

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 15, 2013

In the Matter of BURNS/HYDE, Minors.

No. 310320

St. Clair Circuit Court

Family Division

LC No. 07-000649-NA

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

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her daughter (DOB 8/9/2005) and her son (DOB 11/14/2011). Respondent's rights to her daughter were terminated under MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). Respondent's rights to her son were terminated under MCL 712A.19b(3)(g) and MCL 712A.19b(3)(j). For the reasons set forth in this opinion, we affirm.

Petitioner sought termination of respondent's parental rights, alleging that respondent had substance abuse problems. Testimony at the termination hearing established that, since November 2007, respondent's daughter had previously been removed three times. Further, respondent had taken part in numerous substance abuse programs and attended counseling, but was unable to stay sober. During the court's temporary wardship of her daughter, respondent admitted to using narcotics while pregnant, which was confirmed when her son was born with narcotics in his system and suffered withdrawal symptoms. At the time the trial court terminated respondent's parental rights to the minor children, she had commenced her second attempt at a twelve-month,¹ Christian counseling program having previously been terminated from the program for a rules violation.

¹ From the record it appears that the program, Life Challenge of South Eastern Michigan is a faith-based, highly structured one-year residential program. Its proponents claim that it differs from a traditional or secular rehabilitation facility because secular programs only offer one type of programming. Debbie Harsh, a senior resident advisor at the program, testified that the program views addiction as a sin, not a disease. She further testified there is no drug testing program because "our sin finds us out and if it happens, from my own experience, I don't need to seek out a sinful behavior, it will be brought to light."

In finding clear and convincing evidence to terminate respondent's rights to both children and that the termination was in the best interests of the minor children, the trial court found that there was clear and convincing evidence to terminate respondent's parental rights and that termination was in the best interests of the children. The court cited the following recommendations of the referee in support of its ruling:

During the temporary wardship for [daughter], respondent mother gave birth to a second child, [son] who was positive for drugs at birth and experienced withdrawal symptoms. After a prior Court wardship in 2008, two years of temporary Court wardship on the current petitioner, over a year of counseling with a relapse prevention plan, and numerous attempts at substance abuse treatment, it is clear and convincing that the conditions which led to the original adjudication of [daughter] continue to exist. Based on the continuing relapses, failure to comply with treatment, and birth of a drug positive baby, it is clear and convincing that the conditions cannot be rectified within a reasonable time. It is further clear and convincing that respondent mother has failed to provide a home free of illegal substances and drug abuse and there is no reasonable expectation that the respondent mother will be able to provide proper care and custody for the children within a reasonable time considering the children's age. Based on the evidence presented, it is also clear and convincing that the children would be harmed if returned to the home of respondent mother. [Son] was clearly harmed by respondent mother's substance abuse by being born drug positive and experiencing withdrawal symptoms, and based on respondent mother's past conduct there is a reasonable likelihood that the children will be harmed in the future if returned to her care.

For all the reasons set forth above, the Court find [sic] that the termination of parental rights of respondent mother [] is in the best interest of the minor children. Therefore, the referee recommends entry of an order terminating the parental rights of respondent. . . .

Respondent argues that the trial court erred by terminating her parental rights under MCL 712A.19b(3)(c)(i) with respect to her daughter. MCL 712A.19b(3)(c)(i) provides:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

On appeal, respondent alleges that since she re-enrolled in Life Challenge, and was doing well in the program, she should be afforded the opportunity to complete the one-year program. Because the trial court did not allow her that opportunity, the trial court erred in finding there was clear and convincing evidence that the statutory grounds had been met. Further, respondent claims that termination of her parental rights is not in the children's best interests. She claims that she was sober for a significant amount of time in 2011, and that her care workers were considering terminating the court's jurisdiction. It was only after she reported on-going substance abuse problems and enrolled herself in Life Challenge that the trial court decided to terminate her parental rights. Respondent downplays prior incidents of domestic violence, which occurred in the presence of her daughter, stating that in Life Challenge she has come to see things differently and would be able to have contact with both children.

In order to terminate a party's parental rights, a trial court must find that at least one statutory ground for termination has been established by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 355-356; 612 NW2d 407 (2000). The trial court must terminate parental rights if it finds that doing so would be in the child's best interests. MCL 712A.19b(5). We review for clear error a trial court's determination that a statutory ground for termination has been proven by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). We also review for clear error a trial court's finding that termination of parental rights is in the best interests of the child. *Trejo*, 462 Mich at 356-357. "A finding is clearly erroneous where the reviewing court has a definite and firm conviction that a mistake has been made." *Matter of Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

Respondent concedes that more than 182 days passed since the initial dispositional order regarding her daughter. However, she testified that she was currently enrolled in Life Challenge, and that the one-year wait is not unreasonable because the program was suggested by the Department of Human Services (DHS) and she can maintain contact with her six-year-old daughter while in the program. However, respondent's history of substance abuse indicates that the results of the treatment program will be uncertain. By her own admission, respondent relapsed on narcotics after she attempted numerous thirty-day substance abuse programs. Her daughter was removed because of substance abuse in 2007, 2010, and again in 2011. Respondent acknowledges that the statutory time period of 182 days has long since lapsed; however, she contends that the trial court erred when it ruled that there was no reasonable likelihood the conditions would be rectified within a reasonable period of time considering the child's age. Our review of the record in this case presents a clear and lengthy history of substance abuse, domestic violence, and a minor who is afraid of being with her mother. Respondent was afforded numerous opportunities for sobriety, yet, for a myriad of reasons she was unsuccessful. We are also troubled by the evidence that the minor daughter was afraid to visit respondent without the presence of the case worker. Additionally, at a very young age the minor daughter was required to care for her mother especially when her mother would sleep through an entire day from ingestion of controlled substances. The record reveals that respondent is able to be sober for only short periods of time. More importantly, the record does not reveal any sustained period of time when respondent remained sober. The very program which respondent attributes to her recovery is one from which she had previously been terminated. Simply put, there is no evidence from which the trial court or this Court could conclude that there was a reasonable likelihood respondent will remain sober. Additionally, we cannot agree with respondent that the trial court clearly erred in finding it unreasonable to wait

an additional year for respondent to attempt to complete her most recent treatment program. See *In re Sours Minor*, 459 Mich 624, 633; 593 NW2d 520 (1999). The record supports the trial court's conclusion that clear and convincing evidence existed to terminate respondent's parental rights to her daughter under MCL 712A.19b(3)(c)(i).

Next, respondent argues the trial court erred by terminating her parental rights to both children under MCL 712A.19b(3)(g), which provides grounds for termination where clear and convincing evidence shows that 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.

Respondent's substance abuse resulted in her daughter being removed from the home three times. As previously stated, trial testimony established that respondent's daughter is confused and frightened and is receiving counseling. She is worried about being alone with her mother. She has witnessed incidents of uncharged domestic violence that frightened her. Further testimony established that sometimes respondent's daughter would have to care for respondent while she was sick in bed. Also, evidence showed that at times the daughter was unable to awaken respondent.

Additionally, respondent has never provided proper care and custody for her son. At the time of his birth, he tested positive for narcotics and required treatment to assist with his withdrawal symptoms. The child was immediately removed from respondent's care and he was less than a year old at the time of the proceeding.

Considering the age of the children and the uncertain results of respondent's most recent drug-treatment program, it was unlikely that respondent could provide proper care and custody for the children within a reasonable amount of time. The record supports the trial court's conclusion that clear and convincing evidence existed to terminate respondent's parental rights to both children under MCL 712A.19b(3)(g).

Next, respondent argues the trial court erred in terminating her parental rights to both children under MCL 712A.19b(3)(j), which provides that termination is appropriate where clear and convincing evidence shows that:

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.

Respondent abused drugs while she was pregnant with her son causing her son to test positive for narcotics upon birth. Her daughter had already been removed from the home three times because of substance abuse issues. Respondent relapsed in spite of counseling services through DHS and enrollment in numerous treatment programs. Although respondent voluntarily enrolled at Life Challenge, nothing guaranteed that she would complete the program or that the program would be successful. On the contrary, as previously stated, respondent's history of treatment and relapse suggested that this program would ultimately be unsuccessful. In addition, respondent had already left the Life Challenge program once after she smoked cigarettes and lost her temper.

Although respondent attempted to return to the program, under MCL 712A.19b(3)(j) the court was required to consider respondent's anticipated performance and ability to complete the program. In this case, for the reasons previously noted, the evidence supported a finding that the children would remain at risk in respondent's custody. The record supports the trial court's conclusion that clear and convincing evidence existed to terminate respondent's parental rights to both children under MCL 712A.19b(3)(j).

Finally respondent argues that termination of her parental rights was not in the best interests of the child.

The evidence showed that respondent loved the children but was unable to successfully remain free of substance abuse. At the time of the hearing, respondent was enrolled in a one-year substance abuse program. Although she would be able to maintain contact with the children, respondent would not have been able to care for them during her treatment. Given the ages of the children, their best interests would not be served by placing them in the custody of a parent who is unable to control her addictions. The best interests of the children were served by offering them a degree of permanence that respondent was unable to provide. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens