

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KEEGAN MOORE, SERENA
MOORE, ELENA MOORE, and JAMIE MOORE,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMES MOORE,

Respondent-Appellant,

and

CHERIE LORIANE BRETTHAUER,

Respondent.

In the Matter of KEEGAN MOORE, SERENA
MOORE, ELENA MOORE, JAMIE MOORE,
ANGELINA KRAUSS, and CASTILLO
BRANHAM, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHERIE LORIANE BRETTHAUER,

Respondent-Appellant,

UNPUBLISHED

July 6, 2006

No. 266385

Calhoun Circuit Court

Family Division

LC No. 04-042301-NA

No. 266386

Calhoun Circuit Court

Family Division

LC No. 04-042301-NA

and

JAMES MOORE, JEFFREY BRANHAM, and
PAUL KRAUSS,

Respondents.

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

PER CURIAM.

In these consolidated appeals, respondent father appeals as of right from the trial court order terminating his parental rights to Keegan, Serena, Elena, and Jamie Moore under MCL 712A.19b(3)(b)(i), (h), and (n)(i). Respondent mother appeals from the same order terminating her rights to the Moore children and Angelina Krauss and Castillo Branham under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

I. FACTS

Respondent father and mother were married and had four children together, Keegan, Serena, Elena and Jamie Moore. Respondent mother additionally had three other children, Melissa Boyd, Castillo Branham and Angelina Krauss. Respondent father and mother lived together for a period of time in Calhoun County until respondent father was incarcerated for the criminal sexual conduct which lead to this adjudication. Respondent father was convicted of third degree criminal sexual conduct of his child, Jamie, and two of respondent mother's children, Melissa Boyd and Angelina Krauss, and was sentenced to 10-15 years jail time with his earlier release being in 2014. The children were initially placed with their maternal grandmother, Mary Davis. Respondent mother saw her children at Davis' home under the supervision of the foster care worker, Deborah Faust. Ms. Faust testified that the visits were difficult and that mother and children would scream at each other. Approximately a year had passed before respondent mother saw her children again at the termination hearing. Ms. Faust also testified that respondent mother's service plan required a psychological evaluation and parenting classes. Ms. Faust made two referrals to such classes but respondent mother did not attend.

Respondent mother saw Dr. Randy Haugen for a psychological examination in September or October of 2004. Dr. Haugen testified that respondent mother's thoughts were bizarre and unrealistic, that she had a history of poor adjustment, possessed minimal coping skills, and was easily stressed. His diagnosis of respondent mother was psychotic disorder and that he recommended a psychological consultation and medications that he believed could help stabilize her erratic thinking patterns but that her issues created difficulty in her ability to form a clean and stable environment for her children.

Respondent mother saw Jerry Gillette, a therapist, in November 2004. Mr. Gillette met with her three or four times and testified that she missed other scheduled appointments. Mr. Gillette diagnosed respondent mother with mood disorder, meaning that she had tremendous

fluctuations in her moods, which interfered with her ability to function. Mr. Gillette recommended a psychiatric evaluation and believed medication could help respondent mother but she refused to go every time he brought it up. Respondent mother made no real progress in these sessions.

In May or June 2005, respondent mother moved to Lenawee County. This increased the previous trouble she had with transportation in getting to the appointments she was supposed to attend. Mr. Gillette referred her to Lenawee Community Health services when she moved to Lenawee County, but she never complied. Ms. Faust also provided respondent mother with the number of the Community Health center and scheduled her two appointments which respondent mother did not show up for. Ms Faust also referred respondent mother to classes in Lenawee County, but respondent mother said she would attend them in Calhoun County still.

Respondent mother testified that she had problems communicating with Ms. Faust and that she repeatedly called Ms. Faust but her calls were never returned. Respondent mother's daughter, Melissa Boyd, and mother, Mary Davis, also testified to this effect. Respondent mother said her communication problem was why she did not attend parenting classes. Respondent mother also testified that she did not remember being asked to do a psychiatric evaluation, but also that she had gone to Lenawee Community Mental Health where she was told the mental health services were in the basement, but that they sent her to a behavioral center which denied her admittance because she did not drink. Respondent mother wanted her children returned because she loved them and did not believe she had any parenting problems.

Both respondent mother and father's parental rights were terminated by the trial court. Respondent father's rights to Keegan, Serena, Elena, and Jamie Moore were terminated under MCL 712A.19b(3)(b)(i), (h), and (n)(i). Respondent mother's rights to the Moore children and Angelina Krauss and Castillo Branham were terminated under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j)¹.

II. TERMINATION OF FATHER'S PARENTAL RIGHTS

A. Standard of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). This Court reviews the trial court's findings of fact for clear error. MCR 3.977(J); *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* In applying the standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹ Respondent mother's rights to her oldest child, Melissa Boyd, were not terminated. Paul Krauss, Angelina Krauss' father, and Jeffrey Branham, Castillo Branham's father, also had their rights terminated in the same order but they are not parties to this appeal.

B. Analysis

First, we find that the trial court did not clearly err in terminating respondent father's parental rights. We agree that the trial court properly terminated respondent father's parental rights pursuant to MCL 712A.19b(3)(h). Since only one statutory ground needs to be found, we will not address the merits of subsections MCL 712A.19b(3)(b)(i), and (n)(i). Subsection (h) provides, in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age. [MCL 712A.19b(3)(h)]

Respondent father's earliest release date was 2014 and thus he would be incarcerated for well more than two years. He did not provide a home for the children where respondent mother was not able to provide proper care and custody for the children. Further, he could not provide a home for the children within a reasonable time considering the children's ages because of the length of his sentence. Therefore, the trial court did not clearly err in finding that section (h) was established by clear and convincing evidence and thus in terminating respondent father's parental rights.

III. TERMINATION OF MOTHER'S PARENTAL RIGHTS

A. Standard of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re Fried, supra* at 540-541. This Court reviews the trial court's findings of fact for clear error. MCR 3.977(J); *In re JK, supra* at 209-210. A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* In applying the standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller, supra* at 337.

B. Analysis

Second, we find that the trial court did not clearly err in terminating respondent mother's parental rights. We agree that the trial court properly terminated respondent mother's parental rights pursuant to MCL 712A.19b(3)(g). Since only one statutory ground needs to be found, we will not address the merits of subsections MCL 712A.19b(3)(c)(i), (c)(ii) and (j). Subsection (g) provides, in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age. [MCL 712A.19b(3)(g)]

Respondent mother was erratic and hostile to protective service workers investigating the alleged abuse to the point that she was unable to care for or protect the children. Respondent mother attended only a handful of counseling sessions, did not attend a recommended psychiatric evaluation, did not attend parenting classes, did not make any progress in counseling, and continued to display erratic and hostile behavior to her counselor. These conditions caused respondent mother to be unable to provide proper care and custody for her children and for there to be no reasonable likelihood that she could provide proper care and custody within a reasonable time.

Respondent mother argues that it was petitioner's fault, and not her own, that she did not complete counseling or other aspects of her case service plan. However, there was conflicting testimony regarding respondent mother's efforts to comply with her case service plan. The trial court found the testimony of the counselor and the foster care worker to be more credible than that of respondent mother, her daughter, and her mother. This Court is required by MCR 2.613(C) to give due regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it, and there is no indication that the trial court clearly erred in finding the testimony of petitioner's witnesses to be more credible than the testimony of respondent's witnesses.

IV. BEST INTERESTS OF THE CHILDREN

A. Standard of Review

Once a statutory ground for termination has been established by clear and convincing evidence, the trial court shall order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich App 346, 352-354; 612 NW2d 407 (2000). Decisions terminating parental rights are reviewed for clear error. *Id.* at 356-357. A finding of fact is clearly erroneous if a reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK, supra* at 209-210. In applying the standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller, supra* at 337.

B. Analysis

We also find that the trial court did not clearly err in its best interests determination. Respondent father sexually abused one of his children and two of the children's siblings and would not be released from prison for many years. Respondent mother had not seen the children

in nearly a year before the termination hearing. The bond she had with her children had been weakened because of her failure to visit them. Thus, the trial court did not clearly err in finding that termination was not contrary to the children's best interests.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette