

Court of Appeals, State of Michigan

ORDER

In re Lovejoy, Minors

Docket No. 310749

LC No. 12-505074-NA

William B. Murphy
Chief Judge

Peter D. O'Connell

William C. Whitbeck
Judges

The Court orders that the unpublished per curiam opinion in this case, which was issued on November 29, 2012, is AMENDED to correct a clerical error in the lower court number. That number should read "12-505074-NA." In all other respects, the November 29, 2012 opinion remains unchanged.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

DEC 11 2012

Date


Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 29, 2012

In the Matter of LOVEJOY, Minors.

No. 310749
Wayne Circuit Court
Family Division
LC No. 12-505074-NZ

Before: MURPHY, C.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

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

Respondent first argues on appeal that the trial court erred in finding that the statutory grounds for termination were proven by clear and convincing evidence. A careful review of the record reveals that respondent failed to present any arguments at the adjudication/termination hearing challenging the statutory grounds alleged by petitioner. Instead, respondent merely argued that it was not in the best interests of the children to terminate her parental rights, effectively waiving an appellate challenge regarding the statutory grounds. See *People v Carter*, 462 Mich 206, 215, 219; 612 NW2d 144 (2000). Regardless, the trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were both established by clear and convincing legally admissible evidence. MCR 3.977(E)(3) and (K); *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). Respondent failed to provide proper care or custody for her children by subjecting them to an unreasonable risk of physical and emotional harm when she allowed her boyfriend, a known sex offender, to move into her home and allowed him to stay despite the fact that he engaged in domestic violence against respondent in the presence of the children and against the children themselves. Further, respondent's boyfriend began sexually abusing one of the children shortly after moving in and, when his sexual abuse of the child was revealed, respondent covered it up by persuading the child to recant. The boyfriend gave the child a sexually transmitted disease. Although respondent may have evicted her boyfriend from her home, she continued to maintain a relationship with him, appeared in his support at a probation or parole violation hearing, and then allowed him to move back into her home. The fact that respondent was willing to jeopardize the children's safety and welfare for the sake of maintaining a relationship with her boyfriend was evidence that she was unlikely to be able to provide proper care and custody within a reasonable time considering the children's ages and that the children were reasonably likely to be harmed if placed in respondent's care. MCL 712A.19b(3)(g) and (j). Given that a single ground for termination is sufficient, § 19b(3), and

considering the waiver problem, we find it unnecessary to examine whether the evidence supported termination under § 19b(3)(b)(ii).

Respondent's claim that petitioner violated its duty to provide her with reunification services also does not merit reversal. The record reflects that at no time in the lower court proceedings did respondent even raise the issue of reunification services, let alone request services. Petitioner was required to file a petition in this case because respondent's boyfriend, an adult "who reside[d] for any length of time in the child's home," abused one of the children and the abuse included criminal sexual conduct involving sexual penetration. MCL 722.638(1)(a)(ii). Petitioner was required to request termination at the initial dispositional hearing because respondent was "suspected of placing the child at an unreasonable risk of harm due to . . . [respondent's] failure to take reasonable steps to intervene to eliminate that risk," MCL 722.638(2), in that she allowed her boyfriend back into the home knowing that he had sexually abused one of the children. Reasonable efforts to reunify the child and family are not required when there has been a judicial determination that a parent subjected a child to aggravated circumstances as provided in MCL 722.638(1) and (2). MCL 712A.19a(2)(a). The various orders entered below, which utilized standard court forms, have checkmarks in boxes, or a lack of checkmarks in boxes, leaving it a bit unclear regarding the status of reunification services. A January 27, 2012, order that was entered following the preliminary hearing provided that "[r]easonable efforts shall not be made to preserve and reunify the family because it would be detrimental to the child(ren)'s health and safety." To the extent that other conflicting orders exist, reversal is still unwarranted, given that respondent wholly failed to preserve the issue and waived the statutory-ground challenge, that MCL 722.638 and MCL 712A.19a were clearly implicated and supported denial of reunification services, and considering that petitioner sought termination at the initial dispositional hearing. See *In re HRC*, 286 Mich App 444, 462-463; 781 NW2d 105 (2009) ("Petitioner . . . is not required to provide reunification services when termination of parental rights is the agency's goal.").

Respondent also argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. In support of her contention, respondent maintains that the children did not want respondent's parental rights to be terminated, that respondent and the children love each other and are receiving counseling, that public policy and the law dictate that children and their parents remain together if at all possible, and that various factual findings by the court were not supported by the record. Additionally, respondent renews her complaint, which we have already rejected, that reasonable services were not provided. In the ruling from the bench and in the written findings of fact and conclusions of law, the court determined that it was in the best interests of the children to terminate respondent's parental rights. The court noted that the children needed stability, that respondent's substance abuse and mental health problems impaired her ability to parent, that she failed to not only protect the child who was sexually abused, but failed "to protect the other children . . . as well" under the circumstances, that respondent "allowed her children to be exposed to domestic violence," that she never followed the suggestion to obtain counseling for herself and the children, that she placed her relationship with the boyfriend "over the safety and welfare of her children," and that the children were "at an age where permanent planning is essential for continued growth and development." The court concluded that "based on the testimony and the arguments . . . presented[,] it is in the best interest of these children to terminate the parental rights of the mother."

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “We review the trial court’s best interests decision for clear error.” *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). The safety and well-being of a child, his or her stability, the need for permanency, and the lack of parenting ability and skills are all grounds that support a conclusion that termination is in the child’s best interests. *In re VanDalen*, 293 Mich App 120, 141-142; 809 NW2d 412 (2011); *Jones*, 286 Mich App at 129-130. We find that the record sufficiently supports the bulk of the trial court’s findings and that there was no clear error in regard to the best-interests determination. We do not question the children’s love for respondent, and we understand their desire to remain with their mother; however, the circumstances of this case, especially the horrific situation involving respondent’s boyfriend and her unacceptable response to the events that transpired, easily support the court’s determination concerning the children’s best interests.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O’Connell
/s/ William C. Whitbeck