

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MYA DESHAY JAMES,
RASHAWN DANTE JAMES, and MARIAH
DEVIN JAMES, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ASHLEY STULL,

Respondent-Appellant,

and

RICKY JAMES,

Respondent.

UNPUBLISHED
December 18, 2007

No. 278481
St. Joseph Circuit Court
Family Division
LC No. 06-000140-NA

Before: Davis, P.J., and Murphy and Servitto, JJ.

PER CURIAM.

Respondent Ashley Stull appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Because statutory grounds for termination were proven by clear and convincing evidence and termination of respondent's parental rights was not contrary to the childrens' best interests, we affirm.

In February 2006, a petition was filed regarding Mya and Rashawn (Mariah was not yet born). The petition alleged that respondent had applied for a personal protection order (PPO) against the children's father, Ricky James, in January 2006, because he choked, hit, and punched her; in addition, it was alleged that James was emotionally abusive toward respondent and used the children as leverage against respondent. James was in jail at the time the PPO was filed. On February 10, 2006, James was arrested for violating the PPO when the police learned that he was living with respondent after he was released from jail. Petitioner alleged that respondent was unable to protect herself or the children from James. Petitioner also alleged that respondent had allowed 12 people (including respondent's parents) to live with her and the children in a small, two-bedroom trailer. The children initially remained with respondent, but a short time later, the court found that there was a factual basis for assuming jurisdiction over the children. Respondent

was ordered to comply with certain requirements, including having no contact with James and obtaining suitable housing.

In early November 2006, respondent gave birth to her third child, Mariah. In February, 2007, a petition was filed to remove Mariah from respondent's custody due to respondent's failure to attend to Mariah's medical needs. Hearings proceeded with respect to all three children, at the conclusion of which respondent's parental rights were terminated. Respondent now appeals the termination, asserting that termination was not proven by clear and convincing evidence and that termination was not in the childrens' best interests.

The petitioner must prove a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Once a statutory 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, supra* at 354; MCL 712A.19b(5). The trial court's best interests decision is also reviewed for clear error. *Id.* at 356-357.

With regard to §19b(3)(j), the trial court relied on respondent's medical neglect of Mariah and her history of relationships involving domestic violence to find that this ground was proven. The evidence showed that respondent could not separate her own needs from those of the children, which was why she failed to seek prompt medical care for Mariah. Because respondent failed to complete the requirements of her treatment plan, most notably therapy, there was a reasonable likelihood that all of the children would face similar risks of harm if returned to her custody. Respondent also had a history of being involved in abusive relationships and the children had already shown signs of being hyper-vigilant as a result of exposure to violence or rage in respondent's home. Because respondent failed to complete therapy to address this problem, there was a reasonable likelihood that the children would be harmed in the future, either physically or emotionally, if they were returned to respondent's custody.

The court also found that §19b(3)(c)(i) was proven by clear and convincing evidence because the children were initially removed because of respondent's involvement in an abusive relationship, and respondent was now involved in another abusive relationship with a new boyfriend. Additionally, respondent's problematic relationship with her own family prevented her from properly caring for the children. There was evidence that respondent had not made any real progress in therapy and would require at least two years of additional therapy to address her underlying problems, particularly with domestic violence and dependency. Her prognosis for success was rated as poor to fair, and her therapist believed that respondent was not truly vested in doing what she needed to do to get her children back and had essentially given up. Thus, it was not reasonably likely that respondent would be able to rectify the conditions that led to the adjudication within a reasonable time.

Respondent's failure to benefit from the services offered, and the evidence that respondent's prognosis for success was poor and that she would require at least two years of additional therapy to address her underlying problems, also supports the trial court's decision to terminate her parental rights under §19b(3)(g). *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

Accordingly, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

We reject respondent's argument that the trial court failed to consider the childrens' best interests. Although the court did not refer to the childrens' best interests on the record, it addressed the best interests standard in its written decision.

Although the children were bonded to respondent, the testimony showed that the bond was not very good. While the children were in respondent's custody, they experienced developmental delays that were attributed to respondent's poor parenting skills. They also exhibited hyper-vigilant behavior that was attributed to respondent's abusive relationships and unresolved anger. Although respondent complains that she was not allowed unsupervised visits, she had difficulty caring for the children during her two-hour supervised visits and had shown little, if any, progress in developing consistency in her parenting abilities. Also, the fact that the children would be safe in foster care did not require the court to avoid terminating respondent's parental rights. The evidence showed that the children were in need of consistency, permanency, and stability, and it would have been contrary to their best interests to require them to wait indefinitely for respondent, especially considering that respondent's prognosis was poor and that she would require at least two years of additional therapy to address her problems. Because the evidence did not clearly show that termination of respondent's parental rights was not in the children's best interests, the trial court did not err in terminating her parental rights.

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Deborah A. Servitto