

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JENNIFER FRONCZAK,
JOSEPH FRONCZAK, and JONATHON
FRONCZAK, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHANNON FRONCZAK,

Respondent-Appellant.

UNPUBLISHED

August 21, 2007

No. 275901

Wayne Circuit Court

Family Division

LC No. 04-429337-NA

Before: Davis, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

I. FACTS

The Fronczak family has been involved with Protective Services since early 2003, due to extensive domestic violence in the home and the mother's reported difficulties with depression. The father of the children, Mr. Joseph Fronczak, had an extensive history of substance abuse and domestic violence towards the mother. Mr. Fronczak was found dead on February 21, 2004. The cause of death was ruled as an acute alcohol and cocaine overdose.

After the father's death, the police made repeated visits to respondent's home where they frequently found the children left unattended. Shortly thereafter, the Department of Human Services (DHS) sought court intervention through the filing of a neglect petition. The petition was authorized and a pretrial hearing was held on April 14, 2004. At the hearing, respondent made several admissions. Based upon these admissions, the court found by a preponderance of the evidence that the children came within the provisions of the Juvenile code and made all three children temporary court wards.

At the first dispositional hearing on May 4, 2004, the court presented respondent with a Parent-Agency Treatment Plan and Service Agreement. The treatment plan required respondent to: (1) maintain suitable housing; (2) maintain a legal source of income; (3) attend individual,

family, and domestic violence counseling; (4) attend parenting classes; (5) attend weekly visitations with her children; and (6) maintain weekly communication with her assigned social worker. After the entry of the dispositional orders, the court conducted regular dispositional review hearings every three months.

During the almost two years of hearings, the court repeatedly heard testimony from caseworkers and therapists that respondent had made little discernable progress with her treatment plan, including a continued inability to maintain stable employment and suitable housing. Further, respondent was still living with her boyfriend, even though the children had expressed their uneasiness with such an arrangement. Further, the court heard repeated testimony of allegations that respondent continued to hit her children during unsupervised visits. Reports also described the children's continued fear and anxiety about the possibility of returning to respondent's care.

At the trial on supplemental petition for permanent custody, the court heard testimony from various witnesses who testified to much of the two-year history that had been set forth at prior hearings. Respondent's eldest son testified that respondent brought him and his siblings to her boyfriend's home during unsupervised visits on more than one occasion. He further testified that his mother hit him and his brother, and often pushed his sister. Respondent's current therapist informed the court that only four family counseling sessions transpired because they went so poorly. The therapist concluded that respondent had not made any notable progress during their sessions. Further, the counseling sessions terminated abruptly when respondent walked out of a session and failed to return for any subsequent sessions. The therapist also testified that she recommended termination of respondent's parental rights, citing respondent's failure to take responsibility for her role in the neglect of her children and her unwillingness to fully participate in the treatment plan.

Respondent appeared as the final witness of the proceeding. Respondent denied hitting her children. She also testified that her unstable housing situation stemmed from her unanticipated loss of employment, caused through no fault of her own. She further asserted that she was now independent, working, and making her own decisions.

After closing arguments, the court granted DHS's petition to terminate respondent's parental rights, citing in its findings that the children were made temporary court wards almost two years earlier, and since that time, respondent had failed to successfully complete and benefit from the services provided. The court referred to MCL 712A.19(b)(3)(c)(i) and MCL 712A.19(b)(3)(g), stating that those statutory grounds for termination of parental rights had been proven by clear and convincing evidence. Further, the court concluded that there was no evidence on the record showing that termination of respondent's parental rights was clearly not in the children's best interests. Respondent now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. Standard of Review

This court reviews the trial court's decision to terminate parental rights under the clearly erroneous standard. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000); *In re Miller*, 433

Mich, 331, 337; 445 NW2d 161 (1989); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). “A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made.” *In re Terry, supra* at 22. In applying the clearly erroneous standard, this court should recognize the special opportunity the trial court has in assessing the credibility of the witnesses. *In re Miller, supra* at 337.

B. Analysis

The trial court did not clearly err in finding that the statutory grounds required under MCL 712A.19b(3)(c)(i) and (g) were established by clear and convincing evidence. To terminate parental rights under subsection (c)(i), the court must find that the conditions that led to adjudication continue to exist and will not be improved within a reasonable time.

At the initial disposition conducted on May 4, 2004, the trial court cited respondent’s long history of domestic violence and her poor parenting skills as significant factors for bringing her children into care. The trial court allowed respondent to work on her treatment plan for approximately 30 months, from April 2004 to October 2006. During that time, the trial court provided various forms of therapy and counseling to both respondent and her children. Yet, at the time of the permanent custody trial, respondent had no suitable housing, uncertain employment, failed to complete domestic violence counseling, made little progress in individual counseling, and been inconsistent with visitation privileges. Respondent’s failure to fulfill the parent-agency agreement supports the trial court’s decision to terminate parental rights as it supports the contention of the respondent’s continued unwillingness to change. *In re Miller*, 182 Mich App at 83. Therefore, the trial court did not clearly err in terminating respondent’s parental rights under MCL 712A.19b(3)(c)(i).

Further, under MCL 712A.19b(3)(g), the trial court must be presented with clear and convincing evidence establishing two elements: (1) that parent failed to provide proper care or custody for her children and (2) that there is no reasonable expectation that parent will be able to provide proper care or custody within a reasonable time. Here, the trial court found that, after several years of service, no notable progress had been made toward locating suitable housing or securing stable employment. Various counselors and clinicians testified during the pendency of the case that little progress was made during respondent’s continued counseling sessions. Attempts at family counseling proved unsuccessful and were abandoned after only four sessions. Given the myriad of services provided to respondent before her children became wards, and in the two years following the court’s intervention, the trial court was presented with clear and convincing evidence to support a finding that respondent would be unable to provide proper care and custody within a reasonable time. Accordingly, the trial court did not err in terminating respondent’s parental rights under MCL 712A.19b(3)(g).

III. BEST INTERESTS OF THE CHILDREN

A. Standard of Review

Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless termination clearly is not in the child’s best interests. MCL 712A.19b(5); *In re Trejo, supra* at 353. The trial court’s decision on the best interests question is reviewed for clear error. *In re Trejo, supra* at 356-357.

B. Analysis

The evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. It is worth reiterating that respondent has repeatedly failed to fulfill the most basic requirements of her treatment plan. For almost three years, respondent has failed to visit her children regularly, obtain suitable housing, maintain stable employment, or complete a required therapy program. Further, the children continue to live with the same relative with whom they were originally placed more than three years ago. The record indicates that the needs of the children are being met in a stable, secure environment in which they have thrived. Throughout the proceedings, the children repeatedly maintained a desire to remain with this relative.

Respondent's argument is inconsistent with the overwhelming evidence to the contrary. Therefore, the trial court did not err in concluding that termination of respondent's parental rights was clearly not against the children's best interests.

Affirmed.

/s/ Alton T. Davis

/s/ Bill Schuette

/s/ Stephen L. Borrello