

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
September 28, 2010

In the Matter of C. BARR, Minor.

No. 296357  
Cheboygan Circuit Court  
Family Division  
LC No. 08-004342-NA

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Before: MURPHY, C.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Respondent mother appeals as of right the termination of her parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In order to terminate parental rights, a trial court must find that a statutory ground for termination was established by clear and convincing evidence and that termination is in the child's best interests. MCL 712A.19b(3) and (5). This Court reviews these findings for clear error. MCR 3.977(K); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appear before it. MCR 2.613(C); *In re Fried*, 266 Mich App at 541.

The trial court did not clearly err in holding that petitioner had presented clear and convincing evidence that established statutory grounds for termination pursuant to MCL 712A.19b(3)(g). Respondent argues that *In re JK* requires us to reverse the trial court's finding on this statutory ground for termination of her parental rights. In *In re JK*, the respondent-mother successfully complied with all the requirements of the parent-agency agreement. *In re JK*, 468 Mich at 206-207. Yet the trial court terminated the respondent-mother's parental rights under § 19b(3)(c)(ii) (other conditions for jurisdiction exist that parent failed to rectify) and (g) (failure to provide proper care and custody) based on testimony that she was not appropriately bonded with her child, despite conflicting testimony from the respondent's therapist (who was in a better position to know). *Id.* at 207-208, 212. Our Supreme Court ultimately held that "the parent's *compliance* with the parent-agency agreement is evidence of her ability to provide proper care and custody." *Id.* at 214 (emphasis in original).

As respondent acknowledges, a parent must not only comply with services offered; he or she must also benefit from the services such that he or she has acquired improved parenting skills to the point where the children are no longer at risk in the parent's home. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Respondent contends that she completed all services and substantially benefited from them, and that, therefore, § 19b(3)(g) was not established under *In re JK*. We disagree. The legal standard is not whether the parent "substantially benefited" from the services, but whether the parent benefited *such that he or she can provide a safe, nurturing home for the minor child*. Unlike the respondent-mother in *In re JK*, therefore, respondent's "substantial" compliance did not negate any statutory basis for termination. The *JK* Court acknowledged the possibility that a case may arise in which "satisfaction by the parent of the parent-agency agreement does not render the parent 'fit.'" *Id.* at 214 n 20. This is such a case.

Respondent acknowledges on appeal that *something* happened to the minor child, based on her very accurate description of male anatomy. As the trial court held, clear and convincing evidence established that the child *was* sexually abused while in respondent's care and custody and that respondent repeatedly exercised the kind of poor judgment that allowed the abuse to occur, even if she did not abuse the child herself as the child had reported. The evidence established that respondent persistently failed to even admit that the child had been sexually abused, and she took absolutely no responsibility for the fact that she allowed this to happen. A parent's persistent failure to gain control over a recurring problem is a ground for termination of parental rights under section (g). See *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996). Respondent could not reasonably be expected to maintain a home environment that kept the child safe from further sexual abuse when she could not even acknowledge the consequences of her former poor choices.

The trial court also did not clearly err in finding that clear and convincing evidence established a ground for termination under MCL 712A.19b(3)(j). Respondent argues that the trial court erred by focusing on past behavior to determine that there was a reasonable likelihood that the child would be harmed if returned to respondent, that the decision was pure speculation, and that it was based wholly on the principle of anticipatory neglect. Again, we disagree.

The trial court did not base its decision exclusively on respondent's 20-year history of DHS involvement. There was evidence that respondent posed a low to moderate risk of sexual abuse to her young daughter based on an extensive risk assessment evaluation that was conducted in February 2009. The evaluator concluded that the risk level would become high if respondent again became involved with a man who had a history of sexual conduct with children, as she had done several times before. Moreover, several of the child's caregivers reported that the child's sexual behavior increased dramatically when she was advised that she may soon be visiting with respondent again, and also after she accidentally saw respondent on the street. In other words, the very thought or sight of respondent triggered the child to sexually act out, directly contrary to the main goal of her therapy, which was to assist her to return to the latent stage of sexual development, the proper stage for her until she was at least 11 years old. The child's therapist opined that being returned to respondent's care would harm the child emotionally by making it impossible for her to return to the latent stage of sexuality. In short, the child could not recover from the sexual abuse if she had contact with respondent.

Respondent additionally argues that the court should have declined to terminate her parental rights on the basis that termination was unnecessary because the minor child was currently safe in her father's custody with respondent under court order not to see her. Respondent cites no authority in support of this argument. The trial court correctly held that the statute does not differentiate between children who have been living with a parent and those living in foster care.

Finally, respondent argues at length that the minor child's credibility was diminished by the number of times she was "interrogated" regarding her allegations of sexual abuse. First, there was evidence that all interaction with the minor child with respect to her disclosures was appropriate and necessary. Moreover, even if respondent could disprove the child's allegations, other facts that provided a basis for termination pursuant to sections (g) and (j) would be unchanged.

Affirmed.

/s/ William B. Murphy

/s/ Joel P. Hoekstra

/s/ Cynthia Diane Stephens