

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 16, 2012

In the Matter of C. F. DICKERSON, Minor.

No. 309055
Delta Circuit Court
Family Division
LC No. 11-000614-NA

In the Matter of A. P. DICKERSON, Minor.

No. 309057
Delta Circuit Court
Family Division
LC No. 11-000613-NA

Before: OWENS, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

S. LaLonde appeals as of right from a circuit court order terminating her parental rights to her minor children “CFD” and “APD.”¹ We affirm.

LaLonde argues that the trial court erred when it found clear and convincing evidence to support the various proffered grounds for termination. We disagree. To terminate parental rights, at least one ground for termination must be proven by clear and convincing evidence.² This Court reviews for clear error a trial court’s finding that a ground for termination has been proven.³ “A finding is ‘clearly erroneous’ [if] although there is evidence to support it, the

¹ MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days), (c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), (j) (reasonable likelihood of harm).

² *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000).

³ *Id.* at 356-357.

reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.”⁴

LaLonde argues that due to the limitations imposed on her visitation rights and a lack of effort on the part of the Department of Human Services (“DHS”) and the trial court to facilitate visitation while she was in jail, she cannot be considered to have deserted her children.⁵ LaLonde further argues that she sought custody of CFD and APD until the day her parental rights were terminated. These arguments are unavailing.

It is undisputed that LaLonde did not see her children after September 7, 2011, and that her parental rights were terminated on February 14, 2012, a period of more than 91 days. LaLonde admitted that she made no attempts to see her children after September 2011, but argues that she did not see her children because of “visitation roadblocks” imposed by the court. Thus, her lack of contact did not constitute abandonment. She cites the following statement by the court, and asserts that the alleged “roadblocks” are contained therein:

So I’m removing the prohibition that she can’t have parenting time without the court changing its order because I’m changing the order now, authorizing parenting time at the discretion of DHS. But at a minimum and in exercising that discretion, they need to make sure that she’s in substantial compliance with the case services plan and she’s attending her drug screens and passing them. The court considers if someone does not attend the drug screen when scheduled that it’s a failure. So the burden is on her to make those things.

She needs to get her medication in order so that she’s not self-medicating with marijuana.

She has not reestablished a fit home for the children, she’s homeless, she doesn’t have a job.

The roadblocks to parenting time to which LaLonde refers amount to substantial compliance with the case services plan, which required her to attend and pass drug screens, find employment, and secure suitable housing for her and her children. The court essentially put visitation in her hands when it changed its prior order suspending visits “until further order of the court.” If LaLonde satisfied the conditions, then DHS had the discretion to permit visitation. These are not barriers to visitation. Rather, they are reasonable conditions placed for the best interests of the children. Accordingly, the trial court did not clearly err when it found that LaLonde abandoned her children.

LaLonde also asserts that the trial court erroneously found that the conditions leading to adjudication continued to exist.⁶ LaLonde argues that the sole condition that led to the

⁴ *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citation and quotations omitted).

⁵ MCL 712A.19b(3)(a)(ii).

⁶ MCL 712A.19b(3)(c)(i).

adjudication was the fact that she had an arrest warrant for an unpaid bond of \$162 and that the trial court incorrectly imposed the case plan requirements as part of the conditions leading to the adjudication. This assertion is not supported by the record. The initial petition filed on May 2, 2011, to initiate child protective proceedings arose after LaLonde was found in a motel room with a convicted sex offender and various drugs/paraphernalia, and was later arrested on an outstanding warrant for failure to pay a \$162 bond. The petition detailed LaLonde's lack of income or employment, her history of drug abuse, and her homelessness. At the termination hearing, the court found as follows:

The court finds that the conditions that lead to the adjudication continue to exist. That basically she did not have a job, she was homeless, she was taking the children from one place to another, she was relying on friends or family. She would try to borrow money. She had left the children with a babysitter to return at a specific time. She was in a motel room with a convicted sex offender that she didn't know was a convicted sex offender. There were some issues of drug use in that motel room, at least by the male. The babysitter called DHS because she wasn't willing to care for the children any longer. So when the court entered the case she was homeless, had no place for the children and she was going to jail.

Thus, the trial court's finding at the termination hearing that the conditions leading to adjudication continued to exist was based on the same conditions alleged in the original petition, to which LaLonde later pleaded.

Although LaLonde denied at the termination hearing that she continued to use or abuse drugs, she twice tested positive for marijuana in August and September 2011, and during a police search in December 2011, was found with fresh "track marks" on her arms in an apartment smelling strongly of marijuana and containing various drug paraphernalia. From September 2011 on, LaLonde had almost no contact with DHS, and missed drugs screenings and other counseling meetings.

Similarly, on the date of the termination hearing, LaLonde was incarcerated and was not scheduled for release until April 26, 2012, more than two months after the hearing. Further, she was unemployed and did not have any housing arranged for on her release from jail other than potentially living with her mother in her one-bedroom apartment in Escanaba. Thus, there was no error by the trial court.

We also reject LaLonde's argument that the trial court erred when it found that she was not providing proper care and custody for her children before the adjudication.⁷ Before the adjudication, LaLonde was homeless and completely reliant on friends and family for housing and financial support. She admitted that she had been unemployed for at least two years, and continued to be unemployed. Throughout the pendency of proceedings, LaLonde made minimal or no effort to secure employment, was in and out of jail, and remained homeless. LaLonde admitted initially that she had "a little drug problem" and used marijuana, alcohol, and

⁷ MCL 712A.19b(3)(g).

Suboxone. She repeatedly tested positive for marijuana in DHS-imposed drug screenings, and was found with drug paraphernalia and signs of recent intravenous drug use during a police search of an apartment in December 2011. Drug abuse, chronic unemployment, and homelessness each could support a finding that LaLonde cannot provide proper care and custody for her children. Given evidence of all three conditions, the trial court's finding that LaLonde failed to provide proper care and custody for her children was proper.

Finally, LaLonde challenges the trial court's finding that there was a reasonable likelihood of harm to the children if they were returned to her.⁸ Specifically, LaLonde argues that there was no evidence of prior harm to either of the children, and therefore, any finding of likely future harm would be based purely on speculation. This argument also lacks merit. It is not required that past harm be proven in order to support a finding of likelihood of harm in the future. Rather, the statute discusses a reasonable likelihood of harm to the child if returned to the parent "based on the conduct or capacity of the child's parent."⁹ Here, as discussed above, LaLonde has a history of drug abuse, chronic unemployment, and homelessness. One of her children was born drug addicted. LaLonde's drug use undoubtedly could interfere with her ability to care for her children, and could directly or indirectly cause them harm if they were returned to her. Further, there is a reasonable likelihood that harm could result to either or both children based on LaLonde's inability to financially support herself, her tendency to associate with persons posing potential harm to the children, and her inability to provide a stable, permanent home for her children. Thus, there was no error by the trial court.

LaLonde next argues that termination of her parental rights was not in the children's best interests. We disagree. Before parental rights can be terminated, it also must be established that termination is in the child's best interests.¹⁰ Whether termination of parental rights is in the child's best interests is reviewed by this Court for clear error.¹¹

At the close of the best-interest phase of the termination hearing, the trial court reviewed the record, noted that LaLonde was in jail at the time and would be incarcerated for two more months, and had done little to comply with the case services plan. Then, the court stated:

These kids cannot sit around so to speak in foster care waiting for her some day, some time to get her life in order. She's had nine months to do it and she's done nothing.

I find it in the best interest of the children that there be permanency planning and that that be adoption by a suitable person; the present foster home

⁸ MCL 712A.19b(3)(j).

⁹ *Id.*

¹⁰ MCL 712A.19b(5).

¹¹ *Trejo*, 462 Mich at 356-357.

they're in or a suitable relative. The department will certainly examine those various electives.

Therefore, the court finds by clear and convincing evidence it is in the best interest that her parental rights be terminated and the court so orders.

Based on her involvement with the case from the initial removal of the children from LaLonde, a Delta County DHS worker concluded that termination would be in the children's best interests because the children's bond with their mother had likely broken down from lack of contact during the pendency of the child protective proceedings, and because doing so would allow for the children to be adopted and for a permanent and stable living situation to develop.

LaLonde argues that this testimony should be disregarded because the case worker admitted that no one from DHS had visited the children in their foster care placement at the time of the termination hearing, nor had any reports come from the social services provider who had monthly contact with the children. LaLonde asks, rhetorically, how the case worker could know that the children's bond with her was gone if the case worker had not visited the children in their current placement. This presupposes that the only way the parent-child bond can be evaluated is by first-hand observation. LaLonde offers nothing to support this implied assertion. The best-interest determination is based on the record before the court. The case worker opined, based on her experience, that the parent-child bond had been broken by the length of time that had elapsed since the children and LaLonde had interacted. This conclusion, predicated on her experience in the field, is reasonable. The foundation of such a bond, and its maintenance, is compromised by the total lack of interaction.

Moreover, the court's determination was not predicated solely on the case worker's opinion. The court stated that the children could not wait for LaLonde to "some day . . . get her life in order." The court's conclusion that her life was not "in order" is supported by the record. Both before and after removal, LaLonde showed no inclination to make changes in her life and behavior that would allow her to take adequate care of her children. As of the date of the termination hearing, LaLonde had been unemployed for approximately three years and had made virtually no effort to seek gainful employment. She had been living with various friends, family members, and in motels. Further, LaLonde admitted to having a drug problem and using marijuana, alcohol, and Suboxone, and the evidence showed that she continued to use drugs despite the case plan requiring drug screenings and counseling. LaLonde displayed a complete lack of effort or motivation to comply with the case services plan or to appear in court, repeatedly being jailed for contempt and non-compliance. Given these numerous factors, the trial court did not clearly err in finding that termination was in the children's best interests.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder