STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of T.M.A. and N.L.G., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

COURTNEY ARENT,

Respondent-Appellant,

and

TERAM BYRD and LEE GREEN,

Respondents.

UNPUBLISHED
September 17, 2009

No. 290820
Berrien Circuit Court
Family Division
LC No. 2007-000039-NA

In the Matter of T.M.A., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TERAM BYRD,

Respondent-Appellant,

and

COURTNEY ARENT,

Respondent.

No. 290821
Berrien Circuit Court
Family Division
LC No. 2007-000039-NA

In the Matter of N.L.G., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LEE GREEN,

Respondent-Appellant,

and

COURTNEY ARENT,

Respondent.

No. 290822
Berrien Circuit Court
Family Division
LC No. 2007-000039-NA

Before: Sawyer, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

In these consolidated appeals, respondent Courtney Arent appeals the termination of her parental rights to her two children pursuant to MCL 712A.19b(3)(c)(i), (g) and (j), respondent Lee Green appeals the termination of his parental rights to his son pursuant to §§ 19b(3)(g) and (j), and respondent Teram Byrd appeals the termination of his parental rights to his daughter pursuant to §§ 19b(3)(a)(ii), (g), and (j). We affirm.

We review a trial court's finding that a statutory ground for termination was proven by clear and convincing evidence for clear error. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

The trial court did not clearly err in finding that § 19b(3)(c)(i) was proven by clear and convincing evidence with respect to respondent Arent, whose no contest plea to the original petition provided the basis for the trial court's exercise of jurisdiction over the children. Although the original petition did not specifically refer to anger issues, it did refer to respondent Arent's substance abuse problem, and a psychological evaluation introduced at the initial dispositional hearing linked respondent Arent's drug abuse to her emotional issues. Thus, we find no clear error in the trial court's consideration of emotional issues in its evaluation of § 19b(3)(c)(i). A court may apprise itself of all relevant circumstances when evaluating the conditions that led to the adjudication. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Also, a court properly may consider evidence admitted at one hearing in all subsequent hearings, because child protection proceedings are treated as a single, continuous proceeding. *In*

re LaFlure, 48 Mich App 377, 391; 210 NW2d 482 (1973). Further, considering the evidence that respondent Arent resumed using illegal drugs after displaying difficulty in controlling her anger in front of the children in 2008, we find no clear error in the trial court's finding that the conditions that led to the adjudication continued to exist and were not reasonably likely to be rectified within a reasonable time considering the children's ages.

The trial court also did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence with respect to respondent Arent. The evidence showed that respondent Arent regressed in her participation in services in 2008. Housing was the only area where she had made progress. "[A] parent must benefit from services offered so that he or she can improve parenting skills to the point where the children will no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Further, the trial court did not clearly err in finding that § 19b(3)(j) was also established. Respondent Arent's regression in 2008 with respect to her participation in services and her continuing substance abuse showed that the children would be at risk of harm if returned to her home. See *In re Gazella*, *supra* at 676; see, also, *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000) (failure to substantially comply with court-ordered case service plan is evidence that returning the child to the parent may cause a substantial risk of harm to the child's physical or mental well-being).

Accordingly, we reject respondent Arent's arguments that the statutory grounds for termination were not established by clear and convincing evidence.

We similarly reject respondent Green's arguments that the evidence did not support termination of his parental rights under §§ 19b(3)(g) and (j). We agree with respondent Green that, because he was not the subject of the earlier adjudication proceeding, legally admissible evidence was required to establish the statutory grounds for termination as applied to him. MCR 3.977(1)(b); *In re CR*, 250 Mich App 185, 201-202; 646 NW2d 506 (2001). However, the mere existence of hearsay evidence does not warrant reversal. *Id.* at 207. Respondent Green's mere assertion that various reports in respondent Arent's case would be hearsay as applied to him is insufficient to establish error. An appellant may not merely announce a position and leave it for a reviewing court to discover and rationalize the basis of the claim. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). In any event, we find no error requiring reversal.

Where a parent does not have custody of a child, parental fitness may only be evaluated in other ways, such as attendance at court-ordered parenting classes, continued contact with the child and caseworkers, and attendance at court hearings. *In re Sours*, 459 Mich 624, 638; 593 NW2d 520 (1999); see, also, *In re JK*, *supra* at 214. Here, while the caseworker gave favorable testimony at the June 11, 2008, review hearing regarding respondent Green's compliance with drug screens and parenting time, the caseworker testified at the later termination hearing that respondent Green thereafter regressed to the point where he was no longer participating in parenting time or other services, or even maintaining contact with her to inquire about his child.

Further, while respondent Green did not testify at the termination hearing, his attorney conceded that respondent Green was not then in a position to care for his child. Considering the record as a whole, we find no clear error in the trial court's finding that § 19b(3)(g) was proven by clear and convincing evidence, nor are we persuaded that this finding was not supported by legally admissible evidence. Further, considering the evidence regarding respondent Green's

lack of commitment to his son, as shown by his regression after the June 11, 2008, review hearing, the trial court did not clearly err in finding that § 19b(3)(j) was also established by clear and convincing evidence.

Lastly, respondent Byrd challenges both the existence of a statutory ground for termination and the trial court's assessment of his daughter's best interests. We review both of these issues for clear error. See *In re JK*, *supra* at 209. The evidence that respondent Byrd failed to participate in services at the beginning of the case, despite being given an opportunity to do so, and did nothing toward obtaining custody for more than 91 days, supports the trial court's determination that § 19b(3)(a)(ii) was sufficiently established.

We similarly find no clear error in the trial court's finding that §§ 19b(3)(g) and (j) were both established by clear and convincing evidence with respect to respondent Byrd. This case is distinguishable from *In re Dahms*, 187 Mich App 644; 468 NW2d 315 (1991), and *In re Newman*, 189 Mich App 61, 66; 472 NW2d 38 (1991), both of which involved circumstances where there was evidence of the respondents' actual participation in services. Further, unlike *In re Newman* where the respondents were refused services, the evidence in this case showed respondent Byrd's lack of commitment to his daughter by his failure to participate in services that were offered, and then, an inability to participate in services when he was incarcerated for violating his parole. He was still incarcerated at the time of the termination hearing in February 2009, and his release date was uncertain. His daughter had already been in foster care for approximately 23 months at the time of the termination hearing. Respondent Byrd was unable to provide a home for her to achieve a stable living environment, but only proposed changing her current placement. The evidence clearly showed that respondent Byrd would be unable to provide proper care and custody within a reasonable time considering his daughter's age.

We also reject respondent Byrd's argument that the evidence that supported termination under § 19b(3)(j) was based on conjecture. Considering respondent Byrd's incarceration and the other proofs, the trial court did not clearly err in finding that there was a reasonable likelihood that the child would be harmed if placed in his care.

Finally, the record does not support respondent Byrd's argument that the trial court failed to apply the best interests standard in MCL 712A.19b(5), as amended by 2008 PA 199, effective July 11, 2008. Consistent with the amended statute, the trial court affirmatively found that "it is in the best interests of the minor child . . . to terminate the parental rights of the legal father Teram Byrd." We find no clear error in this finding. See MCR 3.977(J); *In re JK*, *supra* at 209. Thus, the trial court did not err in terminating respondent Byrd's parental rights to the child.

Affirmed.

/s/ David H. Sawyer
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra