

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RACHEL HOLBROOK, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LUCINDA SUE HOLBROOK,

Respondent-Appellant,

and

THOMAS ABSON,

Respondent.

UNPUBLISHED

October 13, 2009

No. 291184

Kent Circuit Court

Family Division

LC No. 07-054238-NA

Before: Talbot, P.J., and Wilder and M. J. Kelly, JJ.

PER CURIAM.

Respondent, Lucinda Holbrook, appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(i) [child has been deserted by parent in excess of 91 days], (c)(i) [conditions leading to adjudication continue to exist], (g) [failure to provide proper care and custody] and (j) [reasonable likelihood of harm to child if returned to parent]. We affirm.

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 has 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. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). Once a statutory ground for termination is established by clear and convincing evidence, the court shall order termination of parental rights if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). The trial court's best interests decision is also reviewed for clear error. *In re Trejo, supra* at 356-357.

Respondent contends that the trial court's reliance on § 19b(3)(a)(ii) was improper because that subsection was not identified in the petition as a statutory basis for termination. However, because the trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g), and (j) were each proven by clear and convincing evidence, any error in relying on § 19b(3)(a)(ii) to substantiate the termination of respondent's parental rights is deemed harmless. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

We disagree with respondent's argument that termination was improper under § 19b(3)(c)(i) because the evidence did not support a finding of educational neglect, or show that she had a substance abuse problem. Contrary to respondent's assertions, the trial court did not rely on these factors in terminating her parental rights and specifically determined at the adjudication hearing that the allegations of educational neglect were not proven. Rather, the principal issue was respondent's mental and emotional instability, which negatively impacted her ability to meet and understand the child's needs. In 2005, respondent was diagnosed as having a major depressive disorder with psychotic features, and it was apparent from her interactions with caseworkers, and from her confused statements and irrational behavior, that problems pertaining to her mental health status remained a significant obstacle to reunification. Services were offered to address this issue, but respondent refused to participate. She never completed a psychological evaluation, failed to cooperate with in-home service providers, and ceased attending counseling appointments and parenting classes. Consequently, the trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist and that respondent's failure to participate in services precluded any likelihood that the conditions would be rectified within a reasonable time. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

Respondent focuses on the physical conditions of the home she provided for her child to argue that termination of her parental rights was not warranted under § 19b(3)(g). However, housing was not a significant issue. Respondent failed to provide proper care for her child by frequently leaving her home alone despite her young age, and by her inability to recognize or meet the child's emotional needs. Because respondent routinely failed to participate in proffered services and demonstrated a lack of insight into the reasons underlying the child's removal from the home, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time period. Further, although there was no evidence that respondent had physically harmed the child, the fact that she frequently left her young child home alone and was unable to recognize or meet her child's emotional needs supports the trial court's finding that the child would be at risk of harm if returned to respondent's home. Therefore, the trial court did not clearly err in finding that § 19b(3)(j) was also proven by clear and convincing evidence.

We disagree with respondent's argument that petitioner should have done more to reunite her with her child. Petitioner was required to make reasonable efforts to rectify the conditions that led to the child's removal from the home by adopting a service plan, MCL 712A.18f(4), and to provide necessary services to facilitate the child's return. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). See also *In re Rood*, 483 Mich 73, 104-106; 763 NW2d 587 (2009). The record discloses that petitioner arranged for in-home service providers, a psychological evaluation, a substance abuse assessment, individual counseling, parenting classes, and other case management services designed to assess and address respondent's mental health and emotional instability, but that respondent did not participate or follow through with the

services. Hence, the lack of effort to achieve reunification is directly attributable to respondent and not petitioner.

Respondent also contends that if petitioner believed that she required mental health treatment, it should have taken steps to have her involuntarily committed to a facility for treatment. However, there was no basis for believing that respondent was unable to function on her own or presented a sufficient safety risk to herself or others to necessitate an involuntary commitment. Significantly, respondent missed several scheduled appointments and failed to complete a psychological evaluation, making it extremely difficult, if not impossible, for petitioner to obtain an accurate diagnosis of her current condition and develop recommendations for appropriate treatment. Petitioner cannot be faulted for not pursuing additional treatment options when respondent refused to even participate in a preliminary evaluation. Further, respondent's criticism of her own guardian ad litem for not requesting that she be involuntarily committed cannot be attributed to petitioner.

Finally, respondent argues that termination of her parental rights was not in the child's best interests. Although there was evidence of a strong bond between respondent and the child during the early stages of the proceedings, respondent visited the child only six times between October 2007 and July 2008, and then stopped visiting altogether. By the time of the termination hearing in early 2009, the child no longer indicated that she missed having contact with respondent. Considering that any previous bond that existed no longer remained in tact, and that respondent could not reasonably be expected to provide emotional support or guidance for the child anytime soon, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Kelly