

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEVON LEE WAGNER and
ANNA MARIE WAGNER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KEITH EDWARD WAGNER,

Respondent-Appellant,

and

JULIE ANN SNOWBERGER,

Respondent.

In the Matter of DEVON LEE WAGNER and
ANNA MARIE WAGNER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JULIE ANN SNOWBERGER,

Respondent-Appellant,

and

KEITH EDWARD WAGNER,

Respondent.

UNPUBLISHED

March 9, 2010

No. 293533

Macomb Circuit Court

Family Division

LC No. 2008-000118-NA

No. 293609

Macomb Circuit Court

Family Division

LC No. 2008-000118-NA

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

With regard to respondent father, the trial court did not clearly err by finding that the statutory grounds were established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The conditions leading to adjudication were respondent father's substance abuse, incarceration, domestic violence against respondent mother, and his abandonment of his then six-month-old daughter at a drug house. At the time of the termination hearing, respondent father was again incarcerated and he had not had treatment for substance abuse or domestic violence. Further, he had made no attempt, during his time out of jail, to comply with the parent-agency agreement or seek visitation with his children. The conditions leading to adjudication therefore continued to exist, and respondent father was not able to provide proper care and custody at that time.

Further, there was no reasonable likelihood that he would be able to rectify the conditions leading to adjudication or be able to provide proper care and custody within a reasonable time considering the children's ages. At the termination hearing in July 2009, respondent father testified that he was not then able to care for the children and would not be able to do so for some time because he was to be incarcerated until October 2009 and then would be in treatment. Respondent father's failure to show any interest in complying with the parent-agency agreement in the past makes him a poor candidate for completion of the parent-agency agreement in the future. In addition, there was a reasonable likelihood the children would be harmed if they were returned to respondent father's care. Given his extensive criminal history and incarceration record, he was likely to be imprisoned again, leaving the children in an unstable home environment. His substance abuse also clearly endangered the children.

Finally, the trial court did not clearly err by finding that termination of respondent father's parental rights was in the children's best interests. MCL 712A.19b(5). Respondent father testified that he had been incarcerated for at least ten years of his son's life, and the children had been in foster care for most of his daughter's life. Respondent father did not seek visitation with the children and may have seen them only sporadically during the year and a half they were in care. No bond existed between respondent father and the children, and he had no means to take care of them. Therefore, the trial court did not clearly err in its best interests determination.

With regard to respondent mother, the trial court did not clearly err in finding that the statutory grounds were established by clear and convincing evidence. MCR 3.977(J); *Trejo*, 462 Mich at 356-357. The conditions leading to adjudication were domestic violence, respondent mother's substance use, her failure to protect the children, and her action in allowing respondent father to take their infant daughter leading to the child's abandonment at a drug house. At the time of the termination hearing, the conditions had not been rectified. Respondent mother admitted to the foster care worker in February 2009 that she was using alcohol, she continued to

be a victim of domestic violence perpetrated by respondent father, and she continued to allow respondent father access to their daughter during her unsupervised visits with the children.

Respondent mother argues that respondent father's testimony was not credible and that the trial court clearly erred by finding that respondent mother allowed him into her home. However, this Court is to give due regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1990). Further, respondent father's testimony was supported by police reports indicating that the police responded to respondent mother's home numerous times for domestic violence, that each time respondent mother refused to press charges, and that respondent father kept clothing and drug paraphernalia in the home. Therefore, the trial court did not clearly err in finding that respondent mother allowed respondent father into her home. Moreover, the trial court's finding that it did not matter if respondent mother allowed respondent father into her home, or if he broke into the home, is accurate considering respondent mother's inability to protect herself and her children from respondent father.

Because of respondent mother's contact with respondent father, the conditions of adjudication continued to exist and she was unable to provide proper care and custody for her children. If respondent mother could not keep respondent father away while otherwise compliant with her parent-agency agreement, the trial court did not clearly err by concluding that it was unlikely that she would be able to do so consistently within a reasonable time. Moreover, because respondent father's presence endangered the children, the trial court did not clearly err by concluding that there was a reasonable likelihood that they would be harmed if returned to respondent mother's home.

The trial court also did not clearly err by finding that termination of respondent mother's parental rights was in the children's best interests. MCL 712A.19b(5). Respondent mother's son was afraid, and steadfastly refused, to go to visits with respondent mother, and he "tore the house apart" when he was encouraged by his grandmother to do so. Respondent mother's daughter had to be coaxed to go to visits and did not want to kiss respondent mother goodbye or even make eye contact with her. Given respondent mother's substance abuse, failure to keep respondent father out of her home, and her severely weakened bond with the children, the trial court did not clearly err in its best interests determination.

We affirm.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood