

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TAPANGA ROSE MARCELLA
LONG and KOWEN JAMES LONG, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

THERESA LONG,

Respondent-Appellant.

UNPUBLISHED
February 12, 2009

No. 286436
Montcalm Circuit Court
Family Division
LC No. 2008-000317-NA

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

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(m). We affirm.

Respondent's involvement with petitioner began in 2003, when her eldest child was removed from her care due to neglect. At that time, respondent lacked housing, had unaddressed mental issues, and was involved in abusive relationships. During the prior proceedings involving that child petitioner provided respondent with services, but she failed to comply. In April 2004, respondent voluntarily terminated her parental rights to that child after termination proceedings had commenced.

A little over a year later, in June 2005, respondent gave birth to Kowen, and in June 2006, respondent had another child, Tapanga, the children at issue in this case. Petitioner did not immediately file a petition requesting removal of the children from respondent's care because she had gained some stability in that she was married to the children's father and had housing, and she agreed to participate in services. Petitioner began providing intensive in-home services to the parents after Kowen's birth, which they participated in throughout the duration of the proceedings.

Unfortunately, despite their participation with services, service providers expressed concerns about the parents' ability to properly care for the children. Specifically, it was reported that the children were both developmentally delayed. Tapanga had a serious feeding issue, was not gaining weight, and was diagnosed with failure to thrive. The parents failed to adequately or timely address Tapanga's feeding issues. Their home was unclean, cluttered, and unsafe for the

children. The children were left unattended in their cribs for lengthy periods of time, the children were often unkempt, and the parents had not demonstrated a significant benefit from services. In January 2008, the children were removed from the parents' care pursuant to a petition, which eventually culminated in the termination of respondent's parental rights.¹

Respondent claims that the trial court clearly erred in its best-interest determination given the testimony by the foster care worker supporting continued reunification efforts. We disagree.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). The statute in effect at the time the termination order in this case was entered provided that "[o]nce a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5).² We review the trial court's determination for clear error. *Trejo, supra* at 356-357. A finding is clearly erroneous if, although there is evidence to support it, we are 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). Further, to be clearly erroneous the decision must be more than just maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999).

While we are cognizant of the opinions recommending that respondent be afforded additional time and services to work toward reunification together with the children's father, we cannot say with a firm and definite conviction that the trial court erred. *JK, supra* at 209-210. It is evident from the court's findings that it gave substantial weight to respondent's continued inability to rectify her parenting shortcomings after having received intensive services for a significant period of time during these and prior proceedings. This conclusion was clearly supported by the evidence, particularly testimony by numerous in-home service providers who worked with respondent during these proceedings detailing her lack of significant benefit with extensive services, her ongoing parenting deficiencies, and concerns about the children's well-being while in her care. We find the ongoing concern about her ability to properly care for the children without continued services to be problematic considering the years of intensive in-home services and oversight already provided to her. Her lack of timely follow through to address Tapanga's feeding issue was especially troublesome and alarming in light of her prior termination, which involved medical neglect, in part. Even the foster care worker, who supported continued reunification efforts, expressed "many concerns" about respondent's parenting ability, felt she needed additional services to improve her skills and to gain a better understanding of her children's needs, and was concerned about returning the children to the

¹ Petitioner did not pursue termination of the father's parental rights, and he was offered a treatment plan and services to work toward reunification.

² Pursuant to an amendment of MCL 712A.19b(5) by the Legislature in 2008 PA 199, a trial court must now find, in addition to a statutory ground for termination, "that termination of parental rights is in the child's best interests." This amendment was made effective July 11, 2008, which is after the date of termination in the case at bar.

parents' care in an unsupervised setting. She admitted that, before the children could be returned to the parents' care, they needed to maintain stable, clean, and appropriate housing and a long period of emotional stability, along with demonstrating an active involvement with their children and appropriate parenting ability. The foster care worker also admitted that, given respondent's history, it was difficult to answer whether she could make improvements in the future, and most likely, multiple services would be necessary.³

Giving regard to the special ability of the trial court to judge the credibility of the witnesses who appeared before it, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), and in light of respondent's ongoing parenting deficiencies and the uncertainty regarding her ability to make further improvements with additional services, we cannot say that the trial court clearly erred in terminating her parental rights. *Trejo*, *supra* at 354.

Next, we reject respondent's claim that her prior voluntary termination could not be used to support termination under MCL 712A.19b(3)(m) because it was obtained under the provisions of the Adoption Code, MCL 710.21, *et seq.*, and not the provisions of the Juvenile Code, MCL 712A.1, *et seq.* First, respondent affirmatively waived appellate review of this issue by admitting during the current proceedings that "abuse and neglect proceedings" were previously initiated against her, she failed to successfully complete her case service plan at that time, and, as a result of her unsuccessful completion of the case service plan and the abuse and neglect petition, she voluntarily agreed to the termination of her parental rights to her eldest child. When she made these admissions, respondent acknowledged that she was doing so with the knowledge that she would lose her rights to an appeal on this specific issue, as her trial counsel advised. A party "may not waive objection to an issue before the trial court and then raise it as an error before this Court." *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). Regardless, respondent's claim lacks merit because the record clearly shows that her parental rights to her eldest child were voluntarily terminated following the initiation of neglect proceedings, thereby making termination of her parental rights to the children at issue in this case appropriate under MCL 712A.19b(3)(m). She admitted in the previous proceedings that she was unable to provide a safe, stable, and non-neglectful home environment, essentially conceding that the court would be able to find statutory authority for termination. *In re Toler*, 193 Mich App 474, 477-478; 484 NW2d 672 (1992). The trial court additionally made a best-interest determination. Contrary to respondent's argument, her decision to consent to the termination of her parental rights did not transfer the proceeding from the Juvenile Code to the Adoption Code. *Id.*

Likewise, we reject respondent's claim that the prior proceedings failed to comply with the statutory requirements regarding the execution of a parental release under the Adoption Code, MCL 710.29, thus making her prior voluntary termination invalid and void. Respondent failed to preserve this claim because there is no indication in the record, nor does she argue, that she ever moved for rehearing or sought revocation of her prior release before the trial court

³ It is noteworthy that the caseworker testified that respondent had exhausted all available services in Montcalm County, although the foster care worker, who supervised the visits in Kent County, believed that there was a parenting program that respondent had not yet participated in.

during the prior proceedings or that she ever appealed the voluntary termination. *In re Baby Girl Fletcher*, 76 Mich App 219, 221; 256 NW2d 444 (1977). MCL 710.29(10) provides that a release may not be revoked if the child has been placed for adoption unless a petition for rehearing or claim of appeal is timely filed. Instead, she apparently raised her claim concerning the validity of the prior termination for the first time during the current proceedings, almost four years later. Clearly, her claim was untimely. Regardless, under the circumstances of respondent's voluntary termination, which clearly fell under the Juvenile Code, the trial court was not required to comply with the statutory requirements governing the execution of a parental release under the Adoption Code. *Toler, supra* at 477-478.

Affirmed.

/s/ Jane E. Markey

/s/ William B. Murphy

/s/ Stephen L. Borrello