

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CLINTON KIBBY, JR., and
KARA KIBBY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANNA DELL WELLS, a/k/a ANNA SIEVERT
WELLS,

Respondent-Appellant.

UNPUBLISHED
January 26, 2006

No. 263506
Antrim Circuit Court
Family Division
LC No. 04-002860-NA

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Respondent Anna Wells appeals as of right from the trial court order terminating her parental rights to the minor children.¹ We affirm. We decide this appeal without oral argument.²

I. Termination Of Parental Rights

A. Standard Of Review

In order 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 met by clear and convincing evidence.³ We review the trial court's decision under the clearly erroneous standard,⁴ under which we defer to the trial court's special opportunity to assess the credibility of the witnesses.⁵

¹ MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).

² MCR 7.214(E).

³ *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

⁴ MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

A finding of fact is clearly erroneous if we are left with a definite and firm conviction that a mistake was made.⁶

Once a petitioner has established a statutory ground for termination 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.⁷ We also review the trial court's decision regarding the child's best interests for clear error.⁸

B. Clear And Convincing Evidence

We conclude that the trial court did not clearly err in finding that statutory grounds for termination of Wells' parental rights were established by clear and convincing evidence. Wells abandoned her two young children to the care of her father, whom she knew had a history of sexually abusing children and who then did sexually abuse Wells' daughter. Wells had a history of mental health problems and had twice attempted suicide. She had been in several relationships with men who were substance abusers and violent. She had not maintained stable housing or employment. She had no knowledge of her children's medical or emotional needs. The abandoned children had been placed with their biological father and his wife. But they were removed from that home because of abuse, and the biological father soon gave up his parental rights to the children.

Wells was given the opportunity for supervised visitation and ordered to comply with several case service plans, which required her to have a substance abuse assessment, follow the recommendations of the assessment, have substance abuse and mental health counseling, successfully complete a parenting class and provide documentation, and find stable housing and employment and provide documentation.

The caseworker received a certificate that Wells had completed a parenting class with CARE but was unable to contact anyone from CARE to discuss what was covered in the parenting program. Wells also presented one pay stub from the Holiday Inn, where Wells stated that she worked for a three-month period. That was her only employment for the past several years. No documentation was submitted to show that Wells had received substance abuse treatment or mental health treatment. Services had been offered, but Wells' constant changes of residence with various friends and their children made it impossible for her to follow through on the services provided and demonstrated her failure to provide a stable home. Clearly, Wells had not complied with the case service plans. A parent's failure to comply with the parent/agency agreement is evidence of a parent's failure to provide proper care and custody for the child and can be a valid indication of neglect.⁹

⁶ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁷ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

⁸ *In re Trejo*, *supra* at 356-357.

⁹ *In re JK*, *supra* at 214; *In re Trejo*, *supra* at 360-363, 361, n 16.

The evidence showed that Wells' poor mental health, her failure to protect her children from sexual abuse or from observing domestic violence, along with her failures to maintain stable housing or employment, as primary conditions of adjudication, continued to exist at the termination hearing and were unlikely to be rectified within a reasonable time. There was clear and convincing evidence that Wells had not rectified the conditions that caused the children to come within the trial court's jurisdiction—homelessness, unemployment, and poor mental health. Further, her history of abandoning the children, her failure to protect her children from sexual abuse or from observing domestic violence, and her failure to follow through with services made it unlikely that the primary conditions of adjudication would be rectified within a reasonable time.

The evidence was clear and convincing that Wells failed to accept her responsibility to keep in contact with the caseworker, comply with the services that were offered, and make the necessary changes, and, after being given a reasonable time to demonstrate her willingness to do so, her parental rights were properly terminated.

C. Children's Best Interests

Wells contends that the trial court erred in its best interests analysis because it did not address the issue that the children were bonded to her. We disagree.

We conclude that the evidence did not show that the children's best interests precluded termination of Wells' parental rights.¹⁰ We find no evidence of bonding between the children and Wells.

We reiterate that Wells abandoned her children for more than two years, leaving them with her father despite her knowledge that he had sexually abused her cousin and her friend. And when they were placed with their biological father, the children continued to be abused, mentally and physically.

Although the children's counselor testified that, like all children, they had an emotional attachment to their natural mother, the counselor also stated that this caused them much conflict and confusion because of their attachment and loyalty to their foster mother, under whose care they had begun to flourish. In fact, Wells' son had stated his fear about living with his mother. Therefore, the trial court did not err in its best interests determination.

We affirm.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette

¹⁰ MCL 712A.19b(5); *Trejo, supra* at 354-355.