

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEVIN JAMES CLAUDE
SCHAEFFER, HUNTER JAYMZ HOPKINS, and
EMILLIO B. LIRA, JR., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

PAMELA HOPKINS,

Respondent-Appellant.

In the Matter of EMILLIO B. LIRA, JR., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

EMILLIO LIRA, SR.,

Respondent-Appellant.

UNPUBLISHED

January 8, 2008

No. 278151

Ingham Circuit Court

Family Division

LC No. 00-050062-NA

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Before: Schuette, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from a circuit court order terminating their parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We affirm.

I. FACTS

Respondent Pamela Hopkins is the mother of Devin Schaeffer, Hunter Hopkins, and Emillio Lira, Jr. Respondent Emillio Lira, Sr. is Emillio, Jr.'s father.¹

Hopkins initially became involved with the Department of Human Services (DHS) in November 2003, because after she returned home from a Halloween party intoxicated, and while she was asleep, she rolled over the top of her son, Brandon, and asphyxiated him. At that time, Devin was removed from Hopkins's care, but he was returned home in August 2005. In May 2005, Hopkins was found to have neglected Hunter, and they were committed to the Intensive Neglect Services (INS) program. However, the trial court terminated jurisdiction just before Emillio, Jr. was born in August 2006.

In January 2007, DHS filed an original petition for termination, alleging, in addition to prior allegations of neglect, that in December 2006 Hopkins was the victim of domestic violence by Lira while the children were present and Emillio, Jr. did not have a crib and slept in unsafe and inappropriate sleeping conditions. He slept on a child's play couch that turned into a mattress. The cushions around it were unsafe because "the child could roll into the crack of that and suffocate."

Hopkins has had a history of relationships that included domestic violence and exposing her children to the violence between her and her partners. Hunter's father would often times get drunk and start fights, and in December 2006 and January 2007, Hopkins was the victim of domestic violence by Lira while the children were present. Devin also reported that Lira abused him as well.

Hopkins has also exhibited signs of emotional and mental instability, including threatening to "blow [her] . . . head off" if the children were removed and telling Devin that she would kill herself if she did not have a boyfriend.

Hopkins completed parenting classes, and she received services for three years that included the INS program. She also participated in several rehabilitative programs between 2004 and August 2006 that addressed domestic violence, substance abuse, self-esteem, depression, and grief. She worked with the Maternal Infant Outreach program and Building Strong Families. However, in July 2005, she wrote to Hunter's father "telling him that [she] had lied to put him in jail and that [she] wanted him back." She also lied to caseworkers. She told them that she was no longer in a relationship with Lira, when in fact she still was.

Lira testified that he was 18 years old and living with his parents. He did not have a job, and before moving in with his parents, he had lived with Hopkins on and off for about a year. He denied having anger problems and denied ever harming Hopkins's children. He admitted that he was aware of Emillio Jr.'s sleeping arrangements, but was not aware that the play couch

¹ James Schaeffer is Devin's father, Robert VanBuskirk is Hunter's putative father. They are not parties to this appeal.

presented any risk of harm. He was not allowed to participate in services while Hopkins's case was pending.

II. STATUTORY GROUNDS FOR TERMINATION

A. Standard of Review

To terminate parental rights, the trial court must find that at least one statutory ground for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). We review the trial court's decision that a statutory ground for termination has been proven by clear and convincing evidence for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision "is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

B. Analysis

Under MCL 712A.19b(3)(j), the trial court may terminate parental rights if "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Here, the trial court did not clearly err in finding that § 19b(3)(j) was established by clear and convincing evidence with respect to each respondent.²

As to Hopkins, the evidence showed that her son Brandon died when she accidentally asphyxiated him while sleeping in her bed. Hopkins was provided with years of services to educate her on better parenting practices, and the trial court eventually terminated its jurisdiction over the children. Just a few months later, respondent was discovered to have unsafe sleeping arrangements for her infant son, either because she used a makeshift bed until she could get around to obtaining a proper crib or because she entrusted his care to someone else, the same situation that led to Brandon's demise.

Further, the evidence showed that domestic violence was an issue in Hopkins's relationships with men, which, if not resulting in physical harm to the children, certainly created a stressful environment. Despite participating in domestic violence counseling for approximately a year, Hopkins convinced the court to relinquish jurisdiction in August 2006 by deliberately lying about her relationship with Lira, saying that it had ended when in reality it was ongoing and consistently abusive. She made the same misrepresentations when DHS came to investigate. That, plus her letters to a former abusive partner, and her statement to her son that she would kill

² Only one statutory ground is necessary to support the trial court's termination order. Therefore, we need not examine whether the trial court erred in terminating respondent Hopkins's parental rights under MCL 712A.19b(3)(g). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

herself if she did not have a boyfriend, indicated that Hopkins continued to place the need for a man in her life above the interests of her children. Despite receiving extensive services on developing healthier relationships, she began living with Lira, a partner who was constantly abusive and hid that relationship from the court and her counselor. Therefore, it was clearly likely that the children would be harmed if left in Hopkins's custody and the trial court did not err in finding that termination was warranted under § 19b(3)(j).

Turning now to termination of Lira's parental rights, the evidence showed that he failed to provide safe sleeping arrangements for his son. He allowed the baby to sleep on a fold-out mattress that was unsafe in itself because the baby could get caught between the mattress and surrounding cushions and possibly suffocate. The mattress was also in an unsafe situation in that it was located on the floor beside an adult's mattress, which presented a risk of the adult rolling over onto the baby. Lira gave no thought to the baby's sleeping arrangements and expressed no interest in his son. Further, he subjected his son to a stressful custodial environment by engaging in domestic violence with Hopkins, and he allegedly manhandled Devin. Therefore, it was likely that Emillio, Jr. would be harmed if placed in Lira's custody and the trial court did not err in finding that termination was warranted under § 19b(3)(j).

III. BEST INTERESTS OF THE CHILD

A. Standard of Review

If the trial court determines that a statutory ground for termination has been established, the court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 353. Again, we review the trial court's best interests determination for clear error. *Trejo, supra* at 356-357

B. Analysis

The evidence did not clearly show that termination of Hopkins's and Lira's parental rights was not in the children's best interests. Despite years of services intended to correct the problems that led to the court's intervention in 2004, which included unsafe sleeping arrangements for an infant and relationships involving domestic violence, Hopkins fell back into her old habits as soon as court intervention ended. Even while the protective proceedings were open, she remained in a secret abusive relationship. Although Hopkins loved her children and tried to avert termination by taking parenting classes again and going back on her medication, those efforts did not clearly overwhelm her failure to improve the problems that led to the adjudication during the 2-1/2 years of court intervention designed to remedy the same problems. Therefore, the trial court did not err in determining that termination of Hopkins's rights was not clearly not in the children's best interests. *Trejo, supra* at 364. Likewise, given that Lira expressed no interest in his son's welfare or in planning for custody, having declined to attend the dispositional hearing, the trial court's finding regarding the child's best interests as to Lira

was not clearly erroneous.

Affirmed.

/s/ Bill Schuette

/s/ Stephen L. Borrello

/s/ Elizabeth L. Gleicher