

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NIKAS' JA KEONI ALEXANDER,
NIQUANTA KOREY ALEXANDER, NICHOLAS
LAMARK ALEXANDER, JR., and NIDIA KENDRA
ALEXANDER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KENESHA MABRY,

Respondent-Appellant,

and

NICHOLAS ALEXANDER,

Respondent.

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NIQUANTA KOREY ALEXANDER, NICHOLAS
LAMARK ALEXANDER, JR., and NIDIA KENDRA
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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NICHOLAS ALEXANDER,

Respondent-Appellant,

and

KENESHA MABRY,

Respondent.

UNPUBLISHED
February 14, 2008

No. 279734
Wayne Circuit Court
Family Division
LC No. 06-450132-NA

No. 279735
Wayne Circuit Court
Family Division
LC No. 06-450132-NA

Before: Fitzgerald, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

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

A 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 reviews the trial court's findings for clear error. MCR 3.977(J).

Petitioner provided clear and convincing evidence that respondent mother failed to provide proper care and custody and was not reasonably likely to provide proper care and custody within a reasonable time, MCL 712A.19b(3)(g). Respondent mother was convicted of child abuse regarding the medical neglect of her fragile, premature infant. Witnesses testified that the older children reported that respondent father abused them and respondent mother. Respondent mother denied the abuse, but the trial court found her testimony untruthful. We give deference to the trial court's special opportunity to judge witness credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent mother complied with her treatment plan; however, the courts are required to analyze actual ability. See *In re Hamlet (After Remand)*, 225 Mich App 505, 515-516; 571 NW2d 750 (1997), overruled in part on other grounds *In re Trejo Minors*, 462 Mich 341, 353 n 10; 612 NW2d 407 (2000). Although the therapist testified that respondent mother progressed in parenting skills, she continued to deny abuse and domestic violence, and the trial court questioned the therapist's competency. Remaining in an abusive relationship is evidence of an inability to provide proper care and custody. *In re AH*, 245 Mich App 77, 87-88; 627 NW2d 33 (2001). Further, respondent mother was prohibited from caring for her children during her three years' probation. Additionally, evidence of respondent mother's continuing denial of domestic violence and egregious child abuse, as well as evidence of medical neglect, supports the court's ruling under MCL 712A.19b(3)(j) (likelihood of harm to children if returned to parent based on parent's conduct *or* capacity).

Because there was no clear error with respect to whether there existed clear and convincing evidence under these statutory grounds, we need not consider whether there was sufficient evidence under the other statutory grounds, given that only one ground for termination is sufficient. *In re JK, supra* at 210.

When a lower court finds a statutory ground for termination, it must terminate parental rights unless termination would clearly be against the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 352-353. The older children's bond with respondent mother was relevant to the decision, *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), but also relevant was their need for stability, *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991), and how long they could wait, based on their ages and particular needs, *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991). The trial court did not clearly err when it held that termination was not clearly against the children's best interests.

Respondent father argues that petitioner did not provide adequate services, specifically domestic violence and child abuse counseling. Petitioner argues that respondent father should have raised this issue earlier; however, we will address the merits because the inadequacy of the services did not truly become an issue until the termination hearing.

Petitioner generally must make reasonable efforts to rectify the problems that led to adjudication. MCL 712A.18f; *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Failure to make reasonable efforts may prevent petitioner from establishing statutory grounds for termination. See *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991). To successfully claim lack of reasonable efforts, a respondent must establish that he would have fared better if petitioner offered other services. *In re Fried*, *supra* at 543.

Although the trial court questioned the therapist's competency, the reason the therapist did not address domestic violence and child abuse was respondent father's decision to deny they occurred. Petitioner referred respondent father to another counseling service; however, respondent father was by then incarcerated. Further, it was unlikely a better counselor would have changed the outcome. There was no reason to believe respondent father would have admitted the abuse and seriously invested in counseling, and he could not care for his children during his three years' probation, regardless. Respondent father argues that the children could have remained in temporary custody or a guardianship with visitation; however, this would not allow him to provide proper care and custody in a reasonable time and give the children the stability they needed.

Respondent father did not directly address the statutory grounds in his brief on appeal. Regardless, there was clear and convincing evidence that he physically abused the children and that they were reasonably likely to be physically abused again if returned to his care because he failed to even acknowledge the abuse. See MCL 712A.19b(3)(b)(i). There was also clear and convincing evidence that respondent father failed to provide proper care and custody and was not reasonably likely to do so within a reasonable time because of the abuse, domestic violence, and probation restriction. See MCL 712A.19b(3)(g). Further, there was clear and convincing evidence that the children were likely to be harmed if returned to respondent father because of the unacknowledged abuse. See MCL 712A.19b(3)(j).

The trial court also did not clearly err when it held that termination was not clearly against the children's best interests. MCL 712A.19b(5). Respondent father argues that a committed and caring parent is better than the uncertainty of the adoption process. However, not only was there evidence that he was not a caring parent, there was evidence that he was an extremely abusive parent, resulting in physical and psychological injury to his children. Further, his probation restriction meant the children would face years of uncertainty if his rights were not terminated.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ William B. Murphy
/s/ Stephen L. Borrello