STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JH, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

VICTORIA ANN BEACH,

Respondent-Appellant,

and

JONATHAN LEON HALL, SR., a/k/a JOHNATHAN LEON HALL, SR., a/k/a JONATHAN L. RAY,

Respondent.

UNPUBLISHED
July 6, 2006

No. 265056
Wayne Circuit Court
Family Division
LC No. 96-347512-NA

Before: Jansen, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Respondent-appellant[1] appeals as of right from an order terminating her parental rights to JH pursuant to MCL 712A.19b(3)(g) (failure to provide care or custody), (i) (parental rights to siblings terminated and prior attempts to rehabilitate unsuccessful), and (l) (parental rights to another child terminated).[2] We affirm.

I Basic Facts and Proceedings

[1] For purposes of this opinion, respondent-appellant refers to Victoria Ann Beach and respondent refers to Jonathon Leon Hall Sr., a/k/a Johnathon Leon Hall Sr., a/k/a Jonathon L. Ray, and that respondents refers to respondent-appellant and respondent collectively.

[2] Although the trial court cited only subsection 19b(3)(l), it was clear from the trial court's analysis that it also relied upon subsection 19b(3)(g) and (i).

In October 3, 2003, petitioner filed a petition requesting the court assert jurisdiction over JH (d/o/b 9-22-00) and his three siblings, LB (d/o/b 5-16-98), DH (d/o/b 2-28-91) and DB (d/o/b 1-5-90). The petition alleged that respondents' parental rights to two other children had been terminated in January 1997. The referee authorized the petition and placed LB and DB with a paternal aunt and placed JH and DH in foster homes. On December 22, 2003, respondent-appellant stipulated that, at the time the petition was filed, she did not have adequate housing and that she was living with respondent, who had a long and continuing history of domestic violence. Respondent-appellant also admitted that, in 2001, she pleaded guilty to distributing cocaine and heroine, was sentenced to 1 to 20 years' imprisonment, and, on December 21, 2002, released on parole until December 21, 2004.

The January 30, 2004 disposition review hearing revealed that respondent-appellant was in full compliance with her treatment plan, and the court even indicated that "[w]ell, you [respondent-appellant] seem to be doing quite well." The next disposition review hearing on April 30, 2004 also indicated that respondent-appellant had remained in compliance with the parent-agency agreement. However, concerns were expressed over the lack of bonding between respondent-appellant and her children. Also, Diane Hall of the Department of Human Services, raised concerns over respondent-appellant's poor attitude, and the court raised concerns over her ill temperament. At the July 30, 2004, disposition review hearing it was revealed that on May 8, 2004 respondent had shot respondent-appellant in the finger. Also, Hall raised concerns that the children were acting out, destroying property, and exhibiting anger toward respondent-appellant and authority figures. No significant changes were revealed at the November 17, 2004 disposition review hearing, though respondent-appellant indicated that she was in the process of securing new housing. At the February 17, 2004, dispositional review hearing, Hall stated that respondent-appellant had told her of an incident where a family friend had slapped DH in the face for being disrespectful. Respondent-appellant had lost her job, claimed to have found another, though provided no verification. Respondent-appellant had still not secured housing, again expecting to do so in 2 to 3 weeks. In addition, DB had been charged with possession of sawed-off shotgun and marijuana, and the court committed him to the state as a delinquent ward. At the end of the hearing, the court stated that "[w]ell, it looks like were digressing here." Hall indicated that she would seek permanent custody of the children, and the court directed her file a petition.

Petitioner filed a petition for permanent custody on March 24, 2005. The petition was dismissed on June 22, 2005 because two of the children were not present for trial. On July 5, 2005, petitioner filed a supplemental petition seeking termination of respondents' parental rights to the four children. The petition alleged that the respondents had a lengthy history with protective services and Wayne Circuit Court; their parental rights to one of her children, JB, were terminated on January 15, 1997. The petition averred that JB and his twin were born addicted to crack on October 21, 1996, and the twin died on December 18, 1996. The petition alleged that respondent-appellant had failed to substantially comply with her parent-agency agreement. Specifically, that respondent-appellant had not "maintained suitable housing, obtained and maintained a legal source of income, and has not maintained weekly visitation with all of the children." The petition also alleged that respondent-appellant failed to continue, "to participate in weekly counseling, AA/NA meetings, participate in random drug screens." Further, that the respondent was currently incarcerated for the crimes of felony-firearm, assault with intent to do great bodily harm, and armed robbery.

Trial was held on August 1, 2005. Hall testified that the two oldest children, DB and LB, did not wish to be adopted. Since DB and LB were both over the age of 14, Hall had no objection to dismissing those children from the petition. The trial court dismissed the permanent custody petition with regard to both boys.

Hall also testified that, as part of her parent-agency agreement, respondent-appellant was to submit to random drug screens, attend AA/NA meetings, attend and complete parenting classes, attend domestic violence classes, continue therapy and continue to visit with the children. In addition, respondent-appellant was to have no contact with respondent. Hall testified that respondent-appellant was fully compliant with the drug screening and always tested negative. Hall also testified that respondent-appellant was required to provide Hall with sign-in sheets to show that she had been attending AA/NA meetings. And while respondent-appellant initially provided Hall with sign-in sheets, she failed to do so on a consistent basis. Hall testified that respondent-appellant untimely supplied her with sign-in sheets on June 22, 2005, just before the original date set for the termination hearing. Hall indicated that respondent-appellant had completed parenting classes and domestic violence counseling. However, Hall testified that respondent-appellant did not consistently supply Hall with proof of income. Hall indicated that, respondent-appellant habitually approached her just before trial and handed her a stack of documents that purportedly verified employment. Hall testified that she did not have an opportunity to review each document. Hall also testified that although respondent-appellant currently lives in a three-bedroom home that is neat, clean and finished, respondent-appellant had only recently resided in that home and had previously blocked a housing inspection.

Hall testified that respondent-appellant did well during her supervised and eventually unsupervised visitation. However, Hall mentioned that respondent-appellant missed 10 of 18 visits between December 2004 and March 2005. Hall acknowledged that respondent-appellant reported that she was in the process of moving when she missed the visits and had scheduling conflicts with work. Hall also noted that during visitation at Christmas in 2004, one of respondent-appellant's male friends struck DH in the face. Hall testified that respondent-appellant explained to Hall that DH was being disrespectful, and that DH deserved to be hit.

Respondent-appellant testified that she had been living in her new home for four months. She was discharged from parole on December 21, 2004. Before her drug conviction, respondent-appellant had been convicted of retail fraud several times. Respondent-appellant testified that she was in counseling with Lori Migdal. Respondent-appellant felt that if Hall wanted information about the counseling, Hall needed to contact Migdal. Respondent-appellant had also attended group sessions for two years at L.I.F.T. She started going there when a friend referred her and before the children were removed. Respondent-appellant provided a letter written by Pastor Audrey Jenkins, indicating that she had participated in the program. Respondent-appellant testified that Regina Harris, the woman who ran the AA/NA meetings, was supposed to mail Hall the attendance records. However, respondent-appellant had some of them. Respondent-appellant presented the rental agreement for her home.

Respondent-appellant testified that she had been employed with Specialized Cleaning Services since February 14, 2005, grossing $480 a week. However, respondent-appellant only provided pay stubs from May 2005 to the time of trial. She testified that the pay stubs from February 2005 to May 2005 were in one of her purses and she did not have an opportunity to unpack. Before working for the cleaning service, respondent-appellant worked for a company

that did contract work for Ford. She also claimed that she worked for a restoration company and did not spend any time without employment in the past year. Respondent-appellant did not provide any documentation that verified her employment at these jobs.

Respondent-appellant testified that she maintained a regular visitation schedule, but there were times when work and JH's therapy interfered with visits. She was also moving at the time. Respondent-appellant testified that she was not allowed to visit the children after Hall believed that DH had been slapped by one of the respondent-appellant's friends. Respondent-appellant denied that her friend slapped DH.

DH testified that he was 14 years old. He did not want his respondent-appellant's parental rights terminated and he wanted to leave foster care and return home with her. DH admitted that he originally told Hall, his mother, and his foster mother that he did not want to go home with respondent-appellant, but he changed his mind. DH believed that respondent-appellant was never going to change and that he did not approve of the company she kept. DH now had a different point of view. DH hoped that all four brothers could be together.

After closing statements, the trial court terminated respondents' parental rights to JH[3] but did not terminate respondent-appellant's parental rights to DH.

II Analysis

The court did not err in finding that the statutory grounds for termination were established by clear and convincing evidence pursuant to MCL 712A.19b(l). The evidence showed that respondent's parental rights to another child, JB, were terminated in 1997. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

> "If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests. [MCL 712A.19b(5).]

"The court's decision on the best interests question is reviewed for clear error." *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), citing *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id*. In applying the clearly erroneous standard, the Court should recognize the special opportunity the trial court has to

[3] "[T]he court, in fact, went beyond the statutory best interest inquiry by concluding that termination was in the child[']s best interests. Subsection 19b(5) allows the court to find that termination is 'clearly not in the child's best interests' despite the establishment of one or more grounds for termination. The statute does not require that the court affirmatively find that termination is in the child's best interest." *In re Trejo*, *supra* at 357.

assess the credibility of the witness. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

At trial, Hall admitted that respondent-appellant submitted to and passed all random drug screens, attended AA/NA meetings, completed parenting classes, completed domestic violence classes, continued with individual and group therapy, and on most occasions visited with the children. She and the court agreed that visitations went well. Respondent-appellant was also instrumental in the father's criminal prosecution for assault with intent to do great bodily harm less than murder, possession of a firearm during the commission of a felony, and armed robbery.

However, reviewing the record as a whole, we cannot conclude that the court clearly erred in not reaching the finding "that termination of parental rights to the child is clearly not in the child's best interests." The court concluded that:

> So the Court further believes, and has weighed carefully the best interests of the child [JH], and the Court believes that the best interests of the child [JH] is that he be separated permanently from his mother and be placed in an environment where there will be stability of income, of friends, or the mother; and that he'll be able to go to school, and have counseling, and have medical treatment and every thing rather than to constantly be brought up on edge.
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> The Court has considered the possibility of the mother within a reasonable time becoming a fit parent for a child that age—age is the key factor here. The other children are 14, 15, and 17, and that the anticipatory neglect of the mother and the possible disposition doesn't come into play nearly as much as it does for this child.

First, it must be noted that the court expressly discounted respondent-appellant's credibility. The record indicates that respondent-appellant did not consistently maintain adequate housing. At the time of trial, she was in a suitable house, but had only maintained it for 4 months. Before then, there was a significant period when she had not secured adequate housing. Further, although respondent-appellant claimed to have maintained her current employment since February 14, 2005, the documentation she provided only showed that she had been employed since May 2005. Respondent-appellant also did not provide any verification of employment for the previous year. Thus, the record supports the court's conclusion that respondent-appellant is not able to provide stable income for JH.

More important, respondent-appellant admitted that she had contact with respondent on "numerous" occasions before he shot her in the finger. Indeed, when asked, "[w]hen was the last time [respondent] was there before the shooting incident," respondent-appellant replied "[t]he weekend that the boys was home, all of them was there." Respondent-appellant's parent agency treatment plan and service agreement expressly provided that, "Ms. Beach is to have no contact with Mr. Hall." Respondent not only violated her parent-agency agreement by having contact with respondent, she maintained contact with a person she knew to be violent and allowed him to visit during her unsupervised visitation. The court also indicated that "there is still some indicia of continuing domestic violence with another person—after [respondent] is imprisoned for

domestic violence—there's somebody else there who may not be in the picture, but we'll have somebody else come into the picture because that's how it's been. That's the history of it." Here, given the history of domestic abuse, we cannot conclude that the court clearly erred in finding that respondent-appellant could not provide a stable home, and not finding "that termination of parental rights to the child is clearly not in the child's best interests."

Further, although we agree that courts should seriously consider the sibling bond and potentially detrimental effects of severing that bond, *Wiechmann v Wiechmann*, 212 Mich App 436, 439-440; 538 NW2d 57 (1995), as the trial court noted, JH is much younger than his siblings. JH has not had periods of significant contact with respondent-appellant. During the first three years of his life, respondent-appellant was either distributing cocaine and heroin or in prison. After respondent-appellant was paroled, she lived with JH for sixth months in conditions that she admits were not suited for children. Further, a domestic violence incident caused the court to exercise jurisdiction. JH has spent more time in a foster home than with respondent-appellant. Further, any bond between respondent-appellant and JH is clearly outweighed by the need for a stable environment.

We affirm.

/s/ Kathleen Jansen
/s/ Janet T. Neff
/s/ Brian K. Zahra