STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ANNA PATTOK, EMILY PATTOK, KATHLEEN PATTOK, MATTHEW PATTOK, and SAMUEL PATTOK, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JOHN PATTOK,

Respondent-Appellant,

and

SHERYL PATTOK,

Respondent.

UNPUBLISHED
July 30, 2009

No. 287842
Kalamazoo Circuit Court
Family Division
LC No. 01-000156-NA

In the Matter of ANNA PATTOK, EMILY PATTOK, KATHLEEN PATTOK, MATTHEW PATTOK, and SAMUEL PATTOK, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHERYL PATTOK,

Respondent-Appellant,

and

JOHN PATTOK,

No. 287843
Kalamazoo Circuit Court
Family Division
LC No. 01-000156-NA

Respondent.

Before: Saad, C.J., and Jansen and Hoekstra, JJ.

PER CURIUM.

Respondents John Pattok and Sheryl Pattok both appeal by right the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

The children were removed from respondents' home in February 2008 because of its extremely unsanitary and deplorable condition, which made it unsuitable and unsafe for the children. Respondents had a prior history of court involvement. Their children were previously removed in both 2001 and 2003 because of similar conditions in the home. Services were provided after the children's removal in both 2001 and 2003, and the children were eventually returned to respondents' home. Witnesses familiar with respondents' prior history testified that the condition of the home in 2008 was worse than in either 2001 or 2003. Because services had previously been provided to respondents in connection with the 2001 and 2003 proceedings, and respondents still were unable to properly maintain the home, petitioner requested termination of respondents' parental rights at the initial disposition hearing in connection with the 2008 proceeding. Following a hearing, the trial court found that termination was warranted under §§ 19b(3)(g) and (j), and that termination of respondents' parental rights was in the children's best interests.

The petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

I. Docket No. 287842

Respondent-father argues that termination was not warranted under § 19b(3)(j) because this was only a "dirty house" case and he and respondent-mother were able to correct the conditions twice before. He emphasizes that the children were always properly fed and argues that, absent evidence of mental or physical abuse, he should have been given a third chance to demonstrate that he could properly care for the children.

However, the evidence showed that the home was beyond merely "dirty." The trial court characterized the condition of the home as "shocking" and witnesses described it as one of the worst they had seen. It was full of clutter, garbage, and debris, including old meat wrappings and hazardous fecal matter throughout the house. The clutter was so substantial that it was difficult to move around the house, unsafe to use the stairway, and the children often were not able to sleep in their own beds. Insects and rotted food were discovered in the refrigerator. Apart from the unsanitary condition of the home, the children's therapist testified that the

condition of the home was psychologically damaging to the children. Respondent-father's own adult daughter, who was living on her own, explained the difficultly she had living in the home under these conditions and the effect it had on her. Similar problems arose previously in 2001 and 2003, and respondents were provided with services in connection with those proceedings. The evidence that the condition of the home was even worse in 2008 showed that respondents did not benefit from the prior services. The trial court did not clearly err by finding that it was reasonably likely that the children would be harmed if returned to respondent-father's home under § 19b(3)(j).

We also disagree with respondent-father's argument that termination was not warranted under § 19b(3)(g). Initially, contrary to what respondent-father argues, the record does not indicate that the trial court improperly applied a policy of "three strikes and you are out." Rather, the court appropriately considered the evidence that respondents had twice before been involved with the court because of improper home conditions in evaluating whether there was a reasonable likelihood that respondents could correct the problems so that they would not recur, thereby enabling them to provide proper care and custody. Because respondents had been provided with services in the past and clearly had not benefited, the trial court did not clearly err by finding that respondents would not be able to provide proper care and custody within a reasonable time considering the children's ages. Although respondent-father testified that things would be different this time because he now had his priorities straight, given respondents' prior history the trial court did not clearly err by failing to credit that testimony. We cannot conclude that the trial court erred by finding that § 19b(3)(g) had been satisfied by clear and convincing evidence.

Respondent-father also argues that the trial court clearly erred by finding that termination of his parental rights was in the children's best interests. MCL 712A.19b(5). The trial court's best interest decision is also reviewed for clear error. *In re Trejo*, *supra* at 356. Although respondent-father's statement of this issue refers to the children's best interests, the substance of his argument is that it was improper to terminate his parental rights without providing services directed toward reunification. We disagree.

Generally, when a child is removed from a parent's custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f. However, a court is permitted to terminate parental rights at the initial dispositional hearing, and when the petitioner requests termination at the initial dispositional hearing, it is not required to develop and consider a case service plan to reunite the family. See MCR 3.977(E); MCL 712A.18f(3)(d); MCL 712A.19b(4). The petitioner need not provide services if it justifies its decision not to do so. See MCL 712A.18f(1)(b); *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000).

Here, petitioner twice provided services in the past to address the same conditions that led to the children's removal in 2008. The home's conditions in 2008 were just as bad if not worse than they had been in 2001 and 2003. Because services had previously been provided and respondents failed to benefit from those services, petitioner was justified in its decision to forego a service plan following the most recent removal. We therefore reject this claim of error.

II. Docket No. 287843

Respondent-mother argues that her parental rights were improperly terminated under § 19b(3)(g). She contends that the trial court clearly erred by finding that there was no reasonable expectation that she could provide proper care and custody within a reasonable time where no services were offered, particularly services aimed at addressing her depression. We disagree.

Initially, respondent-mother inaccurately asserts that because neither petitioner nor the court was involved with the family from 2003 until 2008, she necessarily maintained a proper home during this sustained period of time. The evidence showed that the children were removed for a second time in 2003, and did not return to the home until 2005. Further, respondents' adult daughter testified that the home was not consistently maintained in an acceptable condition during the period of time the court was not involved, and by 2008 was in the worst condition it had ever been. Thus, the evidence did not show that respondent-mother was able to consistently maintain a proper home, even when the court was not involved.

Respondent-mother's principal argument is that she should have been offered services for her depression, which she asserts is the root cause of her inability to maintain a proper home. She argues that there was no evidence showing that she would not be able to benefit from services within a reasonable time. We cannot agree. The evidence showed that respondent-mother received counseling and psychiatric services from petitioner in the past, but did not continue with those services once petitioner was no longer involved with the case. Moreover, respondent-mother admitted that she has suffered from depression since 1982 or 1983. Her continued inability to maintain a proper home in 2008, despite the past services she received, demonstrated that she had not benefited from those services. Given the length of time respondent-mother has suffered from depression, her failure to benefit from past services, and her failure to seek appropriate services on her own, there was no reasonable expectation that respondent-mother would be able to address this condition within a reasonable time considering the ages of the children. Therefore, the trial court properly determined that § 19b(3)(g) had been satisfied by clear and convincing evidence.

Respondent-mother also argues that her parental rights were improperly terminated under § 19b(3)(j). Again, we cannot agree. Respondent-mother argues that the fact that the trial court allowed unsupervised visits, even after termination of her parental rights, demonstrated that she did not present a risk of harm to the children. However, the risk of harm to the children was not based on their association with respondent mother herself. Rather, it was based on the psychological trauma and physical danger arising from their exposure to unsafe and unsanitary conditions over prolonged periods of time in respondent-mother's home. Respondent-mother emphasizes that the children's therapist agreed that it would be beneficial for the children to see respondents make progress in learning to care for their home. Even if this is true, however, the evidence did not establish a reasonable likelihood that respondents would be able to make progress in learning to provide a proper home within a reasonable time. As indicated previously, respondent-mother was provided with ample services and assistance to correct the home

problems in the past, yet they continued to occur. The trial court did not clearly err by finding that § 19b(3)(j) had been satisfied by clear and convincing evidence.[1]

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra

[1] Unlike respondent-father, respondent-mother has not argued in her brief on appeal that the trial court erred by finding that termination of her parental rights would be in the children's best interests. See MCL 712A.19b(5). Therefore, we decline to consider this matter.