

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 14, 2012

In the Matter of R. I. WILLIS, Minor.

No. 309226
Isabella Circuit Court
Family Division
LC No. 2011-000019-NA

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

N. Marquez, the minor child's mother, appeals as of right the order terminating her parental rights to her minor child, RW, based on the trial court's determinations that the child was deserted,¹ the conditions leading to adjudication continued to exist,² and the failure to provide proper care or custody.³ We affirm.

Marquez and RW's biological father, now deceased, intended to have RW adopted at birth. They attempted to voluntarily relinquish their parental rights to RW in favor of an unmarried Texas couple, R. Faircloth and F. Willis, but the process was never completed. Marquez moved before the adoption was complete, but assumed that the adoption was valid. Marquez testified that she later was informed that Faircloth, Willis, and RW had died in a car accident. Marquez explained that she attempted to verify this information with a coroner in Texas, but had been unable to because she did not know where and when the accident occurred. The three, however, were not killed in an accident. At the adjudication, Marquez admitted that she had no contact with RW since April 2008, that Faircloth did not have any legal or custodial rights to RW, and that RW was in Michigan without proper care or custody.

At the dispositional hearing, RW's children's services worker, Melody Lake, testified that she had spoken with Marquez and that Marquez had requested not to participate in services. Lake recommended terminating Marquez's parental rights and changing RW's permanency goal to adoption. The hearing referee determined that RW's goal would remain reunification while

¹ MCL 712A.19b(3)(a)(ii).

² MCL 712A.19b(3)(c)(i).

³ MCL 712A.19b(3)(g).

concurrent planning was taking place and ordered Marquez to comply with and benefit from the case service plan. Marquez's attorney informed her that if she wished to participate, she needed to contact Lake immediately to establish services. A review hearing was set for three months later.

At the review hearing, Lake testified that Marquez had not been in contact with her and had not participated in services. The referee found that Marquez was not interested in regaining custody of RW and scheduled a permanency planning hearing. At the permanency planning hearing, RW's new services worker, Matthew Shank, testified that he had not been contacted by Marquez during the three months that he had been involved in the case. The court ordered the Michigan Department of Human Services ("DHS") to initiate termination proceedings.

At trial, Marquez testified that she had never been told that obtaining custody of RW had been an option. She also testified regarding the steps she had taken to attempt to establish a home for RW. Lake testified that she informed Marquez about services and that Marquez had been instructed to contact her to become involved in services if Marquez wanted to reunify with RW. Lake reiterated that she had never been contacted by Marquez. Shank testified that he told Marquez that it was not too late to become involved in services, had compiled information regarding the services available, but also had never been contacted by Marquez.

The trial court found that the allegations in the petition had been proven by clear and convincing evidence. Specifically, it found that Marquez had not relinquished her parental rights to RW and that an adoption had never been granted. It found that Marquez had been present at the hearing at which she was instructed to contact DHS to become involved in services, yet had not contacted DHS or attempted to participate in services. The court also noted Marquez's continuing issues with her mental health, alcohol abuse, housing, and financial stability. The trial court considered the three statutory grounds alleged and determined that they had been established by clear and convincing evidence. The trial court concluded that termination was clearly in RW's best interests and ordered termination of Marquez's parental rights to RW.⁴

To terminate parental rights, the trial court must first find that at least one statutory ground has been established by clear and convincing evidence.⁵ Once a statutory ground for termination is established, the court shall order termination of parental rights if the court also finds that "termination of parental rights is in the child's best interests."⁶ This Court reviews the trial court's determination that a statutory ground for termination has been proven by clear and convincing evidence, as well as its conclusion that termination is in the best interests of the child

⁴ MCL 712A.19b(3)(a)(ii), (c)(i) and (g).

⁵ MCL 712A.19b(3); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005).

⁶ MCL 712A.19b(5).

for clear error.⁷ “A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made.”⁸

Marquez argues that none of the statutory grounds for termination were established by clear and convincing evidence. We disagree.

The trial court may terminate parental rights under MCL 712A.19b(3)(a)(ii) if “[t]he child’s parent has deserted the child for 91 or more days and has not sought custody of the child during that period.” A parent’s failure to communicate with the child or the child’s case worker, and seek assistance concerning custody of the child for the statutory time period constitutes desertion.⁹

Testimony was elicited that Marquez initially indicated that she did not want to participate in services and previously requested to have her parental rights terminated. Evidence was also presented that Marquez had no contact with RW since 2008 and consistently failed to contact DHS despite being told to do so “immediately” if she wished to reunify with RW. Marquez was informed by DHS that services were available, which included parenting classes and establishing phone contact with RW. Marquez, however, failed to contact DHS and take advantage of the services being offered and did not attempt to initiate phone contact with RW. Although Marquez testified that she did not want her parental rights terminated, wanted to participate in services, and was unaware of the procedures to contact RW, we give regard to “the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.”¹⁰ Moreover, regardless of Marquez’s intent when she initially tried to place RW with Faircloth, we find that Marquez’s failure to follow through on the requirements of legal placement and to keep abreast of whether the matter had been resolved is fairly characterized as desertion.¹¹

Based on the above, the conditions leading to adjudication, that Marquez had not contacted RW since April 2008, continued to exist.¹² Additionally, while Marquez was participating in counseling and was on medication for depression, as the trial court aptly noted, Marquez was still deeply depressed. Marquez also had a history of alcohol abuse, moved frequently and had limited finances, all of which support that Marquez was unable to provide

⁷ *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

⁸ *In re Vasquez*, 199 Mich App 44, 51; 501 NW2d 231 (1993).

⁹ See *In re Mayfield*, 198 Mich App 226, 229-230; 497 NW2d 578 (1993).

¹⁰ *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹¹ MCL 712A.19b(3)(a)(ii).

¹² MCL 712A.19b(3)(c)(i).

proper care or custody for RW.¹³ Moreover, there was no reasonable probability that Marquez would be able to rectify the condition leading to adjudication and provide proper care and custody for RW within a reasonable time considering RW's age.¹⁴ RW had already spent a significant period of time in foster care, and based on the record, completion of the reunification process would be lengthy, if it occurred at all.¹⁵ Accordingly, the trial court did not clearly err when it found that the grounds to terminate Marquez's parental rights were proved by clear and convincing evidence.¹⁶

Marquez also argues that the trial court clearly erred when it concluded that termination of Marquez's parental rights was in RW's best interests. We disagree.

To determine whether termination is in the child's best interests, "the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home."¹⁷ RW has no bond with Marquez, has a significant need for permanency and stability, and is doing well in foster care. As such, the trial court did not clearly err when it found that termination of Marquez's parental rights was in RW's best interests.¹⁸

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan

¹³ See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009); *In re LE*, 278 Mich App 1, 27-28; 747 NW2d 883 (2008); *In re Springer*, 172 Mich App 466, 474; 432 NW2d 342 (1988).

¹⁴ MCL 712A.19b(3)(c)(i), (g).

¹⁵ See *In re Williams*, 286 Mich App at 272-273.

¹⁶ MCL 712A.19b(3)(a)(ii), (c)(i), (g); *In re Mayfield*, 198 Mich App at 229-230; *In re Vasquez*, 199 Mich App at 51.

¹⁷ *In re Olive/Metts*, ___ Mich App ___; ___ NW2d ___ (Docket No. 306279, issued June 5, 2012), slip op, p 3 (internal quotation and citations omitted).

¹⁸ *Id.*