

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KAVARIAY LONG, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEPHANIE VAUGHN,

Respondent-Appellant.

UNPUBLISHED
August 21, 2007

No. 276238
Kent Circuit Court
Family Division
LC No. 05-054161-NA

In the Matter of SAMIYA GILLEN-BEAL, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEPHANIE VAUGHN,

Respondent-Appellant.

No. 276239
Kent Circuit Court
Family Division
LC No. 05-54263-NA

In the Matter of NY'JAZIA MATTHEWS Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEPHANIE VAUGHN,

No. 276240
Kent Circuit Court
Family Division
LC No. 05-54164-NA

Respondent-Appellant.

In the Matter of AA'LARRION VAUGHN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEPHANIE VAUGHN,

No. 276241
Kent Circuit Court
Family Division
LC No. 06-054163-NA

Respondent-Appellant.

Before: Bandstra, P.J., and Cavanagh and Jansen, JJ.

MEMORANDUM.

In these consolidated appeals, respondent appeals as of right the trial court order terminating her parental rights to the minor children. We affirm.

Respondent first argues that the trial court erred in finding that statutory grounds for termination were established and in concluding that termination was not against the children's best interests. We disagree.

In order to terminate parental rights, the trial court must find that at least one statutory ground for termination set forth in MCL 712.19b(3) has been established by clear and convincing evidence. *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2002). Here, the trial court concluded that termination was warranted pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (other conditions exist causing the children to come within the jurisdiction of the court), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if returned). This Court reviews that finding for clear error, recognizing the trial court's special opportunity to assess the credibility of witnesses. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong" *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999) (internal quotation marks and citations omitted). Once a trial court determines that at least one statutory ground for termination has been established by clear and convincing evidence, it is required to terminate parental rights unless it finds from clear evidence on the whole record that termination is not in the children's best interests. MCL 712A.19b(5); *Trejo*, *supra* at 353. Here, the trial court did not find that termination was clearly not in the children's best interests. This Court also reviews that finding for clear error. *Id.* at 356-357.

The instant matter commenced in August 2005, when respondent's "fictive kin" Charlotte Ruffin contacted petitioner Department of Human Services (formerly Family Independence Agency) (DHS) for assistance in caring for respondent's children. Respondent left the children with Ruffin when she was arrested and jailed for an alleged felonious assault, without providing Ruffin with a power of attorney or other legal authority allowing Ruffin to seek medical care for the children, or with adequate supplies to allow Ruffin to properly care for them. It was later discovered that respondent's utilities had been turned off for lack of payment. And, concerns were raised regarding respondent's emotional stability, potential domestic violence issues and respondent's substance abuse status.

After respondent was released from jail, she entered into a parent agency agreement requiring her to undergo a psychological evaluation and comply with its recommendations, complete parenting classes, maintain clean, appropriate and stable housing for at least six months, maintain stable employment for at least six months, undergo a substance abuse assessment and address budgeting issues. Despite her reluctance to participate in services and comply with her treatment plan, respondent eventually completed a psychological evaluation, which revealed that respondent suffered from a major depressive disorder for which ongoing therapy and a psychiatric evaluation were recommended. However, respondent did not follow up on those recommendations, despite repeated referrals to assist her in doing so. Further, throughout the year her children were in care, respondent consistently failed to supply documentation regarding her housing, utilities and her income, completed but did not benefit from parenting classes, and, despite multiple requests that she submit to drug screens, including one specifically ordered by the court and for which a court escort was provided, failed to submit a single valid screen. Testimony established that respondent was defiant, unwilling to cooperate and unwilling or unable to put the needs of her children ahead of her own. Respondent showed continued difficulty in attending to all of the children, resulting in persistent safety concerns throughout the case. Respondent also lied to DHS workers, the trial court and others about being pregnant, failed to obtain prenatal care during her pregnancy and admittedly, was unprepared for the birth of her fifth child. Given this evidence, the trial court did not clearly err when it terminated respondent mother's parental rights upon the bases of MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).

The trial court also did not clearly err when it found that termination of respondents' parental rights was not clearly against the children's best interests. MCL 712A.19b(5). The DHS worker testified that, in light of respondent's repeated failure to consistently participate in services including therapy, her lack of insight into the children's needs, and the persistent safety concerns evident during visitation with the children, respondent's children would be at risk of harm if returned to respondent's care.

Respondent also argues that she was denied due process when the trial court terminated her parental rights to Samiya before entering a written order adjudicating Samiya a ward of the court.

Samiya was placed into care immediately upon her discharge from the hospital following her birth. Respondent did not contest Samiya's placement at the preliminary hearing, and the trial court explicitly assumed jurisdiction over Samiya at the adjudication hearing held on November 22, 2006. Due to an apparent oversight, however, the trial court did not enter its written order adjudicating Samiya a ward of the court until April 16, 2007,¹ nearly three months after the termination hearing and only after being advised by the parties of its failure to earlier enter such an order. Respondent now argues that the trial court's failure to enter its written order in a more timely manner deprived her of her statutory right to appeal the trial court's assumption of jurisdiction over Samiya and that such an error could not be corrected by issuance of a subsequent order, and therefore, necessitates reversal of the termination of her parental rights to Samiya. This assertion lacks merit.

We note initially that, despite respondent's suggestion otherwise, respondent was present at the adjudication hearing and was clearly aware of the court's ruling adjudicating Samiya a ward of the court.² Although respondent did object to the court taking jurisdiction over Samiya, having previously admitted that she was unable to care for the child, she offered no substantive response to the allegations against her at that time. Thus, despite respondent's bare objection to the court taking jurisdiction over the baby, the allegations set forth in the petition were, in all substantive regards, wholly uncontested. Respondent did not challenge the court's authority to proceed at the termination hearing and has not taken any action, or indicated any substantive basis, to challenge the trial court's assumption of jurisdiction over Samiya. If respondent believed that the trial court's failure to timely enter a written order adjudicating Samiya a ward of the court prejudiced her rights or affected the court's authority to terminate her parental rights to the child, she had the opportunity to raise this issue below. She did not do so. A party may not harbor error as an appellate parachute. *People v Shuler*, 188 Mich App 548, 551-552; 470 NW2d 492 (1991).

Further, as noted above, prior to the court's assumption of jurisdiction over Samiya, respondent told DHS that she was not prepared to take Samiya home from the hospital, that she had no supplies for an infant, and that she could not afford to care for the child. She also admittedly had no family upon which she could rely for assistance in caring for the child. And, respondent repeatedly refused to submit to drug screens, including one specifically ordered by the court after it became readily apparent that respondent was pregnant. Therefore, we can perceive no error, let alone clear error, in the trial court's assumption of jurisdiction over Samiya.

¹ The trial court entered this order nunc pro tunc, explicitly providing that it was effective November 22, 2006, the date of the hearing. As noted in *Sleboede v Sleboede*, 384 Mich 555, 558-559; 184 NW2d 923 (1971), "The function of [a nunc pro tunc] order is to supply an omission in the record of action previously taken by the court but not properly recorded. . . ."

² While the trial court indicated at the commencement of the hearing that respondent was not transported for the hearing, it then expressed its appreciation that a special trip was made to allow respondent to participate in the hearing. Further, the transcript of the hearing expressly reflects respondent's presence during the portion of the hearing relating to the trial court's assumption of jurisdiction over Samiya.

We affirm.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen