

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

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In the Matter of ANTHONY JAMES ASHMAN,  
VALERIE MARIE ASHMAN, and TIMOTHY  
RYAN ASHMAN, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CAROL DENISE ASHMAN,

Respondent-Appellant.

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UNPUBLISHED

April 10, 2008

No. 277222

Macomb Circuit Court

Family Division

LC No. 2004-5720811-NA

Before: Zahra, P.J., and Whitbeck and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (g), and (j). We reverse and remand.

A petition was authorized in August 2004 to take temporary custody of the minor children plus an older child, Melissa, now aged 19.<sup>1</sup> Allegations included sexual abuse of Melissa by father Russell Ashman, sexual abuse of Valerie and Melissa by grandfather Richard Ashman, and failure to protect by respondent and Russell, who allegedly allowed Valerie and Melissa to stay at Richard's house while knowing he may have sexually abused his daughter when she was a child. Further, the petition charged that respondent was aware that Russell exposed the children to pornography, and that she left Melissa home from school with Russell although she felt uncomfortable. Later, in November 2004, an amended petition was filed adding allegations that respondent was aware that Russell was abusing Melissa and Valerie and did nothing to stop it, and that respondent told the children to lie about the sexual abuse.<sup>2</sup> On May 12, 2005, respondent pleaded no contest to some of the allegations in the amended petition,

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<sup>1</sup> Respondent also has two young adult sons, Greg and Carl.

<sup>2</sup> Russell pleaded no contest to the petition and signed a release of parental rights. Subsequently, he and Richard were each convicted of criminal sexual conduct and imprisoned. Russell's earliest release date is November 30, 2019 and Richard's earliest release date is July 16, 2010.

and the request for termination was deleted. A parent agency agreement (PAA) was drafted for respondent. It contained nine items, including parenting classes, a psychological evaluation, counseling, and suitable housing and employment.

A June 2005 psychological evaluation concluded that respondent was in denial and evincing anxiety and depression, although she was capable of supportive and positive parenting and earnestly wanted to learn and overcome the family problems. The children continued with therapy, and respondent commenced therapy and supervised visitations. She had not seen the children in eight months. Bimonthly family therapy with respondent, Melissa, Valerie, and their therapists began in July 2005. Lisa Haysmer, Melissa's therapist, reported that respondent said she supported the girls and believed their accounts of sexual abuse, but that the family had very poor communication skills. Respondent revealed seeing Melissa kissing older brother Greg when Melissa was about nine or ten years old and Greg was 13 years old. Melissa said it was more than this, and Haysmer believed Melissa. Meanwhile, Valerie's therapist, Jill Killenberg, reported that Valerie's placements in foster and relative care were unsuccessful due to depression, isolation from family, significant academic decline, and defiance. Anthony and Tim's therapist, Owen Pfaendtner, reported that Anthony had problems with mood swings, hygiene, social isolation, and expression of emotions. Anthony made a pornographic drawing and respondent did not know how to handle the situation. She was denying the abuse and had dependent personality traits. At family sessions, the boys greeted her with superficial hugs and appeared to have limited attachment. Three times respondent had received information suggesting actual or possible abuse, yet said she had no knowledge. In addition to the "kissing" between Melissa and Greg, there was pornography in the house and an incident when Melissa was very young and respondent saw Russell "straddling" her in a camper. Respondent immediately investigated, but Melissa and Russell said they were just wrestling or playing around.

Therapy continued and supervised visitation went well. Respondent was allowed unsupervised one-hour visits individually with each child in approximately March 2006. In family therapy, respondent was more assertive and supportive of her daughters. Respondent's visits with her sons went very well and it appeared as if all enjoyed themselves. The caseworkers observed respondent using skills from parenting classes. Her divorce from Russell was finalized, and the referee commended her for performing "the best I've seen" on a PAA. Expanded, unsupervised day visitations began.

In July 2006, however, Pfaendtner reported that respondent had told Anthony and Tim not to tell their aunt that their older brother Carl attended visits that he was not supposed to attend. This was a significant setback, according to Pfaendtner, and prognosis was now poor. Carl was a positive role model who supported his siblings, but he was allowed only one visit a month to foster bonding between respondent and the younger children. Another serious setback, in Pfaendtner's view, involved pornography in the home. Respondent had apparently known about the children's exposure to pornography, because she had said it was kept in a drawer in the bedroom, but a child had stated in family therapy that X-rated videotapes were on when the children were home and pornographic magazines were on the parents' bedroom floor in plain view. In response, respondent said she thought the children had not seen the pornography; if she saw any magazines on the floor, she would kick them under the bed or cover them with something, and the bedroom door was kept closed.

The guardian ad litem reported that all of the children wanted to go home and said good things about visitations. The caseworker, however, felt that respondent was not benefiting from counseling, and she and Pfaendtner recommended additional therapy. Respondent's new therapist, Dr. Dionne Edwards, saw respondent as a capable parent who had her children's best interests in mind. Respondent felt she was accountable for not knowing what had been going on in the home and for the children not being able to talk to her. But she noted that Melissa had been bribed and threatened by her father not to reveal their conduct. Now, the girls would come to respondent with their problems, and Greg had moved to Tennessee.

All four children testified at the termination hearing. Each of them testified that they considered respondent to be a good mother and did not want her parental rights terminated. As far as they knew, respondent was unaware of the sexual abuse by Russell and Richard. According to Melissa and Valerie, respondent was not home, and was often at work, when the abuse happened. Haysmer could not say that respondent had any direct knowledge of the abuse. She observed that respondent and Valerie had a "clear evident bond," the family was invested in therapy, and she felt they should continue to work towards reunification. The children could be returned slowly, with supervision for at least six months. Haysmer did not see it in Valerie's best interest to have respondent's parental rights terminated. At the beginning, respondent may not have believed Melissa, because Melissa had recanted. Haysmer felt that not disclosing Carl's presence at some visits was not a safety issue. Respondent was not given adequate time to improve, and the children would be traumatized whether or not respondent's parental rights were terminated.

Caseworker Jessica Rossow testified that respondent complied with all of the goals in the PAA, including housing, financial stability, psychological evaluation, and attending parenting classes and counseling. Respondent's only failings were in the subgoals of benefiting from parenting classes and counseling. Rossow cited reports by Pfaendtner and psychologist Patrick Ryan. However, Dr. Ryan, who evaluated the family in September 2006, testified that respondent appeared quite glad that both abusers were in prison. Dr. Ryan was not concerned about the children molesting each other if they returned home; they realized the inappropriateness of the abuse and were appalled by what happened to them. Respondent also must have sustained abuse and it left her distrustful. She had high normal scores on a parenting inventory, including good empathy levels and the ability to set limits and care for her children. In Dr. Ryan's opinion, lying about Carl coming to visits showed denial and difficulty confronting a hard situation. Dr. Ryan was also troubled by respondent's supposed denial of sexual activity between Melissa and Greg and her asking the caseworker if Greg could visit with the boys.

Also at the termination hearing, Dr. Edwards testified that he was not concerned about future sexual acting out if the children returned home. Dr. Edwards did not think that respondent would be in another romantic relationship until the children were adults (respondent testified that this was her intent). Dr. Edwards did not see the setbacks mentioned by Pfaendtner as serious, and said that Pfaendtner, who practiced with Dr. Edwards, had repeatedly said it was "crazy" to terminate respondent's parental rights. Dr. Edwards felt that respondent had the proper skills and could provide a safe environment. She was emotionally ready and could meet the children's needs. Dr. Edwards noted that the children were always well mannered, did well in school, and had no problems with crime or substance abuse.

Respondent testified at length regarding the changes she had made in therapy. She testified, and DHS did not contest, that Greg was allowed to come to visitations for about eight months until June 2005 with all four children, and until November 2005 with Anthony and Tim. Later, when Greg was in town, respondent actually got permission from the former caseworker for Greg to see the boys. As for Carl visiting when he was not supposed to, respondent explained that he had car trouble, and DHS did not tell her specifically that Carl should not be at unsupervised visits or that the visits were just for her. Respondent admitted that she was subpoenaed and testified for Russell in his criminal trial. She visited Russell in jail and met him at restaurants right after police removed him, because she “felt she had to.” However, Dr. Edwards testified that respondent was very fearful of Russell and had been emotionally abused by him. Dr. Edwards felt it would be harder for the children to recover without contact with respondent; they would be victimized again if her rights were terminated and they could not have contact with her.

This Court reviews for clear error a trial court’s decision that a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

After reviewing the record, we find that the trial court clearly erred in finding sufficient evidence to terminate respondent’s parental rights to the minor children. The evidence was not clear and convincing to satisfy the statutory grounds in MCL 712A.19b(3)(b)(ii), (g), or (j). Compliance with a PAA is evidence of ability to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). A parent must also benefit from parenting classes and counseling in order to provide a safe, nurturing home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). In this case, the trial court clearly erred in finding that respondent did not benefit sufficiently from parenting classes and counseling. Respondent attended over 100 therapy sessions, and the caseworkers saw her utilizing the teachings of parenting classes in visitations. The events termed “serious setbacks” by Pfaendtner were seen as issues to be dealt with by Dr. Edwards and Haysmer. Dr. Edwards’ contacts with respondent were both more sustained and more recent than Pfaendtner’s. In fact, Pfaendtner recommended continued family therapy. The testimony of respondent, Dr. Edwards, Haysmer, and the children, including Carl, showed that respondent had internalized positive behavior changes and the beliefs necessary to sustain them. See *In re Boursaw*, 239 Mich App 161, 172-173, 177; 607 NW2d 408 (1999), overruled on other grounds *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000). The court’s finding that the children were likely to sustain injury or abuse in respondent’s care was “essentially conjecture.” *In Re Sours*, 459 Mich 624, 636; 593 NW2d 520 (1999); *In re Boursaw*, *supra* at 177. Like the parent in *Boursaw*, respondent made “significant strides towards remedying [her] problems.” *Id.* at 176. She should be given the opportunity to continue working toward reunification.

Having not found sufficient evidence to establish a statutory ground for termination, this Court need not address the trial court’s best interests analysis. Nevertheless, for appellate purposes, we will do so. We review a trial court’s determination of the children’s best interests for clear error. MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357.

We find clear error in the trial court’s findings regarding the children’s best interests in this matter. The evidence clearly and convincingly showed that termination of respondent’s

parental rights would be clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 353. All of the children enjoyed visitations with respondent, and the caseworkers consistently found respondent's behavior appropriate. The children had depended on respondent for help with homework, school, and extracurricular activities. She cooked for her large family daily and supported the family financially. Often, she was the sole provider because of Russell's injuries. Of necessity, her jobs and the children's school activities took her away from home. The weak attachment observed early on in the court proceedings is understandable given the forced eight months of separation between respondent and the children and the attempts of relatives to blame respondent for the situation. With many months of therapy, attachment and bonding improved substantially. Respondent cared deeply for her children's emotional welfare; her seeming support of Russell had occurred before he was sentenced in April 2005, when respondent was isolated from the children and still under Russell's domination. Indeed, Haysmer opined that respondent had learned how her choices were wrong and that termination was not in Valerie's best interests. The testimony of Drs. Ryan and Edwards also supported this conclusion. Haysmer and Dr. Edwards were unconcerned about future acting out between the children.

Anthony, Valerie, and Tim are now 16, 15, and 13 years old, respectively. Termination of respondent's parental rights cut off the children's access to the most important and caring person available to help them mature into adulthood.

Reversed and remanded for further proceedings consistent with this opinion, including renewed efforts towards reunification of respondent and her children. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ William C. Whitbeck  
/s/ Jane M. Beckering