

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 10, 2012

In the Matter of WHISENANT/HANSON, Minors.

No. 307113
Berrien Circuit Court
Family Division
LC No. 2010-000103-NA

Before: WHITBECK, P.J., AND SAWYER AND HOEKSTRA, JJ.

PER CURIAM.

Respondent Hanson appeals as of right the order of the trial court terminating her parental rights to her minor children, K. Whisenant, N. Hanson, D. Hanson, and T. Hanson, Jr. pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will harmed if returned to parent). We affirm.

I. FACTS

The children in this case came to the attention of the Department of Human Services (DHS) in April 2009 when T. Hanson, Jr., then 1-1/2 years old, was found walking alone in the street, wearing only a shirt. Hanson was not at home at the time, and T. Hanson, Sr. was asleep on the floor of the couple's apartment while the door was wide open. Child protective services became involved with the family, and Families First services were offered. Before the Families First program could be completed, however, child protective services removed the children from the Hansons' care in May 2009 because K. Whisenant was then found wandering the streets. T. Hanson, Sr. was again found sleeping, and Hanson was incarcerated.

In August 2009, T. Hanson, Sr. was arrested and ultimately convicted of criminal sexual conduct involving a 15-year-old friend of Hanson's oldest child, A. Beshires.¹ The children were ultimately placed in a guardianship in the care of their maternal grandmother, P. Russell.

¹ S. Hanson's parental rights to A. Beshires were not terminated because the trial court determined that termination was not in her best interests.

In summer 2010, Hanson lost her job and her housing and began regularly testing positive for cocaine use. G. Beshires,² A. Beshires' father, recently had been released from prison and Hanson moved in with him despite his extensive criminal history. In August 2010, the children were again removed from Hanson, and more specifically from the care of Russell, who was living with Doyle Gene Dixon, a convicted sex offender. It was alleged that Dixon was sexually abusing the children in Russell's home and that Hanson was aware of the allegations but had failed to inform DHS. DHS identified Hanson's barriers to reunification with the children as lack of financial resources, lack of employment, substance abuse, lack of housing, sexual abuse of the children by family members, lack of emotional stability, and lack of parenting skills.

It was later determined that all of the children except possibly D. Hanson had been sexually abused, either by Dixon or others. Hanson, however, did not have a proper reaction to the abuse, and after G. Beshires was again incarcerated, Hanson moved in with Russell and Dixon even though Hanson knew that Dixon had allegedly sexually assaulted the children. In fact, Hanson reported to her own counselor that she was worried about Dixon. After a visit with Hanson, N. Hanson reported to the foster care worker and to her counselor that Hanson told her that what Dixon had done to her was appropriate and that N. Hanson should not talk about it anymore. Hanson later denied that she had said she was worried about Dixon and denied that she had told N. Hanson not to discuss the assault.

In addition to the sexual abuse, the children also were suffering from neglect when they were removed again in August 2010. D. Hanson's teeth were rotted, she had a severe case of head lice, and was delayed in her development. T. Hanson, Jr. was also delayed in development, and at the time of the termination hearing was five years old but only 2-1/2 years old developmentally. T. Hanson, Jr. also had severe behavioral problems. K. Whisenant had extremely defiant behavior and had special education needs.

Throughout the time that the case was pending before the trial court, Hanson was sporadic in participating in services. Foster care worker Katherine Klank testified that Hanson had a pattern of engaging in services for a few weeks, making progress, and then stopping her participation in services. For example, before the April 2011 review hearing, Hanson had been offered approximately 40 visits with the children and had missed all but six or seven of the visits. Shortly before that hearing, Hanson began to attend visits. Klank testified the Hanson's sporadic visitation with the children had confused and upset them. D. Hanson was so confused that she did not understand that Hanson was her mother and had to have special counseling to address the question of who her natural family was. N. Hanson reported to her counselor that she only wanted to visit with Hanson if the foster care worker was present and that she did not want to go home with Hanson. During a visit in April 2011, Hanson interacted only with the two younger girls, N. Hanson and D. Hanson, while K. Whisenant was put in a time out for his behavior. At the end of the visit, K. Whisenant told his aunt with whom he was living that he did not want to visit with Hanson again.

² The trial court did terminate G. Beshires' parental rights, and he is not a party to this appeal.

Foster care worker Klank testified that in the reporting period before the July 2011 hearing, Hanson had provided negative drug screens for six weeks, but then had stopped participating in drug screens entirely. Klank testified that that pattern was typical for Hanson; to provide negative drug screens for a few weeks, then test positive, then stop participating in the screens. Before the July 2011 hearing, Hanson had not participated in a drug screen since April 2011. At about that same time, Hanson stopped attending counseling and stopped attending visitation with the children. Hanson had been referred to three parenting classes but had failed to complete any of them. Hanson still lacked stable housing. Klank testified that Hanson had not demonstrated any improvement in her parenting during the visits in which she did participate. Klank summarized that Hanson was in no better position to parent the children than she had been when the children were removed from her care. Klank testified that all the children were very hurt by Hanson's decisions and her failure to visit them, and that K. Whisenant had declared that he hated Hanson and never wanted to see her again.

At an October 2011 termination hearing, Klank testified that in the weeks preceding that hearing, Hanson again began participating in services, attending counseling and parenting classes, and was planning to search for housing. Hanson still did not have housing, however, and was again living with her own mother. Hanson still lacked employment or stable income, and her counselor reported that Hanson had not made any progress in counseling. Though Hanson had again begun participating in drug screens, she had missed the drug screen scheduled for the week of the hearing. Klank summarized that Hanson had not made any meaningful progress on any of the issues that caused the children to be removed from her care. Klank testified that Hanson had been offered every service that petitioner had available.

Klank also opined that termination was in the best interests of the children. She noted that K. Whisenant wanted Hanson's parental rights terminated and wanted to be adopted by his aunt with whom he was living. Klank also noted that one month before the termination hearing, Hanson had called the police in the middle of the night and had them check on K. Whisenant's welfare at the relative's home, which terrified the child who believed he was being removed again and who thereafter had nightmares. Though T. Hanson, Jr. was too young to express an opinion, N. Hanson stated that she did not want to return to living with Hanson, and D. Hanson did not understand that Hanson was her mother.

At the conclusion of the termination hearing, the trial court terminated Hanson's parental rights to the four children. Hanson appeals from the order of the trial court.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Hanson argues that the trial court erred in finding that sufficient evidence had been introduced to demonstrate the statutory criteria for termination. To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination

by clear and convincing evidence.³ We review for clear error a trial court's decision terminating parental rights.⁴ 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.⁵ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁶

B. MCL 712A.19b(3)(c)(i)

A review of the record supports the trial court's finding that termination of Hanson's parental rights was warranted under MCL 712A.19b(3)(c)(i) because the conditions that led to adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the ages of the children.

At the time that the children were removed in August 2010, Hanson lacked stable housing, lacked income or a job; was substance addicted; was periodically cohabiting with G. Beshires, who had a criminal record; and was failing to protect the children from sexual abuse.

After the children were again removed, Hanson made no progress and only sporadic efforts to address these barriers. Hanson remained unemployed and without stable income for the entire time that the case was before the trial court. She lacked stable housing, sometimes living with G. Beshires and sometimes living with her own mother and Dixon, even though Dixon was alleged to have sexually assaulted the children. She often tested positive for substance use or missed the drug screens altogether. She visited with the children only sporadically, and the visits she did attend sometimes involved conflict with the children. She enrolled in three parenting classes but failed to complete any of them. Merely participating in services without benefiting from those services is not sufficient.

In this case, Hanson participated in services sporadically, but never adequately addressed the barriers to reunification with her children, namely, her substance abuse, homelessness, lack of employment or income, lack of parenting skills, and lack of ability to keep the children safe from sexual predators. In light of the record, the trial court did not clearly err in determining that termination was warranted under subsection (3)(c)(i) because the conditions that led to adjudication continued to exist.

C. MCL 712A.19b(3)(g)

³ MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

⁴ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

⁵ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁶ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The record similarly supports the trial court's finding under MCL 712A.19b(3)(g) that Hanson failed to provide proper care and custody for the children and that there was no reasonable expectation that she would be able to do so within a reasonable time considering the ages of the children.

Before DHS again removed the children, but while they were residing with Russell, the children were neglected and subjected to sexual abuse by others. At the time of the termination hearing, the children had been in foster care for one year, and during that time, Hanson had participated only half-heartedly in services and had never appeared to benefit from those services. Failure to benefit from services supports the finding that a parent will not be able to provide proper care and custody for a child within a reasonable time. In light of the evidence, the trial court did not clearly err in finding that termination was warranted under subsection (3)(g).

D. MCL 712A.19b(3)(j)

Finally, the record supports the trial court's determination that termination was warranted under MCL 712A.19b(3)(j), finding that there was a reasonable likelihood, based on the conduct or capacity of Hanson, that the children would be harmed if placed in Hanson's custody.

Hanson is substance addicted and refuses to address her addiction. Although Hanson would periodically participate in services to address her substance abuse, her efforts were sporadic only and produced no progress. Hanson similarly had failed to make any progress in finding employment or housing, or in gaining parenting skills. Given the record support for the trial court's determination, we determine that the trial court did not clearly err in finding that termination was warranted under subsections (3)(j).

In sum, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Hanson's parental rights.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child's best interests, then the trial court is required to order termination of parental rights.⁷ There is no specific burden on either party to present evidence of the children's best interests;

⁷ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

rather, the trial court should weigh all evidence available.⁸ We review for clear error the trial court's decision regarding the child's best interests.⁹

B. LEGAL STANDARDS

In determining the child's best interests, a trial court may consider a variety of factors including the parent's history, unfavorable psychological evaluations, the child's age, inappropriate parenting techniques, and continued involvement in domestic violence.¹⁰ A trial court may also consider the strength of the bond between the parent and child, the visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.¹¹ A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.¹²

C. ANALYSIS

In this case, the trial court found that termination was in the best interests of the children after a detailed review of the record. The trial court noted that the children had special needs and needed parents with time, effort, and dedication to devote to them. The trial court also noted that the children needed permanence and consistent care, including housing, food, guidance, stability, and love, and that Hanson had failed to provide these things to the children because of her involvement with her own issues and with substance abuse. Having considered factors that are relevant and permissible for determining the children's best interests, and given the record support for those factors, it cannot be said that the trial court clearly erred in determining that termination was in the best interests of the children.

We conclude that the trial court did not clearly err in determining that termination of Hanson's parental rights was in the best interests of the children.

We affirm.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Joel P. Hoekstra

⁸ *In re Trejo Minors*, 462 Mich at 353.

⁹ *Id.* at 356-357.

¹⁰ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

¹¹ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹² See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).