

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 27, 2012

In the Matter of ZIZA, Minors.

No. 309681
Macomb Circuit Court
Family Division
LC No. 2011-000166-NA

Before: FORT HOOD, P.J., and K. F. KELLY and DONOFRIO, JJ.

MEMORANDUM.

Respondent appeals as of right from a trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), (h), and (j). We affirm.

Respondent pleaded guilty to child sexually abusive communication activity, MCL 750.145c(2), distributing or promoting child sexually abusive material, MCL 750.145c(3), accosting, enticing, or soliciting a child for immoral purposes, MCL 750.145a, and using a computer to commit a crime, MCL 752.797(3)(d) and MCL 752.796(3)(f), for which she was sentenced to 3.75 to 7 years' imprisonment. Respondent admitted the abuse in her criminal case but denied it at the disposition and best interest hearings, claiming that she was merely attempting to "trap" men who demonstrated an interest in young children.

The sole issue on appeal is whether the trial court erred in finding that termination was in the children's best interests. MCR 3.977(H)(3); MCL 712A.19b(5). Respondent argues that the trial court erred in terminating her parental rights because there was a reasonable likelihood that, after treatment, respondent would be able to parent her children or at least have safe contact with them. We disagree. The trial court's decision on best interests is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

First, we note that when respondent uses the term "reasonable likelihood" in terms of the best interest analysis, she uses the term in the wrong context. It is in deciding whether the statutory grounds for termination have been proven by clear and convincing evidence, that a trial court must consider whether "there is a *reasonable likelihood* that the conditions [leading to adjudication] will be rectified within a reasonable time considering the child's age," MCL 712A.19b(c)(i) and (ii), or whether "the parent will be able to provide proper care and custody within a *reasonable time* considering the child's age," MCL 712A.19b(g). (Emphasis added.) Thus, a trial court may look to the future in determining whether there is a statutory basis for termination. Here, however, respondent concedes that the statutory bases were proven by clear

and convincing evidence. As such, the trial court's remaining obligation was to determine if termination was in the children's best interests. In making such a determination, the trial court need not focus on the potential for future rehabilitation. Instead, a child's best interests must be determined by focusing on the child's present-day interests and whether respondent would benefit from prison services was irrelevant to the trial court's present-day determination of the children's best interests.

Second, respondent's argument focuses on what she perceives to be *her* best interests, not the children's. Respondent testified that she loved her children and wanted a chance to be in their lives. She believed that the children should wait for her to get out of prison. However, we stress that the focus of a best interests determination is on the child, not the parent. There is no indication from the record that the *children* would benefit from a continued relationship with their mother. In fact, quite the opposite is true. Dr. Patrick Ryan performed psychological evaluations on the young children. The children's cognition "clearly had been damaged" and both urgently needed therapy and school or preschool. Without treatment, the children would not be resilient or resistant to stress. Both saw the world as "a very scary place." Dr. Ryan believed the children were "very fragile" and "in need of exceptionally good care." They had been damaged and were functioning below their potential. Although the children had special needs, they were "very remediable." However, Dr. Ryan testified that the children could be harmed by contact with respondent if she did not address her issues.

Dr. Ryan's psychological evaluation of respondent indicated that she would not likely address her issues. He believed that respondent would not only place her needs before the needs of her children, but that she would likely *use* her children to satisfy her own needs. Respondent had significant underlying pathology and emotional issues that she hid or refused to address and she would likely be noncompliant with any type of treatment. Respondent was diagnosed with narcissistic personality disorder and continued to believe that she did not do anything wrong.

Finally, we note that the children are with their father. Dr. Ryan testified that the father appeared to be a good parent and showed no psychopathology. The father can now protect the children from respondent, who is a sexual predator. Additionally, with their father's help and therapeutic intervention, termination will allow the children to finally begin the healing process. Given the horrific circumstances of this case and the needs of the children, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio