

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GABRIELA RIAN ROMERO and
PATRICK TRISTIN CHILDERS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LISA MARIE ROMERO,

Respondent-Appellant.

UNPUBLISHED

August 6, 2009

No. 288607

Oakland Circuit Court

Family Division

LC No. 08-742702-NA

Before: Owens, P.J., and Servitto, and Gleicher, JJ.

PER CURIAM.

Respondent appeals as of right the order of the trial court terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(b), (g), and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interest of the child(ren). MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours, supra* at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is 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).

Termination of parental rights is appropriate under MCL 712A.19b(3)(b) if the court finds by clear and convincing evidence that

The child or sibling of a child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable

likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

We initially note that respondent plead no contest to the allegations in the petition, which not only permitted the court to find the facts contained in the petition by a preponderance of the evidence for purposes of adjudication, but also established a statutory basis for termination. A review of the record further established clear and convincing evidence to support termination under the above statutory provision cited above.¹

Respondent acknowledged that she failed to protect her son from physical abuse. Respondent witnessed her son's putative father physically assault him on several occasions. She nevertheless allowed the child's abuser to live with her and to later return to the home during the course of these proceedings, even though she knew at that time that he was a parole absconder. Respondent was also abused by her son's father, sometimes incurring injuries that required medical attention, and sometimes in front of the children. Furthermore, respondent failed to protect her daughter from her mother's husband, although respondent herself had been sexually abused by this man as a child. The above provided a sufficient basis to terminate respondent's parental rights under MCL 712A.19b(3)(b).

Because only a single statutory ground needs to be proven in order to terminate parental rights, we need not consider whether the trial court erred in finding that termination was appropriate under MCL 712A.19b(3)(g) and (j). *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). However, the record contains ample evidence supporting termination under these statutory provisions.

¹ The trial court indicated that it terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i) ("The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home"). It appears that this was a misstatement on the court's part, as there was no evidence before the court that respondent herself perpetrated any physical or sexual act against the children as set forth in subsection (3)(b)(i). However, there was significant testimony and other evidence that respondent could have prevented injuries perpetrated upon the children by a nonparent and that there was a reasonable likelihood that the children would suffer abuse by the nonparent if placed in respondent's home as set forth in MCL 712A.19b(3)(b)(ii) and (iii). Based upon the evidence, it is reasonable to conclude that the trial court intended to reference MCL 712A.19b(3)(b) (ii) or (iii) in its termination analysis. To the extent that the trial court intended to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), we find that termination under that subsection was clearly erroneous.

Respondent failed to protect her children from physical and sexual abuse for an extended period of time, and continued to allow her son's abuser to reside with her even after the children were removed from her care. Respondent also had ongoing substance abuse issues that she failed to adequately address. Respondent's psychological examiner and one of her substance abuse counselors testified that respondent was unlikely to change her behavior. The psychological examiner also testified that respondent was impulsive and irresponsible, and did not believe she had been neglectful of her children. Based upon the above, it is clear that respondent failed to provide proper care and custody for her children and there was no reasonable expectation that she would be able to do so within a reasonable time. There was also a reasonable likelihood, based on respondent's conduct, that the children would be harmed if returned to her home. The trial court did not err in terminating respondent's parental rights.

We further find no error in the trial court's finding that termination was in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Respondent's ongoing and largely unaddressed substance abuse issues combined with her failure to protect her children from violent and predatory men supported the trial court's determination that the children would be continually endangered in respondent's care.

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher