

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DANIEL OSTRANDER,
TERRAH OSTRANDER, and ROBERT
OSTRANDER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMIE DANIEL OSTRANDER,

Respondent-Appellant,

and

JAMIE SUE OSTRANDER,

Respondent.

In the Matter of DANIEL OSTRANDER,
TERRAH OSTRANDER, and ROBERT
OSTRANDER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMIE SUE OSTRANDER,

Respondent-Appellant,

and

JAMIE DANIEL OSTRANDER,

UNPUBLISHED

June 3, 2010

No. 293934

Shiawassee Circuit Court

Family Division

LC No. 2008-012155-NA

No. 294534

Shiawassee Circuit Court

Family Division

LC No. 2008-012155-NA

Respondent.

Before: BANDSTRA, P.J., and FORT HOOD and DAVIS, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father appeals as of right the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g), and respondent-mother appeals by delayed leave granted the same order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (with regard to the youngest child only) (j). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). We review the trial court's decision for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). "A decision qualifies as clearly erroneous [only] when, 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.'" *Id.*, quoting *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). When reviewing the trial court's decision, MCR 2.613(C) requires that this Court accord due deference to the trial court's assessment of the credibility of the witnesses who appeared before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 2.613(C). As observed by our Supreme Court in *In re Miller*,

The deference required by MCR 2.613(C) can make a critical difference in difficult cases such as the one before us. In contrast to the reviewing court, the trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony. [*Id.*]

Having carefully reviewed the lower court record, and affording the required deference due the trial court's findings, we conclude that the trial court did not clearly err by concluding that at least one statutory ground for termination was established by clear and convincing evidence with respect to both respondents. The issues that led to adjudication included respondents' long history of protective services involvement regarding domestic violence, deplorable home conditions, and inability to manage money and pay necessary household expenses, as well as respondents' inability to benefit from services and concerns from hospital staff regarding respondents' ability to care for newborn Robert's considerable medical needs. Respondents received many services both before and after the minor children were removed from the home. However, the issues that led to adjudication continued to exist at the termination hearing, almost a year later. Although there was evidence that respondents made progress on the cleanliness of their home, they had been unable to maintain a stable home suitable for the children, or to maintain employment. At the time of trial, respondent-father, and apparently, respondent-mother were living in a one-room efficiency apartment, but they were unable to pay

their rent for that apartment and were facing eviction. They planned to move in with respondent-father's father and his girlfriend in a three-bedroom trailer if the minor children were returned to their care until they could secure employment and obtain appropriate housing. The testimony of the workers assisting respondents with budgeting was that they did not make good financial decisions, choosing to purchase items that they did not need rather than pay necessary bills. Domestic violence continued to be an issue, not only involving verbal threats and name calling but escalating to physical violence, including hitting or kicking walls causing holes and an incident in which respondent-father threw a hot beverage on respondent-mother.

The evidence showed that the minor children were detrimentally affected by the domestic violence in respondents' home. The children showed regression in their acting out behaviors when they were returned to respondents' care for a period of time and were exposed to domestic violence between respondents. Respondents were involved in counseling for anger management and parenting issues and attended several parenting classes, but the evidence did not show that they benefited from these services. In addition, the trial court was concerned with respondents' psychological evaluations, which were admitted into evidence. Respondent-father's evaluation stated that he did not put the needs of the children ahead of his own and thought that child rearing was a mother's role. It also indicated that he lacked the capacity to contain his anger and aggression for long and that, as a result, there is a strong likelihood of him acting out in an aggressive manner, and further, that he is likely to be impatient and respond in an angry or aggressive manner to typical child transgressions. The report of the psychologist stated that respondent-mother had issues with paranoia and delusional thinking and that she failed to report incidents of such thinking to avoid attention from others, or for fear that it would be challenged or used against her in some way.

While we are sympathetic to respondents' economic plight, the evidence was sufficient to permit the trial court to conclude that respondents had not made sufficient progress as to the non-economic concerns that resulted in the children's removal, to warrant delaying termination of respondents' parental rights to permit them additional time to find employment and suitable, stable housing. For these reasons, we find no clear error in the trial court's conclusion that termination of respondents' parental rights was warranted.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5). Applying the clear error standard of review as described above, and affording the required deference to the trial court's assessment of witness credibility, we also conclude that the trial court did not clearly err in determining that termination of respondents' parental rights was in the children's best interests. Petitioner had been involved with the family for three years and respondents still could not provide the minor children with a stable home, domestic violence continued to be an issue, and they were unable to show that they could make appropriate parenting decisions for the minor children. Respondents had not bonded with Robert because he was removed from respondents' care shortly after he was born. Although respondents had a bond with the two older minor children, the trial court was presented with sufficient evidence to permit it to conclude that the needs of the minor children for stability, permanence, guidance, and safety outweighed that bond.

Respondent-mother contends that the trial court showed prejudice toward respondents because they were poor and that it chose to rule as it did because the foster parents, a more affluent family, could provide a better home for the children. Respondent-mother argues that her due process rights were violated because the decision was based on her economic status. This argument is without merit based on the lower court record. Respondents had received services for over three years to address their issues and were unable to show that they could make appropriate financial decisions with regard to paying their bills and maintaining stable housing, provide an environment for the minor children that was free of domestic violence, and make appropriate parenting decisions. While the current economic environment surely played some role in respondent-father's ability to maintain employment and respondent-mother's ability to obtain employment, their issues were longstanding and not entirely dependent on finances.

Respondent-father argues that his due process rights were violated because the trial court did not hold a dispositional review hearing within 14 days of the removal of the minor children from his care. Respondent-father does not represent that this issue was raised at the trial level. Unpreserved constitutional error is reviewed under the plain error rule. Respondent must show that error occurred, the error was plain, that is clear or obvious, and the plain error affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 587 NW2d 130 (1999). Additionally, pursuant to MCR 3.902, limitations on corrections of error in cases filed under the Juvenile Code are governed by MCR 2.613, which provides:

An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

MCR 3.974 governs removal of a child who remains in the home after the initial disposition hearing, or who has been returned to the home from foster care. As respondent-father correctly points out, when such minor children are removed from the home on an emergency basis – that is, before a dispositional hearing at which the trial court changes their placement, MCR 3.974(A)(3) – MCR 3.974(C) provides that a “dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown.”

The two older children were originally removed from respondents' home in January 2008. The trial court gave petitioner discretion to return the two older children to respondents' home and in May 2008, they were returned to their parents' care. The trial court entered its order once again removing the two older children from the home on November 20, 2008. The record reflects that a petition was filed on November 21, 2008, seeking removal of the two older children; the allegations included substantiated complaints of domestic violence in October and November 2008, verbal name calling and threats between respondents at least one to two times a day, unfavorable psychological evaluations of respondents, failure to make progress in therapy, poor financial choices, and the deterioration of Daniel's behavior while in the home. The record further reflects that a preliminary hearing was commenced that same day; it was adjourned to permit respondents to obtain court-appointed counsel. The hearing was continued three days later, at which point the trial court found that it was contrary to the welfare of the children to remain in the home because of verbal threats and domestic violence that occurred in the home

and the behavior of the children resulting from that violence. The preliminary hearing was further adjourned for 11 days, for “good cause . . . to allow for legal counsel to be present.” The hearing concluded on December 4, 2008, at which time, the trial court scheduled a full dispositional review hearing for January 5, 2009.

Respondent-father’s argument that he was denied his due process rights to a dispositional review hearing within 14 days after the two older children were removed from his care does not rise to the level of a constitutional error requiring relief. Respondent was provided with the opportunity to object to the removal and the timing at the preliminary examination that commenced the day after the removal, and was then adjourned first to a date three days after removal and then to a date 14 days after removal. This Court does not have information regarding the trial court’s reason for setting the dispositional hearing for the date that it chose, but even assuming that the court committed a plain error in not holding a dispositional review hearing within 14 days, on the record presented we do not conclude that the error affected respondent-father’s substantial rights. The children were removed from the home because of domestic violence between respondents and the affect of the domestic violence on the children and their behavior. Respondent-father does not dispute that domestic violence occurred between him and respondent-mother. A full dispositional hearing was held approximately 45 days after the minor children were removed. Respondent-father does not indicate how the outcome of that hearing would have been different had it been held 14 days after removal; he does not identify any witnesses or evidence that would have been available to him had the hearing been held earlier, nor does he indicate that the trial court relied on events occurring between 14 days and 45 days after the removal in continuing the children’s placement outside the home. Under these circumstances, this Court cannot conclude that respondent-father’s substantial rights were violated by the trial court’s failure to hold a dispositional review hearing within 14 days of the children’s removal.

We affirm.

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood

/s/ Alton T. Davis