

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ISABELLE LA'SHAE PEREZ,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

REBECCA SUE PEREZ,

Respondent-Appellant,

and

CARLOS MANUEL PEREZ,

Respondent.

UNPUBLISHED

July 17, 2008

No. 282792

Kent Circuit Court

Family Division

LC No. 06-053188-NA

Before: Saad, P.J., and Fort Hood and Borrello, 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(3)(c)(i) and (g). We affirm.

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; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

There was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) because the conditions that led to the adjudication continued to exist at the time of the permanent custody hearing. Prior to the adjudication respondent had physically and verbally abused her children, was sexually and physically abused by her husband (respondent Carlos Perez), was unemployed, and had been diagnosed with depression that caused her to become suicidal. Respondent was provided services to work through these issues, but she never fully complied with those services. Following adjudication, respondent was given a new court-ordered treatment plan to address her issues. By the time of the permanent custody hearing, those conditions continued to exist because respondent had not sufficiently participated in or fully benefited from services to overcome her problems.

Respondent never resolved the domestic violence in her relationship with Perez. On September 14, 2007, four weeks prior to the permanent custody hearing, police officers were called to Perez's home due to a domestic violence incident. Respondent admitted to slapping Perez and allegedly pulled a phone cord from the wall and broke some furniture. Respondent and Perez never completed couples' counseling (they attended only five of fifteen scheduled sessions) and never overcame the issues in their relationship.

Respondent's employment history has also been inconsistent and continued to be an issue. Early in the case, respondent obtained a seasonal job at Wal-Mart that lasted only two months. Although respondent claimed she had several jobs afterward, she failed to provide verification of her employment. She finally provided a pay stub on the morning of the initial permanent custody hearing (October 11, 2007), but it indicated she had only begun working on September 17, 2007. Moreover, respondent never demonstrated financial stability or the ability to maintain employment.

Respondent's mental health was unstable prior to Isabelle's adjudication and she was not seeking treatment by the time of the permanent custody hearing. Respondent was prescribed anti-depressants but took herself off of the medication because she felt it was not helping her. But respondent never provided a note from her doctor indicating he supported her decision to stop taking anti-depressants. Respondent acknowledged that she was experiencing more anger and emotional difficulties since she stopped taking the medication. Although respondent completed anger management in March 2007, she asked for another referral for anger management shortly thereafter because she did not believe she had overcome her anger issues. Respondent received a referral but did not follow through on it.

Likewise, respondent's emotional well being continued to be unstable by the time of the permanent custody hearing. Respondent did not fully comply with counseling or sufficiently benefit from it. Although respondent initially saw a counselor somewhat regularly, she stopped attending the sessions when her counselor left on maternity leave and did not resume until the caseworker could find a counselor with whom she felt comfortable. Respondent agreed to see her former couples' counselor, and began individual counseling sessions with him on June 6, 2007. However, respondent only attended four sessions and stopped going on September 7, 2007. Respondent had not accomplished all of her therapeutic goals. It is not enough to merely go through the motions; a parent must benefit from the services offered so that she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

Termination of respondent's parental rights pursuant to MCL 712A.19b(3)(g) was also appropriate. Respondent could not provide Isabelle with proper care and custody. Throughout the case, respondent has not maintained a suitable home. Respondent did not obtain her own apartment until September 2007, at which time she had moved in with a new boyfriend who had a criminal history. Respondent's mother had to co-sign for the apartment due to her financial instability. The apartment did not have hot water or furniture. Respondent's inability to maintain a stable home and provide appropriate housing for Isabelle demonstrates her inability to provide proper care for her.

Furthermore, respondent never addressed the mental health issues that interfered with her ability to properly care for Isabelle. And, respondent did not maintain consistent employment or demonstrate monetary stability to show that she could financially support Isabelle. "[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Respondent's inability to fully comply with her treatment plan, to demonstrate emotional and mental stability, stable housing, employment, and to overcome the domestic violence in her relationship with Perez demonstrated that she could not provide proper care of Isabelle.

Respondent argues that her substance abuse was erroneously used as a basis for terminating her parental rights because she was not provided notice and a hearing or an opportunity to rectify the condition. Because there was another statutory basis to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i) and because other factual evidence existed, independent of respondent's drug use, supported termination of parental rights under MCL 712A.19b(3)(g), we hold that the trial court's consideration, if any, of the drug use was harmless. The erroneous termination of parental rights under one statutory basis for termination can be harmless error if the court also properly found another ground for termination. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Finally, the trial court did not clearly err in its best interests determination. There was no evidence in the record that it was not in Isabelle's best interests to terminate respondent's parental rights. To the contrary, the evidence established that Isabelle was in need of permanency and stability. It was not in Isabelle's best interests to live with respondent, who had unresolved domestic violence problems and other instability. Respondent has not consistently shown the ability to meet her own needs or the needs of Isabelle.

A best interest finding requires more than a parent who is appropriate during weekly visitation. See *Trejo*, *supra* at 356-357. Contrary to respondent's contention, she was unable to parent Isabelle because she had not demonstrated that she was mentally and emotionally stable, had resolved her domestic violence issues, or had obtained adequate and consistent housing and employment. "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000), quoting *In re AP*, 728 A2d 375, 379 (Pa Super, 1999).

Affirmed.

/s/ Henry William Saad

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello