

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANASUE MARIE LUDEMANN,
ALEXISANNA LYNNE LUDEMANN,
ANGELEA VIVIAN-BLESSEN RIGGS,
RAYMOND DANIEL-THOMAS RIGGS, JR.,
DUSTIN MICHAEL RIGGS, ARIELLA
ROCHELLE-ROXIANNA RIGGS, and
AMARILLA NICHOLE WHATMAN-
LUDEMANN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARY ANN RIGGS,

Respondent-Appellant.

UNPUBLISHED
February 26, 2009

No. 286977
Lenawee Circuit Court
Family Division
LC No. 07-000052-NA

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) (“The child or a sibling of the child has suffered physical injury or physical or sexual abuse . . . [and,] [t]he parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future”). Because the trial court did not clearly err in concluding that the allegations of abuse were proved by clear and convincing evidence and that termination of parental rights was not against the best interests of the children, we affirm.

The trial court did not clearly err in finding that the statutory ground for termination of respondent’s parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court found sufficient evidence that respondent, having the opportunity, failed to prevent the children’s physical injury or physical or sexual abuse, and there was a reasonable likelihood the children would suffer injury or abuse in the foreseeable future if placed in respondent’s home. Respondent contends on appeal that the trial court’s decision was based on the less than credible testimony of

respondent's 14-year-old daughter that she was sexually abused, and that if sexual abuse occurred the evidence did not show respondent was informed and had opportunity to prevent it.

Respondent had a long history of abusive relationships, and protective services cases were opened in 2002 and 2006 for physical abuse of two of her children, during which she received counseling and other services. This proceeding commenced in February 2007 when protective services discovered respondent remained in contact with Rick Whatman, a sex offender and abusive boyfriend who fathered two of her children and a third during this proceeding. Petitioner requested termination in April 2008 when respondent's 14-year-old minor child made new allegations that Whatman had sexually abused her on two occasions when she was 12 years old.

The trial court found the abused child's testimony credible despite discrepancies in her April 2008 statement and June 2008 testimony whether penetration occurred in the second instance of abuse, and whether the child informed respondent of the abuse on the day it occurred or two weeks later. Other discrepancies existed regarding exactly when the abuse occurred, whether there was a cordless telephone in the home, and whether there was a lock on the bedroom door the child should have employed.

Evidence was presented indicating that the abused child was depressed, emotionally fragile, stole, lied about other things, was defiant and unmanageable, greatly resented respondent, and often expressed hatred of Whatman. Petitioner presented no medical evidence of sexual abuse. The minor child, even during four visits to a doctor for illness, never mentioned sexual abuse to anyone for well over a year.

The trial court agreed that the abused child was at times untruthful but believed she had repeatedly voiced her fear and dislike of Whatman to respondent and others, had been sexually abused by Whatman and had informed respondent after the first incident, and that respondent had failed to prevent the abuse. The trial court attributed any discrepancies in the child's versions of events to her memory being shattered by the assaults. Given the minor child's young age at the time of abuse and disclosure 18 months later, discrepancies could be expected, and there is not a definite and firm conviction that the trial court made a mistake in judging the abused child credible. The minor child tearfully testified before several strangers, her therapist testified there was no reason why the child would fabricate the abuse, and regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Miller, supra* at 337.

The trial court also correctly determined there was a reasonable likelihood that the children would suffer injury or abuse in the foreseeable future if placed in respondent's home. Respondent received counseling, psychological evaluation, and other services from 1999 to 2002 and 2006 to 2008. Psychological evaluations in 2001 and 2007 revealed no significant change in respondent's propensity to subject herself and her children to abusive relationships despite past services, and in addition to having contact with Whatman during this proceeding she began associating with another sex offender, William (Rob) Harrington. Respondent's counseling report two months before the termination hearing indicated she did not acknowledge Whatman and Harrington for the negative influences they were, and respondent refused to believe her child was sexually abused even after hearing her testify. It was not likely respondent would protect her children from Whatman and Harrington.

Further, the evidence showed that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). The evidence showed several instances of continued contact between respondent and Whatman, respondent's association with Harrington, and respondent's passing Harrington's contact information on to her 11-year-old daughter. Given clear evidence of respondent's continued failure in counseling to understand that the sex offenders and domestically violent men she associated with presented a danger to her children, her long history of associating with such men despite extensive services, and her refusal to believe her daughter was sexually abused, there was no likelihood that respondent would protect her children in the foreseeable future if granted their custody. The trial court correctly determined termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering