

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 10, 2010

In the Matter of K. CASWELL, Minor.

No. 294583
Genesee Circuit Court
Family Division
LC No. 08-123774-NA

Before: K.F. KELLY, P.J., and WILDER and GLEICHER, JJ.

PER CURIAM.

Respondent Kelly Marie Arthurs appeals as of right an order terminating her parental rights to her minor child under MCL 712A.19b(3)(b), (g), (j), and (n). We affirm.

On March 10, 2008, respondent drove a vehicle while under the influence of alcohol and with measurable levels of cocaine and marijuana in her system. While driving her twin, nine-year-old daughters home from a restaurant, respondent lost control of the vehicle and struck a utility pole. One of respondent's daughters died from injuries sustained in the crash. About a week later, petitioner filed a petition requesting termination of respondent's parental rights to her surviving daughter. The petition also reported respondent's admission that she had a cocaine addiction extending back at least two years. In April 2008, the father of respondent's children admitted that the circuit court had jurisdiction over the surviving child.

In February 2009, respondent entered no contest pleas to charges of second-degree murder, MCL 750.317, operating a vehicle while intoxicated causing death, MCL 257.625(4), and operating under the influence causing incapacitation or injury, MCL 257.625(5). In April 2009, the Genesee Circuit Court sentenced respondent to concurrent terms of 10 to 15 years for the murder conviction, eight to 15 years for the operating under the influence causing death conviction, and two to five years for the operating under the influence causing injury conviction. A lengthy termination hearing occurred over the course of five days in April 2009, June 2009, and July 2009.

The circuit court authored a comprehensive opinion and order terminating respondent's parental rights. The opinion and order acknowledged respondent's participation in her daughters' upbringing, including her decision to stay at home "[f]or the early years of the girls' lives." The circuit court then chronicled respondent's substance abuse difficulties and the impact her addictions had on her family:

Against this backdrop is another story: that of [respondent's] longtime status as a drug addict, which goes back to the early to mid 1990's. Over this time, [respondent] has abused several substances, which included: cocaine, methamphetamine, marijuana, alcohol, and other drugs. A snapshot of her status in the early period was captured in a traffic stop, and ultimately an arrest, in Oklahoma in 1996. The police officer testified that [respondent] ran a stop sign, had her turn signal on for no reason, and parked in a fire lane. He testified that he smelled burnt marijuana and found baggies and papers, a bag with amphetamine residue, a spoon, five prescription pills, and a syringe. He specifically noted track marks on the crook of her left arm. He described her demeanor as loud and "very hateful."

[Respondent's boyfriend/the involved child's father] testified that he was aware of [respondent's] drug problems, but that she mostly kept things together until the girls were approximately four years old. In 2005, [respondent's] intravenous drug use sharply escalated. One time, she had to undergo vascular surgery to remove a needle from her arm. Needles were found all over the house: in shoes, the teapot, in and under furniture, etc. One of the girls pricked her finger on a needle that was left in the laundry basket. Another time, her sister found a needle in her American Girl doll box. One Maxwell House coffee can alone contained between fifty and sixty needles. This resulted in a protective service complaint in 2006, but [respondent] denied any substance abuse problem.

[Respondent's] behavior became extremely irresponsible, erratic, and explosive. She began staying out all night on many occasions. In February of 2006, she threw a diamond ring worth several thousand dollars in the snow. In June of 2006, she was arrested for drunk driving which resulted in a conviction. Her behavior got even worse in 2007. The police were called to the house in February after a domestic disturbance. In March, she was charged with domestic violence following another blow-up. In July, there was an incident where, due to a drug run, [the father's] car was impounded.

Finally, on July 18, 2007, a truly frightening incident occurred. [Respondent], after a night of drinking, awoke the entire household in the early morning hours, by her loud pounding to get in. When inside the house, she assaulted [the father] by biting him on his leg; leaving permanent marks. The police were called and [respondent] was arrested, which occurred in front of the girls. This resulted in another domestic violence charge, to which she ultimately pled guilty and received probation. [The father], in an affidavit attached to the petition for the personal protection order, wrote: "I have tried to no avail to get her help with her addiction but she continues to use, which I feel puts me and the children at risk of further incidents."

[Respondent], for her part, testified that this incident "scared me straight." She promised to address her problems. She went to live with her sister in Cedar Springs and received treatment for the rest of the summer. Her sister testified that [respondent] was doing well with her substance abuse issues. However, rather

than stay in Cedar Springs and continue to work on her sobriety, [respondent] chose to return to the household in Fenton for the start of the school year.

[Respondent's] sobriety held for September and October, but she began to slip in November. By January of 2008, she was completely out of control. She became increasingly desperate for cocaine, which she would buy in hits of \$20 or \$40 worth, and injected herself using needles. She left her daughters with friends for hours while making drug runs. She stole money from [the father] by taking his checks and forging his signature. She increasingly involved herself with a drug acquaintance . . . in order to foster her addiction.

Up until this point, [respondent] had put her family through many dramatic and dangerous incidents, any one of which should have been enough of a wake up call to get her to deal seriously with her addiction. Yes, she had received some treatment over the years in Utah, at Sacred Heart, and Cedar Springs. However, time and again, [respondent] continued to choose drugs over her family. Unfortunately, none of the terrifying incidents described above were enough to truly "scare her straight." In fact, to the contrary; [respondent's] addiction and the resulting dangerous behavior were increasing in severity. As such, in March of 200[8], [respondent] was hur[t]ling toward some tragic event; it was just a question of what form it would take.

On March 1[0], 2008, the evening activities were either going to be a birthday dinner for [the father's] mother or math night at school. However, it is now clear that the only item on [respondent's] agenda was making yet another drug run. Tragically, as [respondent] herself put it to Judge Neithercut, referring to [the deceased daughter]: "my last run turned into her last ride."

. . . [Respondent] testified to Judge Neithercut: "I needed some dope. [The involved child] didn't want to go. She wanted to be home, and I told her no. She tried to resist, I said we're delivering some cookies"

After impact, the girls were essentially unresponsive. In the aftermath of the accident, the evidence shows that [respondent] did three things. First, she called [the father] to inform him of what happened. Second, she took a syringe that she had in her bra and hid it in her vagina to prevent the police from finding it. Finally, she had that cigarette.

* * *

[Respondent] claimed to have finally learned her lesson, stating: "Oh, how life can change in the flash of a moment; what a high cost to learn what is important." Pledging to finally deal with her addictions, she voluntarily underwent treatment at Odyssey House, a long-term, in-patient facility in Flint.

Court orders barred her from having any contact with either [the father] or [the involved child]. However, on November 17, 2008, [respondent] left her treatment, took a taxi cab to [the father's] house and proceeded to create a

tremendously dramatic event that resulted in police involvement, and, ultimately, her arrest. The police officer testified that [respondent] was disruptive, loud, angry and profane. . . .

The circuit court next offered the following relevant analysis of the evidence:

First, [respondent's] drug addiction was dangerous to the safety and welfare of the children. [Respondent] spent a lot of time in her testimony trying to convince the Court that she was a good mother with a problem that can be corrected. The Court recognizes that she does have some good qualities, loves her children and did many things with them over the years. However, the record is replete with numerous instances of her neglecting her children and placing them in dangerous situations; driving them under the influence is just one example. There were several dangerous domestic disturbance incidents that the children were exposed to. Leaving her drug needles all over the house is another example. Her addiction placed her children in danger and did, in fact, cause . . . death . . . and . . . serious injuries As such, she is an unfit parent.

Second, [respondent] is incapable of remediating her addictions. She has had multiple opportunities at treatment over the years, and was unsuccessful. To put this in perspective, one needs only to consider the similarities of [respondent's] behavior concerning her arrest in 1996 and the night of March 1[0], 2008: multiple drug dependency, unsafe behavior, and a volatile demeanor. The wake up call of July [2007] that she claimed "scared me straight" lasted only a few months. Then, she was worse than ever, spiraling toward that utility pole.

Third, although [respondent] will be in prison for the remainder of [the involved child's] childhood, she still has the capacity to do her emotional harm. [Respondent] has demonstrated a strong propensity toward extremely dramatic situations to the detriment of the emotion well-being of both her immediate and extended families. The numerous incidents involving the police are, in part, a reflection of this. Another example was her behavior at the funeral and luncheon. To remove any doubt about this, [respondent], despite court orders to the contrary, left treatment, got drunk and created a scene at the family home. [The involved child] was in the house while [respondent] was screaming at the police and was arrested.

[Respondent] testified that, although she does not plan to force the issue anytime soon, she ultimately seeks to have contact with [the involved child] through visits and phone calls. In addition, she expressed a desire to have a voice regarding the important decisions in [the involved child's] life. The Court can easily foresee a tremendous amount of litigation over these issues going forward should [respondent] retain parental rights. The Court has great concern about the negative impacts to the child over such conflicts.

Fourth, despite currently doing well under [her father's] care, the enormity of her loss makes [the involved child] emotionally fragile. As such, she needs to be protected from anything that could destabilize her emotional state. Therefore,

a crucial element of [the father's] ability to continue to help [the involved child] is his complete control over her situation. Dramatic conflict is the last thing that she needs. This is especially true if the conflict involves the potential reliving of the circumstances concerning the death of her sister and imprisonment of her mother.

The circuit court finally offered the following additional conclusions concerning the child's best interests:

The Court finds that it is in the best interests of [the involved child] to terminate the parental rights of [respondent] for the following reasons:

First, [respondent] is an unfit parent and dangerous to the well-being of her child, even in prison. The Court recognizes that there is a mother/daughter bond, and this accounts for the child's request not to terminate rights. However, [respondent's] prison status combined with her addictive and dramatic personality makes it impossible to continue a relationship in a way that would be healthy for [the involved child].

Second, the Court finds that it would [be] a bad idea for [respondent] to have any input regarding decisions for [the involved child]. [Respondent] has a history of very poor decisions. In addition, any attempt by her to impose her will would be destabilizing to the child. Again, [the father] has demonstrated that he can meet the needs of this fragile child and should be given discretion to do so without dramatic conflict from [respondent].

Respondent argues on appeal only that the circuit court erred when it found that termination served the child's best interests. Once a petitioner has established a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). We review for clear error a circuit court's findings of fact. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A finding 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." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (internal quotation omitted). An appellate court should give regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*, citing MCR 2.613(C).

In taking the position that termination would contravene the child's best interests, respondent highlights her testimony that she acted as the child's primary caregiver and that they shared a close bond. Respondent submits that although she will not be able to parent the child for many years due to her incarceration, she could offer the child love and support through visits, calls, and letters. That respondent and the child shared a bond certainly has relevance to the best interests analysis. But, as reflected in the circuit court's careful and thoughtful opinion and order, a mother-child bond becomes less valued in circumstances like those presented here involving respondent's exposure of her family to repeated acts of self-destructive behavior, and abundant evidence of respondent's inability to remedy the addictions that fueled her dangerous and selfish behaviors. Respondent's testimony revealed resentment toward the child's father, years of failing to choose her children's best interests over her substance abuse, and a desire for

her child to forgive her for causing the death of the child's twin sister. While respondent voiced that she accepted blame for the fatal accident that killed her other daughter and that she would rebuild a mother-daughter relationship only on the child's terms, she has no recent track record of placing the child's interests ahead of her own. Notably, the protective services worker testified that respondent became angry with her rather than expressing remorse on the day after the accident. The circuit court accurately observed that if respondent retained her parental rights, a reasonable probability exists that she would cause emotional harm to the "emotionally fragile" child. In summary, we detect no clear error in any of the circuit court's best interest findings.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher