STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KEANAU LEE DENISE HUMPHREY, MARCESIA ARIYA RENEE CURTIS, DESTINY NICHOLE CURTIS, and LAINEIGH ALYSSA CURTIS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KEESIA MAY CURTIS, f/k/a KEESIA MAY HENDERSON,

Respondent-Appellant.

UNPUBLISHED
March 17, 2009

No. 287759
Cass Circuit Court
Family Division
LC No. 06-000255-NA

Before: Jansen, P.J., and Borrello and Stephens, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCR 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm.

Respondent does not directly challenge the trial court's findings regarding the statutory grounds for termination, but instead argues that the trial court violated her due process rights, US Const, Am XIV; Const 1963, art 1, § 17, by failing to expressly consider the condition known as battered woman syndrome as an explanation for her parental deficiencies. Respondent also argues that petitioner failed to provide reasonable services designed to address this condition. However, respondent did not argue either of these issues in the trial court, thus, these issues are not preserved. Therefore, respondent must show a plain error affecting her substantial rights. *In re McLeodUSA Telecommunications Services, Inc*, 277 Mich App 602, 619; 751 NW2d 508 (2008); *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996).

Parents have a fundamental liberty interest in the companionship, care, custody, and management of their children that affords them heightened due process protection against government interference. *In re B & J*, 279 Mich App 12, 18; 756 NW2d 234 (2008).

In this case, we reject respondent's claim that her due process rights were violated for several reasons. First, respondent did not present any direct evidence that she suffers from

battered woman syndrome. Although she relies on a definition of the syndrome contained in *People v Christel*, 449 Mich 578, 588; 537 NW2d 194 (1995), the Court in that case did not formally adopt any definition of "battered woman syndrome" but only referred to a treatise definition of the syndrome in the context of analyzing the narrow question whether expert testimony regarding battered woman syndrome was admissible to evaluate a complainant's credibility. *Id.* at 589, 591. The Court also expressly refrained from approving or disapproving the use of battered woman syndrome evidence when offered as exculpatory evidence by a defendant in a criminal trial. *Id.* at 589.

Second, even if evidence of battered woman syndrome might be admissible to excuse or mitigate a criminal defendant's culpability, respondent has not shown that it would be relevant in determining whether the statutory grounds for termination here were established by clear and convincing evidence. Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j). Section 19b(3)(g) provides for termination where "[t]he parent, *without regard to intent*, fails to provide proper care or custody . . . ." (Emphasis added.) Section 19b(3)(j) provides for termination where "[t]here is a reasonable likelihood based on the *conduct or capacity* of the child's parent, that the child will be harmed . . . ." (Emphasis added.) Similarly, the critical inquiry under § 19b(3)(c)(i) is whether the conditions that led to the adjudication, in this case exposure to domestic violence, are reasonably likely to be rectified within a reasonable time. Thus, termination is warranted under these subsections regardless of whether the respondent's parental deficiencies arise from intentional or culpable behavior. Therefore, even if battered woman syndrome could explain respondent's behavior, it does not operate as a defense to the statutory grounds for termination. For these reasons, respondent has failed to establish a plain error relating to the relevance of battered woman syndrome in this case.

We also reject respondent's argument that petitioner failed to provide reasonable services to address her condition. Under MCL 712A.18f(1), (2), and (4), petitioner was required to make reasonable efforts to rectify the conditions that caused the children's removal. See *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). MCL 712A.19a(2) provides that reasonable efforts to reunify the child and parents must be made, except in specified circumstances that are not applicable here. In this case the services provided to respondent were legally sufficient. Respondent was given counseling by therapist Becky Katovsich and parenting education by family therapist Julie Reising. Katovsich and Reising both testified that a major focus of their services was to address respondent's abusive relationship with her husband and help respondent understand how her continued relationship with her husband was harmful to her and the children. There is no indication that Katovsich, Reising, or any other service providers were unqualified to address the issue of domestic abuse or that the services provided to respondent were inadequate to address her needs.

Finally, we disagree with respondent's argument that the trial court's decision was improperly based on the speculative opinions of psychologists regarding her future behavior, contrary to *In re Hulbert*, 186 Mich App 600; 465 NW2d 36 (1990). We observe that the psychologists' testimony regarding respondent's future behavior was within the scope of their expertise, and plaintiff failed to object to the testimony. Furthermore, the trial court's findings were based on respondent's objective behavior of remaining in contact with her husband, taking his picture to show the children, taking the children to visit him, and her attempts to conceal this conduct. Accordingly, we find no error.

Affirmed.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens