

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of TREVOR DILLON KALMAN  
and JOSHUA ANTHONY KALMAN, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAWN KALMAN,

Respondent-Appellant.

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UNPUBLISHED

April 29, 2008

No. 280854

Genesee Circuit Court

Family Division

LC No. 06-120746-NA

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(b)(i), (c)(i) and (j). We affirm.

On appeal, respondent argues that the requisite statutory grounds for termination were not established. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial 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); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 355-357; *Sours, supra* at 632-633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller* 433 Mich 331, 337; 445 NW2d 161 (1989). "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*; MCR 2.613(C).

The trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i). Respondent threatened to kill Trevor when he told her he did not want to take care of Joshua. She chased Trevor with a bat and attempted to hit him with a stick. She

hit him in the back with a shovel. On another occasion when Trevor said “no” to respondent, she chased him to the couch, jumped on him, and started hitting him on the head with her fists.

The court also did not clearly err in terminating respondent’s parental rights under MCL 712A.19b(3)(c)(i). Although respondent partially complied with her treatment plan, she did not resolve the major obstacles that prevented her from safely and appropriately parenting Trevor and Joshua. Although respondent’s substance evaluation did not recommend that she submit drug screens, there was some evidence that she was dishonest about her alcohol use. The court’s order from February 28, 2006 required respondent to submit to random drug screens. Other than respondent’s claim that she submitted a negative urine screen to her employer before being hired, there is no evidence that she complied with the court order to submit regular drug screens.

Respondent’s psychiatric and psychological evaluations recommended that she see a psychiatrist for medication and that she continue therapy to address her bi-polar condition. The psychological evaluation noted that respondent’s parenting deficiencies are reflective of a bipolar condition that was not sufficiently controlled. There is no evidence that respondent had regular psychiatric appointments or made the necessary efforts to better control her bipolar disorder and improve her parenting. In fact, the testimony revealed that respondent took herself off the medication that was prescribed to treat her mental illness. Respondent stopped regularly attending therapy in September 2006 and was not compliant with the therapy process. A parent’s failure to comply with the essential requirement of her treatment plan may justify termination of her parental rights based on continuing neglect. See *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56 (1991).

Additionally, although respondent completed parenting classes, she did not sufficiently benefit from them. One of petitioner’s witnesses testified that respondent’s parenting skills actually worsened near the end of the case. A parent must do more than merely participate in services designed to rectify the conditions that brought the child to the court’s attention. A parent must benefit from services and make changes necessary to “reach an acceptable level of parenting skill.” *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). Mere participation in a treatment plan is not the goal. There must be evidence of parental fitness. *Miller, supra* at 337, 340-344.

Respondent argues that she should not be “punished” for not obtaining a job and housing sooner given the poor economic climate and her limited education. While it is laudable that respondent obtained employment, the job she accepted required her to work daily, during the afternoon and evenings, which was inappropriate given the needs of her children and her history of having left them improperly supervised for extended time periods. Furthermore, respondent’s employment did not become full time and permanent until May 7, 2007. Likewise, there was conflicting testimony as to whether her two-bedroom apartment (which she obtained in January 2007) was ever presented for an assessment of its suitability.

With respect to termination under MCL 712A.19b(3)(j), much of the evidence discussed *supra* concerning MCL 712A.19b(3)(c)(i) also clearly established that in light of respondent’s past conduct, there was a reasonable likelihood that Trevor and Joshua would suffer harm if returned to her home. Respondent never demonstrated that she had improved her parenting skills. She demonstrated poor judgment and insensitivity to the children throughout the case.

There was evidence that Trevor was emotionally harmed by respondent's verbal and physical abuse of him.

Respondent argues that Trevor's testimony was not credible and therefore the court erred in relying on that testimony in terminating her parental rights. The evidence did not show that Trevor had lied or had reason to lie. The therapist from Lutheran Social Services testified that since being removed from respondent's care, Trevor was thriving and was in a better emotional state than he had ever been in. The court gave a lot of weight to the therapist's testimony, as she was an objective professional who was familiar with Trevor's needs and history

The trial court made specific efforts to carefully weigh Trevor's testimony appropriately, noting the discrepancies between his statements and respondent's testimony. The numerous proceedings in this case afforded the trial court an opportunity to make an informed and well-founded assessment of the credibility of both respondent and Trevor. Because the court was familiar with the parties and had many opportunities to observe their demeanor and tone, it was uniquely situated to assess their credibility. This Court must defer to the fact-finder's assessment of witness credibility. MCR 2.613(C); *People v Lemmon*, 456 Mich 625, 646-647; 576 NW2d 129 (1998); *People v DeLisle*, 202 Mich App 658, 662; 509 NW2d 885 (1993).

We affirm.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey