ___ ; ___ NW2d ___ (2009). Accordingly, we cannot conclude that the trial court clearly erred by finding that termination of parental rights was in P and B's best interests, but not in D's best interests.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly

¹ Pending in Wexford County's family division court is a domestic relations custody action with respect to D. See *Peugh v Card*, LC No. 2000-15266-DC. The status of the existing custody orders is unclear from the record before us.