STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ASHLEE JOANN VERGHO, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MICHELLE KAY VERGHO,

Respondent-Appellant,

and

THOMAS LEE VERGHO, JR.,

Respondent.

UNPUBLISHED
August 9, 2007

No. 275885
Midland Circuit Court
Family Division
LC No. 06-002688-NA

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to her child pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (g).[1] We affirm.

This case was initiated because the child tested positive for cocaine when she was born. Respondent admitted by plea that her recent history included drug use, unemployment, failure to make rent payments, and failure to comply with her treatment plan. The original petition additionally reported that respondent had a history of homelessness.

Testimony in later proceedings established that respondent made only negligible progress in any of these areas, and had failed to participate in any of the services offered but for attending supervised visitation with the child. The trial court also heard evidence that the relationship

[1] The trial court terminated respondent father's parental rights as well, but he has not appealed.

between respondent and her respondent husband was a dysfunctional and destructive one, involving domestic violence and a state of dependency.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 3.977(J). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

Respondent attacks the trial court's conclusion concerning § 19b(3)(c)(*i*) not by disputing the trial court's recitations of facts, but by asserting that she received ineffective assistance of counsel in the proceedings below. See *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). However, because no ineffective assistance argument was included among the questions presented, and because such argument is not germane to the challenges actually raised, we decline to consider the ineffective assistance argument. See *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995); MCR 7.212(C)(5).

Because respondent does not dispute the trial court's factual conclusions that respondent-appellant retained serious and unresolved substance abuse problems, plus a general inability to empathize with her child or put the child's interests on par with of her own, and because her resort to ineffective assistance argument is unavailing, respondent has failed to show that the trial court clearly erred in concluding that termination was proper under § 19b(3)(c)(*i*).

Respondent attacks the trial court's conclusion concerning § 19b(3)(c)(*ii*) not by disputing the trial court's recitations of facts, but by pointing out that the court did not specify what "other conditions" invoking the court's jurisdiction, apart from those that originally did so, existed, and by reiterating her ineffective-assistance argument. But the trial court's expression of grave concerns over the dysfunctional relationship between respondent and respondent husband, including respondent's emotional dependency and withdrawal, and domestic violence, highlighted a problem that was not identified in the February 15, 2006, petition. Accordingly, although the court did not say so, it is clear from the record that this subject matter was the focus of the court's (c)(*ii*) inquiry.

Because the court's findings are unrebutted that respondent had continuing, serious, and unresolved domestic abuse, and emotional dependency, problems, stemming from her destructive marital relationship, and because the ineffective assistance argument is without merit, the court did not err in concluding that termination was proper under § 19b(3)(c)(*ii*).

In challenging the trial court's conclusion under § 19b(3)(g), respondent argues that she "kept a clean house," "was motivated at her psychological evaluation to be involved in services," "was consistent at parenting time and did better when [her respondent husband] was absent," and "had a normal IQ . . . ." Respondent does not contest the trial court's findings that she generally failed to comply with her service plan, and had serious continuing issues with substance abuse,

domestic abuse, and emotional dependency. Instead, respondent concedes that "[t]he evidence was clear" that her relationship with her husband "was dysfunctional and destructive," then attempts to attribute her failure to distance herself from that person to her attorney.

Because respondent failed to rebut the trial court's findings, in fact admitting that that she remains in a dysfunctional and destructive relationship, and because her attempt to assign responsibility for the latter to her attorney below are unavailing, respondent has failed to show that the trial court clearly erred in concluding that termination was proper under § 19b(3)(g).

Finally, the trial court held that "clearly it is in the best interests of . . . this child . . . to have the termination of parental rights occur," adding "we have a child with significant needs, we have had significant services put in place and nonetheless neither one of these parents . . . have done what needs to be done." Respondent argues that the court erred in so concluding.

The inquiry is not whether it is in the child's best interests to terminate, but whether termination is "clearly not" in the child's best interests. MCL 712A.19b(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). The trial court thus found a higher standard than what the law requires.

Respondent states that she "had a normal IQ, was motivated to be involved in services early in the case, but she was brought down by [her respondent husband's] controlling nature and his severe depression." Respondent thus offers her unremarkable IQ as mitigation, while admitting that her "motivation" to participate in services existed only in the early stages of the case, and that her continued relationship with her abusive husband caused her to be "brought down," in other words, to fail at the required rehabilitation. Respondent again attempts to blame her attorney for her failure to end her dependency on her abusive husband.

Because respondent admits to the general failure to comply with her service plan, along with her continuing dysfunctional and destructive relationship with her abusive husband, and because her attempt to shift the blame for the latter to her attorney is unavailing, respondent has failed to rebut the trial court's conclusions concerning the child's best interests.

Affirmed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly