

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALICIA DENISE BURFORD,
ASIA FOSTER BURFORD, TRAVIS
MARSHALL BURFORD, TAYLOR MICHAEL
BURFORD, and AMY LYNN BURFORD,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MICHELLE BURFORD,

Respondent-Appellant.

UNPUBLISHED

August 9, 2007

No. 275470

Midland Circuit Court

Family Division

LC No. 05-002497-NA

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM.

Respondent Michelle Burford appeals as of right from the trial court order terminating her parental rights to the minor children.^{1,2} We affirm.

I. Basic Facts And Procedural History

This matter came to the attention of the Department of Human Services in approximately June 2005 after a referral was made alleging repeated sexual and physical abuse of Alicia Burford by her father, Lewis Burford. Lewis Burford also allegedly physically abused Asia and Amy Burford. Michelle Burford allegedly knew about the abuse but failed to report the allegations or take any other action to protect the children. The petition alleged that when Alicia Burford disclosed the sexual abuse to her mother, Michelle Burford told her daughter that Lewis Burford had been sleepwalking. Following a preliminary hearing, the Burfords' parental rights

¹ MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if child is returned to parent).

² The record reveals that Alicia Burford and Asia Burford reached the age of majority during the pendency of this appeal.

were suspended pending further proceedings. In July 2005, Michelle Burford entered a plea to an amended petition setting forth the above allegations.

Following a permanency planning hearing in May 2006, the trial court authorized the filing of a petition for termination of Michelle Burford's parental rights due to lack of progress towards stability and permanency for the children. In November 2006, Lewis Burford voluntarily released his parental rights to all five of the children. And in December 2006, the trial court issued a written opinion and order terminating Michelle Burford's parental rights to all five children.

II. Grounds For Termination

A. Standard Of Review

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.³ We review the trial court's order terminating parental rights for clear error.⁴ A finding of fact is clearly erroneous if we are left with a definite and firm conviction that a mistake was made.⁵

B. Analysis

In reaching its disposition, the trial court stated that the abuse was allowed to happen and continue for many years because of Michelle Burford's "passive acquiescence." The trial court found it significant that Michelle Burford denied the abuse even after the termination petition had been filed, and the trial court opined that she was still in denial and that she was simply repeating a mantra when stating that she now believed the abuse occurred. The trial court stated that Michelle Burford's "actions and non-protective nature" exhibited her general failure to protect the children. The trial court concluded that, despite the initial "illusion" of compliance with the case service plan, the evidence was "clear and convincing . . . that she has not made progress toward providing the protection required for her Children." The trial court found that there was "miniscule improvement in her parenting skills."

Michelle Burford claims that the trial court clearly erred in finding clear and convincing evidence to support termination of her parental rights. We disagree.

The primary condition of adjudication was Michelle Burford's failure to protect the children. At the August 2005 initial dispositional hearing, the DHS caseworker testified that, although Michelle Burford was participating in counseling, she told the caseworker that she did not believe the sexual abuse allegations. Michelle Burford confirmed that she "had some difficulty in believing" the sexual abuse allegations, but she explained that she believed that "something happened to [Alicia]." When later asked whether she believed that Lewis Burford

³ MCL 712A.19b(3); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

⁴ MCR 3.977(J); *In re McIntyre*, *supra* at 50.

⁵ *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

sexually abused Alicia, Michelle stated, “I believe somebody did. I’m not sure who.” Despite conceding that Alicia had already told her what happened at least once, Michelle Burford stated that if Alicia were to confront her directly and tell Michelle that her father abused her, then she would believe her. Michelle Burford stated that she did not believe her children needed to be protected from Lewis Burford, but she also explained that she was willing to get a divorce, if that was what would make the children feel safe, “as soon as [she could] afford it.” The trial court ordered that Michelle Burford comply with the case service plan and that she have no contact with Lewis Burford.

At the November 2006 termination hearing, testimony revealed that Michelle Burford participated in counseling and attended parenting classes as required by the case service plan. However, Michelle was not able to fully adhere to the case service plan because she failed to maintain appropriate housing throughout the duration of the case. DHS volunteer Carol Horton noted that on most of her six visits to the home, there was no food in the house. Water supply to the marital home was turned off in April 2006, and the home’s electricity was allegedly turned off shortly thereafter. After moving out of the marital home, Michelle Burford moved in with several different friends, and admitted that she even spent some nights sleeping in her vehicle. DHS Foster Care Specialist Sonya Farr opined that, despite her attendance at the parenting classes, Michelle Burford was not able to adequately apply what she learned in the classes to her own children.

Michelle Burford got a job in February or March 2006, but testimony demonstrated her inability to appreciate her financial limitations or formulate any budget or financial plan to care for herself and the children. Testimony also revealed Michelle Burford’s inability to provide discipline or structure for the children. Outpatient therapist Susan Poole testified that she did not support returning the children to Michelle Burford’s care because Michelle was passive in her interactions with the children, and it would take a great deal more work for Michelle to be able to properly parent and set boundaries for the children. Testimony indicated that, although she did not initiate it, Michelle Burford was still having contact with her husband. Although Michelle Burford takes issue with the trial court’s finding that her newfound belief in her daughter’s abuse was insincere, the trial court’s determination is entitled to deference by this Court.⁶

Accordingly, we conclude that the trial court did not clearly err by finding that the condition of adjudication continued to exist at the time of the termination trial and that there was no reasonable likelihood that the condition of adjudication would be rectified within a reasonable time considering the ages of the children.⁷

The same evidence indicating that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children, equally demonstrates that there is no reasonable likelihood that Michelle Burford will be able to provide proper care and custody for the minor children within a reasonable time considering the

⁶ MCR 2.613(C); *In re Miller, supra* at 337.

⁷ MCL 712A.19b(3)(c)(i).

ages of the children,⁸ and that there is a reasonable likelihood that the children would be harmed if returned to Michelle Burford's care.⁹ Moreover, a parent's failure to comply with the case service plan is evidence of a parent's failure to provide proper care and custody for the child.¹⁰

We conclude that the trial court did not clearly err in finding that statutory grounds for termination of Michelle Burford's parental rights were established by clear and convincing evidence.

III. Best Interests Determination

A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the trial court finds from evidence on the whole record that termination is clearly not in the child's best interests.¹¹ We also review the trial court's decision regarding the child's best interests for clear error.¹²

B. Analysis

Based on testimony received during the termination hearing, the trial court concluded that there was "inadequate, if not non-existent, bonding" between Michelle Burford and the children, which was "particularly troublesome in light of the undisputed fact that Mother was a stay-at-home mother." The trial court concluded that it was in the children's best interests to terminate Michelle Burford's parental rights based on "insufficient measurable progress on her parenting skills" and the fact that the children deserved permanency.

Michelle Burford claims that the trial court clearly erred in determining that termination of her parental rights was in the children's best interests. We disagree.

All four of petitioner's witnesses during the termination hearing, testified to the lack of evident bonding between Michelle Burford and the children. DHS volunteer Carol Horton noted Michelle Burford's significant lack of affection or interaction with the children. Outpatient therapist Theresa Bryant stated that the three younger children expressed grief and concern about not being able to see their parents, but Bryant noted that Michelle's interactions with the children were "very superficial."

⁸ MCL 712A.19b(3)(g).

⁹ MCL 712A.19b(3)(j).

¹⁰ *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

¹¹ MCL 712A.19b(5).

¹² *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Although there was evidence of a bond between Michelle Burford and the children, she is evidently unable to protect and adequately provide for the children. We conclude that the evidence did not show that the children's best interests precluded termination of Michelle Burford's parental rights. The children need permanency and stability in their lives. We therefore conclude that the trial court did not clearly err by finding that termination of Michelle Burford's parental rights was in the best interests of the children. Accordingly, Michelle Burford's parental rights were properly terminated.

Affirmed.

/s/ William C. Whitbeck

/s/ Michael J. Talbot

/s/ Brian K. Zahra