STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LD, JD, and PLD, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PETER DASHNER,

Respondent-Appellant.

UNPUBLISHED
July 3, 2001

No. 229615
Monroe Circuit Court
Family Division
LC No. 99-014449-NA

Before: Doctoroff, P.J., and Saad and Wilder, JJ.

PER CURIAM

Respondent Peter Dashner appeals as right from a family court order terminating his parental rights to the minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (c)(ii), (g), and (j); MSA 27.3178(598.19b)(3)(b)(i), (b)(ii), (c)(i), (c)(ii), (g) and (j). We affirm.

I. Facts and Proceedings

This case first came to the attention of the Family Independence Agency (FIA) in May 1999 after the FIA became aware of the fact that the children had had head lice since March 1998. The petition also alleged that respondent was unable to provide the children with a stable living arrangement and either refused or failed to protect the children from mistreatment by their stepmother, Faith Dashner. Specifically, it was alleged that Faith (1) pulled LD by hair, grabbed her chin, called her a b---- and pushed her to the ground, causing her chest to be crushed into her book bag, (2) repeatedly hit PD on the back, causing bruising, (3) duct taped the children's mouths when respondent felt they talked too much and (4) confined the children to a bedroom almost on a continuous basis. Following a preliminary hearing on the petition, the family court authorized the petition, made the children temporary court wards, and placed them in the care of relatives. In addition, respondent, pending further adjudication, was allowed supervised visitation with the children at the relative's home and had services provided by the FIA.[1]

[1] On August 30, 1999 the court amended the original petition to include respondent's and Faith's (continued…)

In November 1999, respondent entered into a parent-agency agreement with the FIA that required respondent to (1) find and maintain suitable housing, (2) attend and complete parenting classes, (3) attend individual and family counseling through Community Mental Health (CMH) and comply with CMH mental health services, (4) notify FIA within two working days of any change in address or living arrangement, (5) regularly attend and participate in services provided by Wrap-Around, (6) visit his children at least once a week, (7) remain free of head lice and prevent re-infestation of the children and (8) not violate any civil or criminal laws. In addition, on April 25, 2000, the court ordered respondent to complete a domestic violence course and to submit a written budget to the FIA on a monthly basis, outlining the family's bills and income. On May 25, 2000, the FIA filed a supplemental petition seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (c)(ii), (g) and (j); MSA 27.3178(598.19b)(3)(b)(i), (b)(ii), (c)(i), (c)(ii), (g) and (j) based on respondent's lack of progress in achieving the goals established in the parent-agency agreement. A permanency planning hearing was scheduled for June 5, 2000, at which time the family court authorized the May 25 petition to terminate respondent's parental rights.[2] On August 23, 2000, following a termination hearing, the family court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (c)(ii), (g) and (j); MSA 27.3178(598.19b)(3)(b)(i), (b)(ii), (c)(i), (c)(ii), (g) and (j).

II. Standard of review

This Court reviews a trial court's factual findings in an order terminating parental rights for clear error. MCL 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Vasquez*, 199 Mich App 44, 51; 501 NW2d 231 (1993). A finding of fact 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. *In re Miller*, *supra*. Deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. MCR 2.613(C); *In re Newman*, 189 Mich 61, 65; 472 NW2d 38 (1991). Once the trial court finds a statutory ground for termination by clear and convincing evidence, the court must terminate parental rights unless it finds, based on the whole record, that termination is clearly not in the best interests of the children. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Maynard*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

III. Analysis

(…continued)

newborn daughter, CD, born on August 19, 1999, and on November 23, 1999, respondent admitted responsibility to the allegation that he had failed to provide a stable living arrangement for the children. Faith and respondent released their parental rights to their child, CD, on September 19, 2000. This release is not at issue in this appeal.

[2] On June 29, 2000, this petition was further amended. The amendment alleged that respondent had (1) physically abused the children, (2) committed retail fraud in the presence of the children and (3) engaged in sexual relations with Faith in the presence of the children.

Defendant contends that the trial court erred in terminating his parental rights because the petitioner failed to establish a statutory ground for termination by clear and convincing evidence and, alternatively, that the trial court erred when it found that termination was clearly not against the best interests of the children. We disagree.

Termination of parental rights is proper when the child's parent caused, or had the opportunity to prevent, physical injury to the child and the court finds that there is a reasonable likelihood that the child will suffer physical injury or abuse in the foreseeable future if placed in the parent's home. See MCL 712A.19b(3)(b); MSA 27.3178(598.19b)(3)(b). Here, the record clearly establishes that respondent failed to participate in domestic violence classes, had ongoing domestic violence incidents, and had not resolved his mental health issues. In addition, LD testified that respondent had thrown her against walls on numerous occasions. This testimony was corroborated by JD, who testified that she had witnessed respondent throw LD against walls on more than one occasion, and by respondent's own testimony, when he admitted to throwing LD against a wall while in Florida. Respondent also admitted during testimony that he knew Faith duct taped the children's mouths and that he did nothing to try to dissuade her from doing so. LD also testified that Faith would force the children to lay on their back, with their arms, legs, and head in the air for two hours at a time and that respondent was aware that Faith would force the children to do this. Accordingly, termination of respondent's parental rights under subsections 19b(3)(b)(i) and (ii) was proper.[3] Further, based on this evidence, we are not left with the definite and firm conviction that termination was clearly not in the best interests of the children. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Miller*; *In re Trejo*, *supra*; *In re Maynard*, *supra*.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Henry William Saad
/s/ Kurtis T. Wilder

[3] Because the family court properly terminated parental rights under subsection 19b(3)(b) and only one statutory ground for termination must be established in order to terminate parental rights, we need not decide whether termination was also proper under the other subsections. *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000).