

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TRINITY NIANA-DIAMOND
CROSS and KHI LADUN TORRENCE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LADUNA MYISHA EVANS,

Respondent-Appellant,

and

CHRISHANE MARQUISE CROSS and WALTER
ELFONSO TORRENCE,

Respondents.

UNPUBLISHED

April 22, 2010

No. 293004

Muskegon Circuit Court

Family Division

LC No. 08-037555-NA

Before: SERVITTO, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Respondent Evans appeals as of right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).¹ We affirm.

¹ According to the transcript of the termination trial, in terminating Evans' parental rights, the trial court stated that it found "grounds specifically under 3G, 3J, 19B3C(i) (2)." Immediately thereafter, in terminating the parental rights of respondent Cross, the court stated that "the grounds for termination have been proven under the same statute as to MCLA 712(A)(19)(b)(3)c, Roman numeral one I should say and Roman numeral two, G and J." Therefore, although the transcript is not perfectly clear, we conclude that the trial court terminated Evans' parental rights under both §§ 19b(3)(c)(i) and (c)(ii). Regardless, a court need only find that *one* statutory ground for termination exists. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000).

Evans challenges the trial court's conclusions that a statutory ground for termination existed and that termination was in the children's best interests. We review a trial court's finding that at least one statutory ground for termination has been proven by clear and convincing evidence, and the trial court's determination regarding the children's best interests, for clear error. *In re Trejo*, 462 Mich at 356-357; MCR 3.977(J).

The trial court concluded that §§ 19b(3)(c)(i), (c)(ii), (g), and (j) had each been proven by clear and convincing evidence and that termination was in the children's best interests, but did not make any factual findings in support of those conclusions. An order of termination "may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order." MCR 3.977(H)(3); see also MCL 712A.19b(1). The court is required to "state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(H)(1). The purpose of requiring the court to make findings of fact and conclusions of law is to ensure that it was aware of the issues and correctly applied the law and to facilitate appellate review. See *Triple E Produce Corp v Mastronardi Produce*, 209 Mich App 165, 176; 530 NW2d 772 (1995). In this case, although the trial court erred in failing to make findings of fact on the record, the error was harmless and a remand for such findings is unnecessary. There is no indication that the court was unaware of the issues in the case or misapplied the law. The court stated that it based its conclusions on "the testimony given in open court today and based upon the information received in previous court hearings and the exhibits admitted . . . and the matters determined at adjudication." Because none of the facts at issue are in dispute, a remand for factual findings would not facilitate our review.

Evans first argues that there was insufficient evidence establishing a statutory ground for terminating her parental rights. We disagree.

MCL 712A.19b(3) provides, in pertinent part:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to

provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court obtained jurisdiction over this case in July 2008, due to Evans' mental health problems, as well as Cross's mental health problems and substance abuse. Cross was Evans' live-in boyfriend and the father of one of the minor children. Other conditions that arose were unsuitable housing, in that Evans continued to reside with Cross, and Cross's threats of bodily harm against a caseworker. At a plea hearing in July, Evans admitted that she had been hospitalized for mental health issues. At a dispositional hearing in September, petitioner presented evidence that Evans completed a psychological evaluation indicating that she had "some mental health issues," that there was "a moderate risk of future neglect" of the children, and that it was imperative "for the safety of her children that she maintain psychiatric and counseling supervision." Cross's evaluation indicated that he suffered from severe mental illness. At the time of the hearing, he was in jail for domestic violence against Evans. A service plan was established for Evans that included parenting time, parenting classes, mental health counseling, and other services. The trial court indicated to Evans that the children would not be returned to her if Cross remained untreated or continued to behave violently. At a review hearing in December, it was reported that Evans completed parenting classes and that she and Cross were receiving mental health treatment, although neither of them signed a release. Evans and Cross continued to live together. After Cross stated that he still smoked marijuana and did not wish to cooperate with petitioner, the court stated, "I think that reunification [with Cross] is absurd. . . . The mother is going to have to make up her own mind how she's going to proceed. If she wants to continue to live with Mr. Cross then I don't think that's going to be feasible to be able to return the children." At the termination trial in June 2009, petitioner presented evidence that although it offered to help Evans obtain her own housing and with transportation, she chose to continue residing with Cross. She had not seen the children in several months, and neither she nor Cross had provided financial support for the children in more than 91 days. A foster care worker testified that Evans and Cross had "not followed through with mental health services" and that without such services, "the children are in danger." Thus, there was clear and convincing evidence that the conditions bringing the children under the court's jurisdiction continued to exist and would not be rectified within a reasonable time, §§ 19b(3)(c)(i) and (c)(ii),² that Evans would not provide proper care or custody for the children within a reasonable

² Although there were less than 182 days between the issuance of the initial dispositional order and the filing of the termination petition, more than 182 days elapsed between the issuance of the initial dispositional order and termination. MCL 712A.19b(3)(c) does not require that petitioner wait 182 days to file the termination petition. See *In re Sours*, 459 Mich 624, 636; 593 NW2d 520 (1999) (stating that termination is appropriate under §§ 19b(3)(c)(i) and (c)(ii) "where the children have come within the jurisdiction of the court, and, at a termination hearing at least 182 days later, the court finds that those conditions or other conditions that would bring the child

(continued...)

time, § 19b(3)(g), and that it was reasonably likely the children would be harmed if returned to Evans' home, § 19b(3)(j).

Evans further argues that the trial court clearly erred in its best interests determination. See MCL 712A.19b(5). Again, we disagree. In addition to the likelihood that the children would be harmed if returned to Evans' home, the record indicates that Evans failed to maintain a steady relationship with the children. She did not visit the children for several months, despite being offered gas cards and bus passes to enable her to visit them, and spoke to the children on the telephone only sporadically. Evans relocated to Arkansas with Cross in May 2009, or sometime before. She did not inform the children that she was moving, had no contact with the children after moving, and did not appear for the June 2009, termination trial. The record contains no explanation for her absence at trial. Given Evans' effective abandonment of the children, the trial court did not clearly err in concluding that termination was in the children's best interests.

The trial court did not err in terminating Evans' parental rights.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering

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within the jurisdiction of the court are continuing”).