

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of M.A.H. and S.D.H, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JENNIFER KAY ANTES,

Respondent-Appellant,

and

MATTHEW HISLER,

Respondent.

UNPUBLISHED

December 17, 2009

No. 292783

Eaton Circuit Court

Family Division

LC No. 07-016645-NA

Before: Beckering, P.J., and Cavanagh and M. J. Kelly, JJ.

PER CURIAM.

Respondent Jennifer Kay Antes appeals as of right from the trial court order terminating her parental rights to the two minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err by finding that at least one statutory ground for termination of respondent's parental rights was established by clear and convincing evidence. See MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The primary condition of adjudication was respondent's substance abuse, including abuse of prescription drugs. Respondent was directed to comply with the terms of her probation, which required intensive outpatient therapy, abstinence from any alcohol or controlled substance, and no use of potentially addictive medications without court permission. While on probation, respondent was further ordered to participate in the Eaton County Family Drug Court's Substance Abuse Family Empowerment and Treatment (Safe-T) program. Respondent completed inpatient drug treatment in April 2008, but she was subsequently unsuccessfully discharged from outpatient substance abuse counseling at the end of 2008 after testing positive for opiates. Her probation was revoked on January 16, 2009, after several positive drug screens

and respondent's unsuccessful discharge from substance abuse counseling. She was briefly incarcerated. After her release from jail, respondent was given another chance to engage with the Safe-T program, but she failed to return a call and was unsuccessfully discharged on March 10, 2009.

Respondent had six positive drug or alcohol screens from April 14, 2008, through January 6, 2009. According to documentation introduced at trial, respondent obtained ten prescriptions for narcotics from April 12, 2008, through March 6, 2009, six of those for Vicodin. Respondent's substance abuse counselor, Sheila Smith, testified that respondent should never take Vicodin because it is an addictive narcotic, and that respondent knows this. Smith further testified that respondent was not honest in treatment. She considered respondent to be high risk because she used substances off and on, did not disclose, and never really disconnected herself from people who were using. Smith testified that an addict must always advise a doctor of their addiction and that they cannot take narcotics. Respondent's testimony and that of her mother indicating that she did advise medical personnel of her addiction lacks credibility in light of medical records that indicate no history of drug abuse, even while indicating in the same "social history" box a positive history for smoking. Respondent's credibility is also severely undercut by a note on her emergency room records indicating that she was on probation and could not take "benzos" but that narcotics were "OK." Also, respondent testified that her use of prescription narcotics was not abuse because her mother controlled the supply; yet her mother testified that she had taken possession of only one of the pill bottles. It is the job of the trial court to judge the credibility of witnesses, and its judgment should be granted deference. *In re Miller, supra*. The evidence amply supports the trial court's conclusion that respondent is not a recovering addict but is still actively using drugs.

The trial court also did not clearly err by finding that there was no reasonable likelihood that respondent would successfully address her addiction within a reasonable time. Respondent's motivation and desire to stay sober is severely drawn into question by her failure to advise her probation agent of the majority of her narcotics prescriptions, by her apparent repeated failure to advise medical personnel that she was an addict, by her lack of honesty in substance abuse treatment and in the Safe-T program, and by her failure to re-engage in the Safe-T program when given the opportunity to do so. Smith commented that she would not have continued with respondent because of her lack of honesty, noting that much time and energy was spent, and respondent had "burnt out" her group. William Kennedy of the Safe-T program testified somewhat similarly that respondent could potentially reenter the program, but the program team would have to consider whether it was the wisest investment of resources or if there might be other parents with substance abuse issues more in need of assistance or more willing to engage and work on sobriety. Respondent received intensive services for over one year, but she did not attain sustained sobriety and was discharged unsuccessfully from two treatment programs. This record is certainly adequate to support the trial court's conclusion that respondent will not successfully address her drug addiction within a reasonable time considering the ages of the children. See MCL 712A.19b(3)(c)(i).

The trial court also did not clearly err by finding that respondent failed to provide proper care and custody for the children and would not be able to do so within a reasonable time considering the ages of the children. See MCL 712A.19b(3)(g). Respondent admitted that she did not put the children's interests first when she was using marijuana, benzodiazepines, and

crack. On October 15, 2007, respondent left the children in the care of a neighbor and consumed alcohol at the home of a friend, got into an accident while driving home, and woke up the next morning in a ditch. She went home in the morning and called the police, and she learned at that time that the children had been found home alone. Respondent and the children's father also engaged in domestic violence in the presence of the children. This record clearly establishes a failure to provide proper care and custody. The same evidence that established that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time, MCL 712A.19b(3)(c)(i), equally indicates that there was no reasonable expectation that respondent would be able to provide proper care and custody for the children within a reasonable time considering the ages of the children, MCL 712A.19b(3)(g), and that there was a reasonable likelihood, based on respondent's conduct or capacity, that the children would be harmed if returned to her care, MCL 712A.19b(3)(j). Therefore, the trial court did not clearly err by relying on statutory subsections (g) and (j) for the termination of respondent's parental rights.

Finally, the trial court did not clearly err by finding that termination of respondent's parental rights was in the best interests of the children. MCL 712A.19b(5). While there was evidence that the children love respondent and have a bond with her, they have now been out of her care for two years, during which time she has failed to successfully address her substance addiction or to maintain sobriety. Despite intensive assistance, respondent has not demonstrated an ability to place the needs of her children before her addiction. Under these circumstances, the trial court did not clearly err by finding that termination was in the best interests of the children.

Affirmed.

/s/ Jane M. Beckering
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly