

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ERIC SCOTT ENGLE, ANNA MORIAH ENGLE, JOY CHRISTINA ENGLE, EMILY MARIE ENGLE, CHRISTOPHER CHARLES ENGEL, and TABITHA JOSIAH ENGLE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

IRENE LENORA ENGLE,

Respondent-Appellant.

UNPUBLISHED

August 9, 2007

No. 275064

Oakland Circuit Court

Family Division

LC No. 05-713431-NA

Before: Bandstra, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) (failure to protect from physical or sexual abuse), (g) (failure to provide proper care or custody), and (j) (child will be harmed if returned to parent). We reverse and remand for further proceedings.

Respondent's six minor children resided in a home in which the four female children were sexually abused by their father over a period of several years while respondent failed to fully investigate the possibility that they were being abused and failed to protect them. Respondent contends on appeal that she waited so many years to reveal the abuse and file for divorce because she was brainwashed and controlled by her husband. Petitioner contends respondent had actual knowledge of her husband's sexual abuse of the children for more than a decade and she took no effective steps to protect them. In addition, she did not address the children's medical and educational needs. Thus, petitioner argues, all three statutory grounds were proven by clear and convincing evidence. The primary issue on appeal is whether respondent could properly parent the children within a reasonable time given that her husband was incarcerated, she had divorced him, and she had completed parenting classes and begun counseling.

The evidence was clear that the passive-dependent respondent had not protected her daughters from their father's long-term sexual abuse. The evidence was also clear that

respondent and the children were completely dominated by Mr. Engle and feared him, and that he became incarcerated at the outset of this proceeding for his abuse of the children. Nonetheless, for the reasons outlined below this Court possesses a firm and definite conviction that a mistake was made in this matter. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

First, the proponents of termination had very limited contact with respondent and did not assess her ability to parent the children in the absence of Mr. Engle's dominant and abusive presence. The protective services worker saw respondent only at removal and trial, the caseworker did not see respondent but met only with the children, and Dr. Allen met with respondent for one psychological evaluation. Termination was recommended pursuant to facts not clearly supported by the evidence, including the assumption that respondent would not continue the children's and her own counseling if the children were returned, that respondent might fail to proactively do unspecified things that would be best for the children, and on the supposition that the children might be victimized in the future.

Second, the trial court incorrectly found that respondent was resistant to therapy designed to treat her passive-dependent disorder. The trial court made very detailed findings of facts regarding this proceeding that spanned many months, but the court failed to correctly acknowledge respondent's prospective benefit from therapy. Two psychologists opined that respondent would be open and willing to participate in treatment, while a third found that she would not be receptive. Respondent's passive-dependent personality was caused in part by the repressive environment she had lived in with Mr. Engle for 27 years, and she required long-term therapy to become a more proactive parent. However, it was also clear that she did not have mental health or substance abuse issues, was intelligent, had suitable housing, was employed and had insurance for the children, was a loving, nurturing and patient parent, initiated therapy although not ordered to do so, completed parenting classes although not ordered to do so and related in detail what she had learned, read about the effects of abuse on her daughters and the healing process and related concepts learned, and was able to provide the children with food, clothing and a clean home. The children were emotionally repressed because of the home environment they had endured with Mr. Engle and respondent, but they were also polite, respectful, and had no behavioral problems.

Third, the circumstances in respondent's home had changed and petitioner did not adequately prove the crux of its case: that respondent's passive nature would likely result in the future harm, neglect or abuse of the children. Mr. Engle was incarcerated and respondent had divorced him. Respondent and the children were in therapy and benefiting, respondent would no longer home school the children, and Anna was receiving special education services. The evidence did not rise to the level of clear and convincing that respondent could not be a minimally adequate parent.

Significantly, the evidence also showed that termination of respondent's parental rights was clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Numerous witnesses testified with regard to the devastation the children would suffer upon termination of their mother's parental rights and the severing of the family bond with their adult siblings. That emotional harm outweighed the speculative harm or neglect that respondent's passive nature would cause the children in the future.

Reversed and remanded for provision of services and additional proceedings. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Karen Fort Hood