STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SKYLER LEROY MCBRIDE, ALEXANDER GARAND MCBRIDE, and SAWYER DALE MCBRIDE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RONALD D. MCBRIDE, JR.,

Respondent-Appellant,

and

SUSAN MCBRIDE,

Respondent.

UNPUBLISHED
July 15, 2008

No. 282062
Bay Circuit Court
Family Division
LC No. 06-009381-NA

In the Matter of SKYLER LEROY MCBRIDE, ALEXANDER GARAND MCBRIDE, and SAWYER DALE MCBRIDE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SUSAN MCBRIDE,

Respondent-Appellant,

and

RONALD D. MCBRIDE, JR.,

Respondent.

No. 282243
Bay Circuit Court
Family Division
LC No. 06-009381-NA

Before: Gleicher, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

In Docket No. 282062, respondent-father appeals as of right the order terminating his parental rights to the three minor children[1] pursuant to MCL 712A.19b(3)(g) and (h). In Docket No. 282243, respondent-mother appeals as of right the same order terminating her parental rights to the children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Because the trial court's error in finding that respondent-father had waived his right to counsel was harmless and because the trial court did not clearly err in terminating respondents' parental rights, we affirm.

I. Docket No. 282062

Respondent-father was incarcerated in 2004 after being convicted of first- and second-degree criminal sexual conduct against a minor.[2] His earliest possible release date from prison is June 30, 2015, at which time the youngest of the three minor children will be 17 years of age. Based on these facts, the trial court terminated respondent-father's parental rights. Respondent-father claims on appeal that because he was unfairly denied his right to counsel, the trial court erred in terminating his parental rights. We disagree.

To terminate parental rights, a trial court must find clear and convincing evidence of at least one statutory ground listed in MCL 712A.19b. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000); see also MCL 712A.19b(5). This Court reviews for clear error a trial court's decision to terminate parental rights. *In re Powers Minors*, 244 Mich App 111, 117; 624 NW2d 472 (2000). A finding is clearly erroneous if the Court is left with a definite and firm conviction that a mistake has been made. *Id.* at 117-118.

As already stated, respondent-father was incarcerated at the time of the termination hearing. He had been imprisoned since 2004 for the sexual assault of a minor, and he would remain in prison at least until 2015, at which time the youngest minor child would be 17 years of age. Under these circumstances, the trial court did not clearly err in finding clear and convincing evidence to terminate respondent-father's parental rights under MCL 712A.19b(3)(g) or (h) or in finding that the termination was in the best interests of the minor children.[3]

---

[1] At the time the order was entered, the three minor children were 15, 11, and 9 years of age.

[2] The victim was not one of the parties' three minor children.

[3] The trial court went beyond the best interest inquiry required by statute. *In re Trejo Minors, supra* at 357. The trial court was only required to decide whether termination was clearly not in the child's best interest. *Id.*

We are cognizant of respondent-father's argument that the trial court erred in denying his request for a court-appointed attorney at the termination hearing. At the start of the termination hearing, respondent-father requested that counsel be appointed for him. The trial court denied the request, holding that because respondent-father had received notices of the hearings that informed him of his right to counsel, and because he had not requested counsel until the start of the termination hearing, respondent-father had waived his right to counsel.

The constitutional guarantees of due process and equal protection extend the right to counsel to respondents in termination proceedings. *In re Powers Minors, supra* at 121. Although a respondent in a child protection proceeding may waive his right to counsel, MCL 712A.17c(6); MCR 3.915(B)(1)(c), we conclude that a respondent does not waive his right to counsel by failing to request a court-appointed attorney before his first court appearance. At a respondent's first court appearance in a child protection proceeding, the trial court shall inform him of his right to a court-appointed attorney if he is financially unable to retain an attorney. MCL 712A.17c(4)(b); MCR 3.915(B)(1)(a)(i). In addition, the trial court shall inform the respondent that if he is not represented by an attorney, he may request a court-appointed attorney at any later hearing. MCL 712A.17c(4)(c); MCR 3.915(B)(1)(a)(ii). To hold that a respondent waives his right to counsel by failing to request a court-appointed attorney before his first court appearance is inconsistent with the plain language of MCL 712A.17c(4) and MCR 3.915(B)(1)(a). See also *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991) (indicating that even if a respondent waives his right to counsel by failing to appear at various hearings, the respondent may reassert the right at a later time). The trial court erred in finding that respondent-father had waived his right to counsel.

However, reversal of the trial court's order terminating respondent-father's parental rights is not required. The erroneous deprivation of counsel at child protective proceedings can be subject to a harmless error analysis. *Id.* at 222-223. Although respondent-father was deprived of his right to counsel at a termination hearing as opposed to a dispositional review hearing as was the respondent in *Hall*, *id*; *In re Powers Minors, supra* at 123, we nonetheless conclude the trial court's error was harmless. It was undisputed that, because of his incarceration, respondent-father had not provided for the minor children's care or custody in three years and would not be able to provide for them for almost another eight years, by which time the two oldest children would have reached the age of majority and the youngest child would be 17 years of age. Based on these facts, we are convinced that even if respondent-father had been represented by counsel at the termination hearing, counsel could have provided no defense to these indisputable facts and, therefore, the trial court would have terminated respondent-father's parental rights. Accordingly, we affirm the order terminating respondent-father's parental rights to the minor children.

II. Docket No. 282243

With respect to respondent-mother, the trial court found sufficient evidence to terminate her parental rights stemming from her protracted abuse of prescription medications. When respondent-mother was overmedicated, the children were forced to fend for themselves. In fact, respondent-mother admitted that she was unable to provide proper parenting while she was overmedicated. Throughout the yearlong child protection proceeding, respondent-mother completed inpatient and outpatient substance abuse treatment programs and progressed to the point where overnight visitations were allowed. However, at these overnight visitations, she

appeared to be under the influence of drugs, and the oldest child discovered a bottle of prescription medication on her bed stand, thus causing visitations to be scaled back to supervised at the Department of Human Services. It was not until the July 30, 2007 permanency planning hearing (where the permanency goal was changed to termination) that respondent-mother recognized her addiction problem and realized the need to stop use of all narcotic medications. Although her behavior improved after that hearing date and she claimed to be successfully weaned from all narcotic medications by early August 2007, she appeared groggy at a September 24, 2007 family therapy session. Testimony from respondent-mother's therapist described an 18-month therapy program recently entered into by respondent-mother, and the children and family therapist said it would take longer than six months before reunification would be possible. Although respondent-mother's substance abuse therapist said respondent-mother was in the middle phase of recovery, she also testified that respondent-mother had only recently acknowledged her substance abuse. Given this evidence, along with the ages of the minor children, the trial court did not clearly err in finding sufficient evidence to terminate respondent-mother's parental rights under MCL 712A.19b(3)(g). Because only one statutory ground needs to be proven to terminate parental rights, *In re Powers Minors, supra* at 118, we need not address whether the trial court erred in finding sufficient evidence to terminate respondent-mother's parental rights under MCL 712A.19b(3)(c)(ii) or (j).

The trial court also did not clearly err in its best interests determination in light of the persuasive testimony of the damage inflicted upon the minor children by respondent-mother's addiction. Although it was clear the children loved respondent-mother and she loved them, it was also clear that the children's psyches were injured with every setback in respondent-mother's treatment. The children were older, tired of having their hopes raised and then dashed, and were well practiced in living without a mother figure. We affirm the order terminating respondent-mother's parental rights to the three minor children.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra