STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JESSICA SHOWERS, JUSTIN HOWEY, KYLE HOWEY and MIRANDA SAUNDERS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BONNIE HOWEY,

Respondent-Appellant,

and

ROBERT SHOWERS, PHILLIP LITTLE, GREGORY MULHOLLAND, and JEFFREY SAUNDERS,

Respondents.

UNPUBLISHED
October 14, 2004

No. 255007
Genesee Circuit Court
Family Division
LC No. 01-114082-NA

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

Respondent-appellant Bonnie Howey (respondent), appeals by delayed leave granted from a circuit court order that terminated her parental rights to her four minor children pursuant to MCL 712A.19b(3)(b)(ii), (b)(iii), (c)(i), (g), and (j).[1] We affirm in part and reverse in part.

I. FACTS

[1] Each of the four children has a different legal father. Robert Showers is the father of Jessica. Phillip Little is Kyle's father, Gregory Mulholland is the father of Justin, and Jeffrey Saunders is Miranda's father. Showers and Saunders released their parental rights to Jessica and Miranda, respectively. Petitioner ultimately decided not to seek termination of Mulholland's parental rights to Justin, and the court dismissed Justin from the case. None of the fathers are a party to the instant appeal.

This child protective proceeding commenced on June 1, 2001, when petitioner filed a petition requesting that the court take temporary custody of the children. The petition alleged that respondent, who "has an extensive Protective Services history dating back to" June 1996, had expressed her willingness to permit her children to visit her father, Donald Howey, despite his November 23, 1998, conviction of attempted second-degree criminal sexual conduct (CSC) involving a minor. Respondent believed in the innocence of her father, who received a sentence of three years' probation but was permitted supervised visits with her children. The petition noted that Jeffrey Saunders, Miranda's father and respondent's former long-term partner, served three years in prison after his conviction "for having sex with a minor child." The petition recounted that in February 2001, a service worker observed that Kyle and Justin laid together in bed, naked and facing the wall; the petition characterized this as an exhibition of "sexually explicit behavior." Justin's paternal grandmother reported his statement that Jessica and Kyle "had sex." The petition averred that respondent's relationships "with several different men" increased the possibility that the children would suffer sexual abuse.

According to the petition, in June 2000, protective services substantiated respondent's improper supervision of the children, offered her services, and obtained her signature on an initial service agreement. Respondent neglected to comply with several provisions of the agreement, including that she attend counseling, complete a "Life Skills Program," cooperate with a Families First intervention effort, attend a psychological evaluation, participate in and take the children to sexual abuse assessments, and cease the children's contact with Donald Howey.

On July 11, 2002, petitioner filed a supplemental petition requesting the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(a)(ii) [desertion for at least ninety-one days], (b)(ii), (b)(iii), (c)(i), (g) and (j). According to the supplemental petition, respondent failed to cooperate with or contact regularly her caseworker; recently lived in at least five different locations, and thus did not maintain a stable home; neglected to participate in counseling with regularity or to visit a psychiatrist, as recommended; disappeared without contacting petitioner for nearly three months; did not regularly visit the children or even "request visitation with her children"; "failed to support the [children] financially or emotionally"; and "failed to protect her children from known and convicted sexual perpetrator's [sic]" like Donald Howey because she maintained Howey's innocence, despite the children's disclosures that Howey sexually abused them.

II. TENDER YEARS TESTIMONY

Respondent first contends that the circuit court erred by admitting at the termination hearing the tender years hearing testimony of Michelle Leeck, Jennifer Hect, and Michelle Bauserman concerning statements made by Kyle involving his father, Phillip Little.

A. Standard of Review

This Court reviews for an abuse of discretion a trial court's ruling concerning the admissibility of evidence. *People v Katt*, 248 Mich App 282, 289; 639 NW2d 815 (2001), aff'd 468 Mich 272 (2003). A decision on a close evidentiary question does not amount to an abuse of discretion. *Id.* When the evidentiary ruling involves a preliminary question of law, this Court considers the legal issue de novo. *Id.*

B. Analysis

Respondent attacks the circuit court's ruling that the statements Kyle made to Leeck, Hect, and Bauserman concerning sexual abuse were admissible pursuant to MCR 3.972(C)(2), that provides, in relevant part, as follows:

> Any statement made by a child under 10 years of age . . . regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation . . . , performed with or on the child by another person may be admitted into evidence through the testimony of the person to whom the statement is made as provided in this subrule.
>
> (a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission *if the court has found*, in a hearing held before trial, *that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness*. This statement may be received by the court in lieu of or in addition to the child's testimony. [Emphasis added.]

We conclude that the circuit court properly admitted Kyle's statements to Leeck, Hect, and Bauserman under MCR 3.972(C)(2)(a).[2] The court noted that the central inquiry for purposes of admissibility under the court rule involves a determination whether the entirety of the circumstances surrounding the making of Kyle's statements showed satisfactory indicia of trustworthiness. The court explained that to determine the trustworthiness of Kyle's statements, it would consider the following factors: "the relationship between declarant and the person . . . to whom . . . the statement was made"; the declarant's capacity; the declarant's trustworthiness; whether the declarant carefully considered his statement; whether the declarant recanted his statement; whether the declarant made other consistent statements; the "declarant's personal knowledge of the event or condition," the state of the declarant's memory; the clarity of the declarant's statement; "whether the statement was made in anticipation of litigation"; the voluntary nature of the statement; and "whether the declarant was disinterested."[3]

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[2] To the extent that respondent suggests on appeal that the circuit court should have stricken the termination hearing testimony of Justin's paternal grandmother, Brenda Mulholland, respondent did not seek to suppress Mulholland's testimony during the termination hearing, and thus failed to preserve this contention for appellate review. We do not further discuss Mulholland's testimony because respondent's appellate brief points to no specific statements by Mulholland that the court should have excluded. See *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 34; 654 NW2d 610 (2002) (an appellant may not simply announce a position and leave it to this Court to discover and rationalize the basis for the claim, or unravel and elaborate her arguments and search for authority to sustain or reject her position).

[3] The circuit court relied on factors enumerated by the Supreme Court in *Katt*, *supra* at 291-292 n 11, which would qualify a child's statement concerning sexual abuse as having "circumstantial guarantees of trustworthiness" for purposes of MRE 803(24). Respondent does not contend that the court considered inappropriate factors in determining trustworthiness.

The circuit court first applied the factors to Kyle's October 2002 statement to Hect during his counseling session. The court observed that as a substitute counselor for Kyle, Hect had a somewhat tenuous relationship with Kyle when he made the statement, which "might cut towards . . . lack of trustworthiness," but that Kyle opened up to Hect in discussing the letters he wrote. With respect to capacity, the court noted that Kyle communicated well and that no indication existed that as an eight-year-old boy he had "a capacity to make things up out of whole cloth." The court disbelieved that Kyle seemed a child that would lie with regularity, despite that he may have initially denied responsibility for particular acts of misconduct in his foster home. The court viewed Kyle's initial reluctance "to disclose these things to Ms. Hect and others [a]s a reflection that the statement was considered carefully." No evidence suggested that Kyle had recanted the veracity of his statements. The court believed that Kyle's several statements to Leeck, Hect, and Bauserman contained consistent details and accounts of sexual abuse, including Kyle's use of the phrase "sex stuff" and "pee pee," nonadult terms that a child Kyle's age would use. The court noted that Kyle's accounts reflected his personal knowledge of the locations where the sexual contact occurred and that Kyle's statements contained a "definiteness" indicating that he "took part in the misconduct." Kyle did not exhibit any difficulty with his memory when describing the relevant events. With respect to the element whether the statement was made in anticipation of litigation, the court found that Kyle did not understand that what he said would affect the child protective proceedings, and that no evidence existed that Kyle hoped to please other adults by making his statements concerning Little. The court noted that Kyle expressed in his letters that he loved Little.

Regarding Kyle's statements to Leeck, the court first observed that at the time Kyle made the statements, he had a close relationship with her "that would prompt [him] to open up truthfully" toward Leeck, who had taken care of him for several months. Concerning the remaining elements of analysis of Kyle's statement to Leeck, the court adopted its findings with respect to Kyle's statement to Hect.

Regarding Kyle's statements to Bauserman, the court noted that she employed a forensic protocol when interviewing him at school. The court rejected that Kyle's statements to Bauserman nonetheless resulted from "browbeat[ing]" or persuasion by Leeck or Hect, explaining that neither Hect nor Leeck had done anything wrong in obtaining statements from Kyle.[4] Although Kyle did not remember ever seeing Bauserman before, he opened up to her

[4] The circuit court disagreed with the contention that Kyle's statements to Hect and Leeck qualified as inadmissible because they did not adhere to a forensic child interview protocol when discussing the sex abuse with Kyle. The court found that Hect and Leeck had acted in their capacities as counselor and foster mother, not investigators, and that "[i]t would be . . . unreasonable to expect Ms. Hect . . . and Ms. Leeck . . . to draw away from their assigned duties as therapist and care provider, to draw away, and indeed, compromise their responsibilities in those fields to adhere to the responsibilities" of an investigator. On appeal, respondent has offered no authority in support of the proposition that as a prerequisite to the admissibility of a child's statements concerning sexual abuse under MCR 3.972(C)(2), the interviewers who obtain the statements must have followed a forensic interview protocol. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (finding an issue abandoned because the appellant provided no authority in support of it).

(continued…)

without prompting when "describ[ing] the sex stuff to her." The court then found that the remaining elements of the trustworthiness analysis discussed with respect to Hect also applied to the statements Kyle made to Bauserman.

The court concluded that all of Kyle's statements to Hect, Leeck, and Bauserman had adequate indicia of trustworthiness to permit their admission pursuant to MCR 3.972(C)(2)(a). After carefully reviewing the tender years hearing testimony of Leeck, Hect, and Bauserman, which amply supports the circuit court's findings, we cannot conclude that the court abused its discretion by admitting their testimony concerning Kyle's statements during the termination hearing.[5]

III. JURISDICTION OVER JUSTIN

Respondent next argues that the circuit court lacked jurisdiction to terminate her parental rights to Justin.

A. Standard of Review

A respondent may properly raise an attack on the court's lack of subject matter jurisdiction at any time, including for the first time on appeal. *In re Hatcher*, 443 Mich 426, 438-439; 505 NW2d 834 (1993); *Bass v Combs*, 238 Mich App 16, 23; 604 NW2d 727 (1999). "Jurisdiction is a question of law that this Court reviews de novo." *Id.* at 23.

B. Analysis

The original petition filed in this case set forth claims that respondent neglected all four children, including Justin. While the original petition listed Gregory Mulholland as Justin's father, it did not contain any specific allegations of his neglect of Justin. On October 30, 2001, the court found on the basis of respondent's admissions that her "inappropriate actions exposed her children to risk of harm and that she has failed to attend to the children's medical, emotional and educational needs, which brings them within the neglect statute." No one ever suggested that the court lacked subject matter jurisdiction, or that it had exercised jurisdiction erroneously. Consequently, when the court initially ordered termination of respondent's parental rights to all the children after the September 2002, termination hearing,[6] the court had jurisdiction over the children pursuant to MCL 712A.2(b). *In re Hatcher*, *supra* at 433-444.

(…continued)

The court also rejected the contention that Hect or Leeck had manufactured Kyle's statements through repeated questioning. The court detected no evidence that Hect or Leeck had solicited or suggested particular responses from Kyle.

[5] The circuit court also concluded that Kyle's statements qualified for admission under MRE 803(24). Because Kyle's statements appear admissible pursuant to the court rule, we do not specifically address their admissibility under the rules of evidence.

[6] Because the court reporter neglected to record the initial termination proceedings that took place in September 2002, a second termination hearing was subsequently held.

After the circuit court entered orders on January 8, 2003, terminating the parental rights of respondent, Jeffrey Saunders, and Robert Showers, the court considered the unresolved status of the parental rights of Mulholland and Little, Kyle's father. The supplemental petition requesting termination of respondent's parental rights had clarified that petitioner did not seek termination of Mulholland's parental rights. After a January 22, 2003, review hearing concerning Kyle and Justin, the court noted that "[p]rogress toward alleviating or mitigating the conditions that caused the child[] to be placed or to remain in temporary foster care was made," and ordered that, with respect to Justin, "[j]urisdiction of this court is terminated in this case," and the "case as to child #3—[Justin] is dismissed." By the plain terms of the January 22, 2003, order, the court relinquished the jurisdiction over Justin that it had obtained pursuant to MCL 712A.2(b).

At the time of this Court's June 2003 remand of respondent's appeal from the initial orders terminating her parental rights to the children, and the circuit court's grant of respondent's motion for a new trial in July 2003, the circuit court no longer possessed jurisdiction over Justin. While this Court had jurisdiction over respondent's challenge to the circuit court's order of termination that included Justin, MCR 7.203, this Court did not have jurisdiction over Justin himself, that jurisdiction, until January 22, 2003, continued in the circuit court when respondent filed her claim of appeal from the initial orders of termination. MCL 712A.2(b). Therefore, this Court's remand of the case and ultimate dismissal of respondent's initial appeal did not somehow reinvest the circuit court with jurisdiction over Justin.

Furthermore, petitioner did not file a post-January 2003 petition alleging that Justin again fell within the circuit court's jurisdiction, nowhere within the circuit court's order granting a new trial or elsewhere did the court make a second finding that Justin came within its jurisdiction, and no indication exists that the court sought to treat the second termination hearing as a termination at an initial disposition in which it also reasserted jurisdiction over Justin.[7]

The only reference to the court's potential jurisdiction over Justin around the time of the second termination hearing occurred when the circuit court raised the issue immediately before rendering its February 2004 bench decision regarding termination. The following exchange took place between the court and the attorneys:

[7] The first post-January 2003 dispositional order with respect to JH located within the record is a supplemental order of disposition following a September 25, 2003, review hearing. The order nowhere purports to assert jurisdiction over Justin, whose name someone wrote on the front page caption of the order. The record also contains an early September 2003 "Order terminating parental rights," which adjourned the termination hearing "to a date to be announced." This order in ¶ 3 generally recognizes that earlier during the proceedings "[a]n adjudication was held and the child(ren) where found to come under the jurisdiction of the court," but the order does not reflect that the court intended to reassert jurisdiction over Justin. Similarly, one of the orders being appealed in this case, the February 19, 2004, order terminating respondent's parental rights to Justin, recites within ¶ 3 that "[a]n adjudication was held and the child(ren) were found to come under the jurisdiction of the court," but the order does not explain whether the circuit court found after the January 2003 order of dismissal that Justin came within its jurisdiction.

> *The Court*: Secondly, and this is a question for counsel, the record that the Court has in its file seems to be confusing on one point that can be certainly explained now. Is there a request to terminate the parental rights of mother concerning[Justin]? *Justin was dismissed from the petition by order of the Court in January '03.* Is Justin still involved or not involved? I understand he is with Greg Mulholand [sic], his father, and there is no termination request concerning father, but is there a request to terminate mother's rights concerning Justin?
>
> *Prosecutor*: Yes, your Honor.
>
> *The Court*: Okay. All right then. And I take it not hearing anything different, that nobody understood it differently. I do note that the Court's papers indicate Justin's name on the paperwork, *but there was apparently some reason that he was dismissed from the petition at the beginning of '03*, and then now is back involved with the case.
>
> FIA's petition for termination of mother's parental rights involves Jessica, Kyle, Justin and Miranda. [Emphasis added.]

The circuit court failed to recognize its obligation to reassert jurisdiction over Justin before proceeding with the termination of respondent's parental rights to Justin.

The circuit court did not reassert its jurisdiction over Justin before the second termination hearing; therefore, the court lacked jurisdiction to terminate respondent's parental rights to Justin. Although the court "has jurisdiction over adults . . . and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile," "those orders shall be incidental to the jurisdiction of the court over the juvenile." MCL 712A.6; see also *In re AMB*, 248 Mich App 144, 176-177; 640 NW2d 262 (2001); *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001).

IV. PSYCHOLOGIST TESTIMONY

Respondent further asserts that the circuit court erred by permitting her privately retained counselor, Walter R. Drwal, to testify at the termination hearing over her objection premised on the psychologist-patient privilege. We need not address this contention because respondent has offered this Court no authority for the proposition that she is entitled to assert a psychologist-patient privilege. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002) (observing that a party may not leave it to this Court to search for authority to sustain or reject its position).

We nonetheless briefly note that the circuit court appears to have properly admitted Drwal's testimony over respondent's privilege-based objection. In Michigan, MCL 333.18237 provides that a psychologist "cannot be compelled to disclose confidential information acquired from" a patient "if the information is necessary to enable the psychologist to render services." But MCL 722.631 explicitly contemplates the abrogation of the psychologist-patient privilege in child protective proceedings:

> *Any legally recognized privileged communication* except that between attorney and client or that made to a member of the clergy in his or her professional character in a confession . . . *is abrogated and shall not constitute grounds for* excusing a report otherwise required to be made or for *excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act*. . . . [Emphasis added.]

In *In re Brock*, 442 Mich 101, 117-119; 499 NW2d 752 (1993), our Supreme Court concluded that the plain language of MCL 722.631 trumped the respondent's invocation of her psychologist-patient privilege because the child protective proceeding had "result[ed] from a report made pursuant to [the Child Protection Law]."

Respondent makes no argument that the instant case did not result from a report made pursuant to the Child Protection Law. Instead, respondent apparently suggests that the psychologist-patient privilege applies because her consultations with Drwal did not take place under mandatory conditions imposed by the circuit court, and that she voluntarily sought counseling from Drwal. Respondent offers no authority in support of the notion that only court-ordered counseling with a psychologist falls within the scope of MCL 722.631. *Sherman*, *supra* at 57. Furthermore, the record establishes that respondent's participation in counseling constituted a requirement of her treatment plan: (1) respondent admits in her brief on appeal that her parent-agency agreement required counseling; (2) caseworker Lisa Thomas testified that respondent's parent-agency agreement required her to undergo a psychological evaluation and address her emotional stability through counseling; (3) Dr. Harold Sommerschield, the doctor who performed respondent's psychological evaluation, recommended in part as a prerequisite to the return of the children that she participate in at least one to three years of therapy; and (4) the record contains a circuit court order directing that the "parents shall comply with the case services plan . . . ." Respondent merely selected Drwal as the psychologist and counselor from whom she would obtain the court-ordered counseling.

Consequently, respondent's claim that the circuit court erred by permitting Drwal to testify lacks merit.

V. TREATMENT SERVICES

Respondent additionally avers that petitioner failed to make adequate efforts to arrange her participation in necessary treatment services.

A. Standard of Review

Respondent challenges a factual finding by the circuit court, that this Court reviews for clear error. MCR 3.977(J). The circuit court's findings of fact qualify as clearly erroneous when this Court's review of the record reveals some evidence to support the findings, but leaves this Court with the definite and firm conviction that the court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

B. Analysis

The record does not support respondent's suggestion that Thomas simply ignored Dr. Sommerschield's recommendation that respondent undergo a psychiatric evaluation. Thomas testified that she began working with respondent in June 2001, and that she referred respondent to parenting classes, counseling, and a psychological evaluation with Dr. Sommerschield. After respondent missed her first two scheduled appointments, Thomas took the unusual step of driving respondent to her third scheduled appointment. With respect to the psychiatric evaluation recommended by Dr. Sommerschield, Thomas conceded that the evaluation would have been crucial to a determination of what type of counseling respondent needed, but Thomas made no referral as she typically would have done because respondent consistently advised Thomas on several occasions that she had found a psychiatrist on her own, that she completed the evaluation, and that she would provide Thomas the psychiatric evaluation report.

Regarding other treatment plan requirements, petitioner would have referred respondent to a counselor and paid for counseling, but respondent by herself selected Drwal as her therapist, and did not want to utilize petitioner's proffered services. Respondent never requested assistance in locating housing.

The record also does not substantiate respondent's contention that Thomas arranged for all of respondent's service referrals in Flint while knowing that she lived in distant Lapeer. According to Thomas, she usually lacked information concerning respondent's current address and had to track her down because she moved so often. Respondent apparently lived both in Flint and Lapeer during the child protective proceedings, although the periods of residence are unclear from the record. When the children's case opened, respondent depended on her father for transportation and sometimes made transportation an issue concerning visitation. But Thomas recalled that for a short time, respondent had supervised visits in Lapeer. Thomas made no referrals for services in Lapeer, but testified that respondent reportedly went to counseling in Lapeer, that she did not substantiate. When respondent lived in Lapeer, Thomas did not have access to bus passes that she could give respondent.

In light of Thomas' unrebutted testimony that to the extent possible she arranged for respondent's participation in various services and that respondent declined to utilize other services proffered by Thomas, we cannot conclude that the circuit court clearly erred when it found that respondent "hasn't tried to learn to take care of the[children] despite the efforts of the FIA and related agencies."

VI. PERJURY OF FIA WORKER

Respondent also contends that Thomas perjured herself during the termination hearing by testifying that respondent permitted her father, Donald Howey, to have unsupervised contact with the children after Howey's conviction of attempted second-degree criminal sexual conduct (CSC) involving a minor. We need not address this unpreserved claim of error, in support of that respondent relies only on a web page printout of Department of Corrections information

concerning Howey that does not appear within the circuit court record. *Amorello v Monsanto Corp*, 186 Mich App 324, 330-331; 463 NW2d 487 (1990).[8]

VII. Statutory Grounds for Termination

Respondent next argues that the circuit court erred by terminating her parental rights to the children pursuant to MCL 712A.19b(3)(g).

A. Standard of Review

This Court reviews for clear error a circuit court's decision that a ground for termination has been proven by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Clear error does not exist unless a decision strikes the reviewing court as more than just maybe or probably wrong. *Id*. at 356.

B. Analysis

Subsection (g) sanctions termination of parental rights under the following circumstances:

> The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

To establish the applicability of subsection (g), a petitioner must introduce clear and convincing evidence of both the respondent's failure and her inability to provide proper care and custody. *In re Hulbert*, 186 Mich App 600, 601, 605; 465 NW2d 36 (1990).

In this case, clear and convincing evidence exists that respondent failed to provide the children proper care and custody. In October 2001, respondent pleaded no contest to allegations of improper supervision in June 2000, that she failed to participate in proffered services

[8] Even considering respondent's exhibit, the web page does not establish that Thomas lied by testifying that respondent permitted Howey to have contact with the children between the time of his conviction and the commencement of this child protective proceeding in June 2001. The circuit court file contains a set of documents relating to Howey's conviction and sentence, which indicate the following relevant facts: (1) Howey pleaded guilty of attempted second-degree CSC in exchange for the prosecutor's dismissal of two counts of second-degree CSC; (2) the court sentenced Howey on November 23, 1998, to a term of three years' probation; and (3) Howey had to "serve 365 days in jail beginning 11-23-98." These documents indicate that Howey spent only one year in jail between November 23, 1998 and November 22, 1999, after which he could have visited with respondent and the children. The web site printout establishes only that Howey was sentenced on November 23, 1998, and "discharge[d]" on October 29, 2001. The printout does not specify that Howey spent this entire period incarcerated, and we observe that the discharge date nearly three years after his sentencing date more likely reflects the date of his discharge from probation.

including counseling, and that within three months of 2001, Jessica was absent for twenty-three days of school and Kyle missed 10-1/2 days. Jessica, Kyle and Miranda consistently engaged in inappropriate sexual behaviors with each other, food objects, and stuffed animals, consistent with symptoms exhibited by child victims of sexual abuse. All of the children also had developmental delays. Justin's paternal grandmother, Brenda Mulholland, observed that for approximately ten years, respondent lacked control over the children, left her home in messy conditions, did not do laundry, neglected to clean or feed the children, who prepared their own food, and otherwise neglected the children, who frequently had head lice. Mulholland also observed that at least two of the children suffered severe injuries: Justin once had burns around his eye from respondent's cigarette, on another occasion, two-year-old Justin had large areas of burns on his stomach and leg allegedly caused by a light bulb, and Miranda suffered second- and third-degree burns from hot water that she allegedly knocked over while respondent cooked.

Overwhelming evidence also establishes that respondent will not be able to provide the children proper care and custody within a reasonable time given their ages. Thomas testified that respondent failed to comply with her treatment plan because she did not benefit from parenting classes, during which she passed notes and socialized, she lived at ten different addresses, usually with different men, did not undergo a psychiatric evaluation, and failed to complete or benefit from any counseling. During respondent's chaotic visits with the children, she gave them little attention and no supervision, and introduced them to several new potential father figures. Also during visits, respondent infected the children with head lice. Respondent did not regularly contact Thomas or the children, and on one occasion, sixty to seventy days lapsed without contact.

Despite Donald Howey's conviction for attempted CSC with a minor, Jessica's allegations that Howey had sexually abused her, and a physical examination confirming that Jessica had endured sexual abuse, respondent maintained Howey's innocence and permitted him to have frequent interactions, including unsupervised contact, with the children. According to Brenda Mulholland, Howey lived with respondent and the children for two weeks in May 2001, and Howey sometimes picked up and watched the children in respondent's absence. Jeffrey Saunders, one of respondent's many boyfriends, also had a CSC conviction, and respondent later suggested that Saunders had sexually abused the children. Dr. Sommerschield had definite concerns regarding respondent's ability to protect the children from sexual abuse in light of her disbelief that Howey had ever sexually abused any children and her history of involvement with unstable and unsafe men.

Hect, the children's therapist, had several unusual phone conversations with respondent, over the course of which respondent alternately cried a lot because she was not on medication, blamed her problems on the state's false allegations that her father had abused the children, and told Hect that she had spoken to the President of the United States and the Supreme Court regarding reinstatement of her parental rights and visitation with the children, and that Hect should expect a call from the President. Dr. Sommerschield testified that respondent exhibited symptoms of bipolar disorder that would affect her ability to remain focused, follow through with plans, and recognize and protect the children against environmental dangers. Before the children could return to respondent's custody, she definitely needed a psychiatric evaluation to determine appropriate medication for her condition together with at least one to three years of counseling. Respondent also required several years of therapy to address a long-standing

characterological disorder, that type of disorder is characterized by the inflicted person's history of unstable relationships, difficulty in developing relationships with other people, tendency to decide "not to deal with" her environment, manipulative and self-centered behavior, immaturity, low frustration tolerance, "a lot of irritability, poor impulse control, poor judgment, [and] failure to benefit from experience." But respondent attended only three counseling sessions, during which she failed to even minimally participate, denied her own culpability for causing harm to the children, and instead blamed the children, their alleged inflictions with attention deficit hyperactivity disorder, and other individuals for her difficulties with the children.

Given the evidence that respondent failed to provide the children proper care and custody before they arrived in foster care, and the abundant evidence of respondent's inability to recognize risks of harm to the children and her failure to engage in treatment, we conclude that the circuit court did not clearly err by finding clear and convincing evidence warranting termination of respondent's parental rights pursuant to subsection (g).[9]

[9] While only one statutory ground need exist to justify termination of parental rights, MCL 712A.19b(3), we observe that respondent does not challenge the circuit court's determination that termination was also appropriate under subsections (b)(ii) and (b)(iii). In light of (1) the above evidence that while living with respondent three of the children suffered sexual abuse perpetrated by Donald Howey, among others, (2) testimony that respondent and her current fiancée deny Howey's culpability for sexual abuse, and that respondent permitted the children to have unsupervised contact with Howey, (3) the abundant evidence of respondent's failure to participate in any significant treatment, and (4) the fiancées admission that he visited with Howey every week, the circuit court did not clearly err in finding clear and convincing evidence to justify termination pursuant to subsections (b)(ii) and (b)(iii).

We further reject respondent's suggestion that the circuit court erred by relying on subsections (c)(i) and (j). The court found that the children came within its jurisdiction because respondent's "inappropriate actions exposed her children to risk of harm and that she has failed to attend to the children's medical, emotional and educational needs." In light of the fact that well more than 182 days had passed since the adjudication in October 2001 and the termination hearing, and the previously discussed evidence that respondent did not supervise the children during visits, gave the children lice during her visits, attended but did not pay attention during parenting classes, never secured stable housing, had significant emotional impairments that hampered her ability to provide the children proper care and custody, made no effort to address her mental condition by undergoing a psychiatric evaluation and obtaining prescribed medication, and expressed no interest in Drwal's suggestions of even simple measures she could take to avoid injuries to the children, the circuit court did not clearly err when it found clear and convincing evidence to warrant termination of respondent's parental rights pursuant to subsection (c)(i).

Additionally, in light of the evidence supporting termination pursuant to subsection (c)(i), together with the evidence discussed above with respect to subsection (g) regarding the children's sexual behaviors, respondent's past failure to protect the children from sexual abuse by Donald Howey, respondent's insistence in Howey's innocence, respondent's permission for Howey to have frequent interactions, including unsupervised contact, with the children, and respondent's involvement with many men, including one convicted of CSC and her current fiancée, who visited weekly with Howey, the court did not clearly err by finding clear and

(continued…)

VIII. COMPLIANCE WITH COURT ORDERED TREATMENT PLAN

Respondent avers that the circuit court erred by terminating her parental rights because no evidence existed that she failed to comply with any court-ordered treatment plan. Although respondent challenges the circuit court's factual finding that she did not comply with mandatory treatment plan requirements, the record belies respondent's suggestion that no mandatory treatment plan existed. Thomas testified that in July 2001, respondent signed and expressed her understanding of a parent-agency agreement that required her to attend parenting classes, obtain legal employment, undergo a psychological evaluation, ensure that the children had safe and stable housing, and address her emotional stability through counseling.[10] Even accepting respondent's position that her compliance with the agreement was voluntary because the adjudication did not occur until October 2001, the record contains a post adjudication circuit court order providing that the "parents shall comply with the case services plan . . . ." Accordingly, we conclude that the circuit court did not clearly err by determining that respondent failed to comply with her mandatory treatment plan obligations.

IX. BEST INTERESTS

Respondent lastly maintains that the overall record failed to demonstrate that termination served the children's best interests.

A. Standard of Review

This Court reviews for clear error a circuit court's determination "that termination of parental rights to the child is clearly not in the child's best interests," MCL 712A.19b(5). *In re Trejo, supra* at 356-357.

B. Analysis

Respondent introduced some testimony that she loved and could parent the children, and that the children loved her. But overwhelming evidence showed respondent's inability to properly parent the children and the resultant harm they suffered while living with respondent. In particular, the evidence showed: (1) that respondent failed to maintain a stable, suitable address; (2) during visits, respondent offered the children no supervision and gave the children only limited individual attention; (3) that respondent failed to protect the children from sexual abuse by Donald Howey, who had an ongoing place in respondent's life, and perhaps Saunders; (4) that respondent had significant emotional impairments that affected her ability to parent, for which she did not seek treatment; (5) while previously residing in respondent's care, the children endured physical injuries and physical neglect; and (6) after living with respondent, three of the children repeatedly exhibited sexual behaviors consistent with those of child sex abuse victims, and all of the children had developmental delays. Jessica experienced anxiety at the thought of

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(…continued)

convincing evidence to support termination of respondent's parental rights pursuant to subsection (j).

[10] Respondent does not dispute these components of her parent-agency agreement.

living with respondent. Under these circumstances, the circuit court did not clearly err by finding that termination of respondent's parental rights would serve the children's best interests.

We affirm the circuit court's order terminating respondent's parental rights to Jessica, Kyle and Miranda, but reverse the order terminating respondent's parental rights to Justin.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Bill Schuette