STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TLJ and DMJ, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HELENJEAN JONES,

Respondent-Appellant,

and

CARL LEE JONES,

Respondent.

UNPUBLISHED
August 4, 2009

No. 290034
Van Buren Circuit Court
Family Division
LC No. 07-015824-NA

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CARL LEE JONES,

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and

HELENJEAN JONES,

Respondent.

No. 290355
Van Buren Circuit Court
Family Division
LC No. 07-015824-NA

Before: Beckering, P.J., and Wilder and Davis, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Respondent-parents were married on June 18, 2006. At the time of the twin children's birth on May 12, 2007 in the state of Michigan, respondent-father was incarcerated in the state of Mississippi. Four days after the children's birth, the Department of Human Services ("DHS") filed a petition seeking temporary wardship, alleging that respondent-mother's cognitive delays rendered her unable to care for the children, and that she lacked adequate provisions and did not have a fit home for the children. The petition further alleged that respondent-father was jailed in Mississippi for larceny and drug offenses. The trial court authorized the petition on May 16, 2007, and the children were placed with DHS for care and supervision. Respondent-father was served with a copy of the petition while incarcerated in Mississippi.

After the trial court assumed jurisdiction over the children, respondent-mother completed a psychological evaluation in which she disclosed that she had been placed in almost 20 foster home placements as a child, and that due to a developmental disability, she had been identified as a vulnerable adult and received social security disability income. It was also disclosed during the evaluation that respondent-mother may have been a victim of domestic violence inflicted by respondent-father. The evaluating psychologist concluded that respondent-mother was mildly or moderately mentally retarded, and a vulnerable adult who was easily influenced by others. The evaluating psychologist further concluded that, given respondent-mother's limited cognitive abilities, she was not a good candidate for individual counseling or parenting training. Further, although respondent-mother was nurturing and appropriate with the children, such that respondent-mother's ongoing interaction with them would be positive, the psychologist opined that given the naiveté that accompanied respondent-mother's cognitive abilities, respondent-mother was not capable long-term of providing a safe home environment for the children. The psychologist therefore recommended a guardianship for the children where respondent-mother cared for them under the supervision of another adult.

For six months, respondent-mother progressed well with the services provided, and based on this progress the children were ordered returned to her care and control on October 30, 2007. Shortly thereafter, however, in January 2008, the assigned caseworker petitioned the trial court to again remove the children from respondent-mother's home when new allegations emerged that respondent-mother had again become subject to domestic violence, this time by a recent acquaintance whose contact with the minor children the respondent-mother was unable or unwilling to control. When questioned by DHS, the acquaintance gave DHS false identification information. DHS also developed concerns about respondent-mother's truthfulness, contributing to concerns about respondent-mother's ability to protect the children. Following a DHS petition, the children were again removed from the home. Services and visitation with the children continued, but in September 2008, DHS filed a petition seeking termination of the parental rights of both respondents.

To terminate parental rights, the trial court must find that at least one statutory ground for termination has been established by clear and convincing evidence and that termination of parental rights is in the children's best interests. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004); MCL 712A.19b(5). This Court reviews the trial court's determination that a ground

for termination has been established and its best interest determination for clear error. MCR 3.977(J); *In re Rood*, 483 Mich 73, 91; __ NW2d __ (2009).

During the termination hearing, the trial court heard evidence that respondent-mother had limited cognitive abilities, was easily influenced and vulnerable, and needed a support system in order to provide a safe environment for the children. It appeared that respondent-mother's pastor was an especially positive influence upon her, and this pastor worked hard to support respondent-mother while, at the same time, respecting her need for independence and her role as the children's primary caretaker. However, there were reported problems in their relationship and, on at least one occasion, she left his church and instructed workers from the Department of Human Services to no longer involve him in her case. In addition, respondent-mother started distrusting other people initially identified as supporters for her, including one of her neighbors and the children's foster parents. Although respondent-mother and her pastor attempted to gloss over these reported problems in their testimonies, it was clear that the support system in place in January 2008 when the children were returned to her care was no longer intact and effective. Therefore, the risk to the children was attributable to respondent-mother's lack of a stable support system, which in turn was caused by her problems in trusting others. There was also evidence that respondent-mother may have lacked the ability to judge who should be included in her support system. Although her pastor testified that he and his church were willing to continue supporting her, it was unclear that respondent-mother trusted that support and would accept it. If she failed to consistently trust a positive influence like her pastor, there was a high, demonstrated risk that she could fall victim to negative influences and, if that occurred, the children would be at even more risk of harm.

Given this evidence, the trial court did not clearly err when it found that respondent-mother, without regard to intent, failed in the past to provide proper care or custody for the minor children, and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time given the ages of the children (who were 18-month-old twins at the time of the termination hearing). MCL 712A.19b(3)(g). The trial court also did not clearly err when it found sufficient evidence established that there was a reasonable likelihood, based on respondent-mother's conduct or capacity, that the children would be harmed if returned to respondent-mother's home. MCL 712A.19b(3)(j).

Respondent-mother argues on appeal that, given her cognitive limitations, petitioner should have done more to help her. However, pursuant to MCL 712A.18f(4) and MCR 3.373(F)(3), the trial court must find and determine whether "*reasonable efforts were made*" by DHS to prevent the children's removal from the home and/or to rectify the conditions that caused the child's removal from the home in the first place. The trial court found that petitioner promoted and assisted respondent-mother's efforts to build a support system for herself, and, after respondent-mother's initial support system fell apart, petitioner attempted to assist respondent-mother in the formation of a new support system (e.g., one worker urged her to rejoin her pastor's church, and another worker urged her to rely more on the foster parents). We find no clear error in the trial court's determinations that, ultimately, respondent-mother could not establish that she would be able to benefit from the reasonable efforts to provide services made by the DHS or that the conditions leading to the children's removal could be rectified even with the offering of such efforts. As noted previously by this Court, " '[i]f 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*, 1999 Pa Super 78; 728 A2d 375, 379 (1999).

Respondent-father had been incarcerated in the state of Mississippi throughout the children's entire lives, including during the proceedings at issue. He argues on appeal that the trial court was required by MCR 2.004(F) to offer him, as an incarcerated parent, the opportunity to participate in the termination hearing. However, this Court has specifically held that MCR 2.004 addresses only parties incarcerated under the jurisdiction of the Michigan Department of Corrections. *In re BAD*, 264 Mich App 66, 71; 690 NW2d 287 (2004). Therefore, because MCR 2.004 did not apply in this case, it follows that the trial court did not violate MCR 2.004(F) by allowing respondent-father to testify by speakerphone, but not participate by speakerphone in the entire termination hearing.

Because respondent-father had been incarcerated for the children's entire lives, he had failed to provide any care or support for them. His release date was unclear in that respondent-father claimed it was January 8, 2009, based on the application of a Mississippi law that reduced the sentences of certain offenders, but he provided no proof of this, and the Mississippi Department of Corrections website listed his tentative release date as January 23, 2010. Assuming that his release date was January 23, 2010, respondent-father could not even begin the process of establishing his parenting skills until a year after the termination trial, and this was an unreasonable amount of time for the children to wait. In addition, there was evidence that respondent-father had abusive tendencies,[1] which placed the children at risk of emotional and physical harm if they resided with him, especially if respondent-father felt such tendencies were justified. As such, the trial court did not clearly err when it found that the evidence clearly and convincingly established that respondent-father, without regard to intent, failed in the past to provide proper care or custody for the minor children, and that there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time given the ages of the children. MCL 712A.19b(3)(g). The trial court also did not clearly err when it found that there was a reasonable likelihood, based on respondent-father's conduct or capacity, that the children would be harmed if returned to respondent-father's home. MCL 712A.19b(3)(j).

Both respondents contend that the termination of parental rights ordered by the trial court was not in the children's best interests. We disagree. While it was clear that respondent-mother was loving and attempted to be a nurturing parent, the evidence failed to demonstrate that respondent mother could sustain a stable support system in order to safeguard the children's safety (especially the safety of TLJ, who had medical issues that required special attention).

[1] In letters written during his incarceration, respondent-father verbally abused respondent-mother and made intimidating statements. He testified at the termination hearing that there was no harm in the statements and that the statements were justified. There was also evidence that respondent-father may have been physically abusive to respondent-mother. Although respondent-mother denied the domestic violence allegations, she did admit in a psychological evaluation that respondent-father had accused her of infidelity, called her names, and, on one occasion, slapped her in the face.

Additionally, respondent-father did not share any bond with the children and exhibited abusive and intimidating tendencies. The children had been in foster care for all but three months of their 18-month-old lives at the time of the termination hearing and were in need of permanence. Based on this evidence, the trial court did not clearly err when it found that termination of respondents' rights was in the children's best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Kurtis T. Wilder
/s/ Alton T. Davis