

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of TRINITY ANN MARIE  
SCHNABEL and FAITH KAELLYNN  
SCHNABEL, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

SAMUEL J. SCHNABEL,

Respondent-Appellant,

and

COREY L. MCCALLISTER,

Respondent.

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UNPUBLISHED  
November 27, 2007

No. 275900  
Wayne Circuit Court  
Family Division  
LC No. 06-455778-NA

Before: Zahra, P.J., and White and O'Connell, JJ.

PER CURIAM.

Respondent Samuel J. Schnabel appeals as of right the January 18, 2007, order terminating his parental rights to his minor children under MCL 712A.19b(3)(b)(i) (parent caused physical injury or abuse and reasonable likelihood of future injury or abuse), (g) (failure to provide proper care and custody), and (j) (likelihood of harm if returned). We affirm.

**I Facts and Procedure**

Respondent has a long history of physical domestic violence against Cory McCallister, his wife and the mother of his children. In July 2005, respondent was sentenced to three years' probation and 26 weeks of batterers' counseling for an April 2005 home invasion and felonious assault. He was also ordered to have no contact with his wife. Respondent's conviction arose out of an incident in which respondent forced his way into the home where his children were living and threatened McCallister's male friend, Richard Wahl, with a knife. According to the police report, respondent was fighting in the street when police arrived and arrested him, and he told police to shoot him. Respondent explained that he wanted to scare Wahl with the knife because he got angry when he saw Wahl with McCallister and the children.

In September 2005, respondent pleaded guilty to malicious destruction of property and two counts of felonious assault and was sentenced to one to five years in prison. According to the presentence report, on August 4, 2005, he rammed into the rear of a car operated by McCallister in which his children were passengers. There is no doubt that respondent was aware his children were in the car and at risk as he yelled “your mother is a whore” at the time of the initial collision. McCallister drove to the local district court, where respondent again rammed at high speed the car in which his children were passengers. A police officer reportedly tried to block the exit with his car, and respondent rammed that police car and continued accelerating. According to the police report, respondent told an officer to shoot him because he was going to kill his wife. The children complained of head pain following the automobile collisions and were treated at the scene by paramedics.

The family came to the attention of petitioner while respondent was incarcerated. Specifically, in May of 2006 McCallister dropped the children off at the home of her mother, Tina Adkins, who was often called upon to assist with the care of her grandchildren. Adkins observed excessive injuries to the three year old child and took her to the hospital. A subsequent investigation suggested the child was abused by McCallister and her latest live-in companion, Jason Flat. Petitioner initiated the instant termination proceedings. The trial court terminated the parental rights of both parents. McCallister has not taken an appeal.

## II Analysis

### A. Standard of Review

This Court reviews for clear error the lower court’s determination that the petitioner established at least one statutory ground for termination by clear and convincing evidence. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). After the trial court determines that the petitioner established a statutory ground for termination, it must terminate the respondent’s parental rights unless termination is clearly not in the child’s best interests. MCL 712A.19b(5); *In re Trejo, supra*, 462 Mich at 352-353. This Court reviews for clear error the trial court’s decision regarding the child’s best interests. MCR 3.977(J); *In re Trejo, supra*, 462 Mich at 365. To constitute clear error, a finding must be more than just maybe wrong or even probably wrong. *Id.* at 356, quoting *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520, reh den 460 Mich 1205 (1999). Rather, it must leave this Court with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216, reh den 468 Mich 1239 (2003). Further, this Court must consider the trial court’s special opportunity to judge witness credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

### B. Petitioner Established Grounds for Termination

Petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). This Court must affirm the lower court’s decision if there is clear and convincing evidence of any statutory ground, regardless whether the lower court erred in finding sufficient evidence under other statutory grounds. *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998).

Respondent argues on appeal that it was inappropriate to terminate his rights under MCL 712A.19b(3)(b)(i) because the mother committed the physical abuse while he was incarcerated. If the physical abuse of the children was limited to the injuries that occurred while respondent was incarcerated, respondent's argument would have merit. However, respondent physically injured his children when on August 4 2005 he twice rammed his car at high speed into a car in which his children were passengers. The children suffered physical injury as a result of defendant's extreme violent conduct. We further conclude the lower court did not clearly err when it concluded the children were reasonably likely to suffer further injury in the foreseeable future if placed in respondent's home. The evidence indicated that respondent was attempting to attack the mother when he rammed the car. Significantly, respondent was aware that his children were inside the car and acted despite the danger he posed to them. Respondent's violent history establishes he is likely to be violent toward others, without regard to the wellbeing of his children. While respondent received therapy and took Bible classes in prison, nothing in the record supports the conclusion that he actually benefited from these services.

The history of domestic violence, the assault with a knife, and the car-ramming incident support termination under MCL 712A.19b(3)(j). Respondent's violence against McCallister is sufficient to demonstrate likelihood of harm to the children. *In re Miller*, 182 Mich App 70, 79-80; 451 NW2d 576 (1990). In *In re Miller, supra*, 182 Mich App 79-80, this Court held that violence between parents in the children's presence was relevant to show that the parents were unfit by reason of criminality or depravity, grounds for jurisdiction under MCL 712A.2(b)(2). While *In re Miller* involved termination under a different statutory section, respondent's history of domestic violence demonstrates a generally violent nature and an inability to control his anger, which places the children at an unreasonable risk.

Further, it was significant that the knife assault in the home in which the children resided and the high speed ramming of a car in which the children were passengers both involved assaults with deadly weapons and the risk of serious harm to the children. On this record, we cannot conclude the lower court clearly error in finding sufficient evidence under MCL 712A.19b(3)(b)(i) and (j).

We also conclude there was sufficient evidence to sustain the lower court's termination of respondent's rights under MCL 712A.19b(3)(g), which provides in relevant part:

(g) 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. . . .

Respondent argues that there was no reason to believe he would not provide proper care and custody when released from prison. However, the evidence indicated that respondent changed employment frequently before his incarceration and he did not maintain stable, independent housing. The paternal grandmother admitted that she supported him and the children when they stayed with her, and respondent admitted he provided only sporadic support during his separation from McCallister. Further, respondent did not contradict the maternal grandmother's claim that she provided housing and money to support the children throughout

their lives. Respondent testified that he intended to live with his mother and attend a one-year metal fabrication program after his release from prison. However, while respondent's hope for training and gainful employment after being released from prison is laudable, he utterly failed to establish that he could independently support the children upon his release from prison.

We conclude the cumulative evidence was sufficient to show that respondent was not reasonably likely to provide proper care and custody in a reasonable time. Therefore, the lower court did not err when it found a statutory ground to terminate respondent's parental rights under MCL 712A.19b(3)(g).

#### C. Termination is in the Best Interest of the Children

Whenever a lower court finds a statutory ground for termination, it must terminate parental rights unless termination was clearly against the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). There is no specific burden on either party; rather, the lower court should weigh all evidence available. In *re Trejo*, *supra* at 354. Respondent's bond with the children is relevant to the best interests analysis. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). The evidence indicated that respondent and the children were bonded before his incarceration and he maintained a bond through letters and a few prison visits. However, the children also needed permanence, see *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991), and a home free of violence. The lower court did not err when it held that termination was not clearly against the children's best interests and terminated respondent's parental rights.

Affirmed.

/s/ Brian K. Zahra

/s/ Peter D. O'Connell