

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 22, 2012

In the Matter of HAMADE, Minors.

No. 305115
Wayne Circuit Court
Family Division
LC No. 09-488630

Before: BORRELLO, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

The Department of Human Services (DHS) took the respondent-father's two minor children into care on suspicion of physical abuse and neglect. After nearly two years of individual and family therapy, respondent still refused to acknowledge that he or his girlfriend had abused the children, and the children showed increasing reluctance to return to their father's care. Respondent repeatedly failed to comply with simple court orders to provide proof of residency and income. The record evidence supports that respondent had physically abused and failed to protect the children and had not provided proper care and custody in the past. It also supports that the children would likely be placed in danger if returned to respondent's care. We therefore affirm the trial court's termination of respondent's parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (g), and (j).

I. BACKGROUND

JH (DOB August 18, 2002) and RH (DOB July 15, 2004) lived with both their parents until their mother's death in May 2008 from cancer. In the year following his wife's death, respondent cared for the children with the assistance of his grown children and his siblings. At some point, respondent became romantically involved with Naziah Yazbeck and began cohabitating with her.

In July 2009, a relative discovered bruising and scratching over a significant portion of RH's body. The relative photographed the child's injuries without respondent's knowledge and reported suspected abuse to Child Protective Services (CPS). During the CPS investigation, RH revealed that Yazbeck beat her with a stick and belt. The children reported that respondent also hit them and refused to protect them from Yazbeck. Respondent denied the abuse allegations. He initially denied knowing Yazbeck and then claimed that Yazbeck was only a babysitter. Respondent claimed that RH was a tomboy and was injured while playing roughly with neighborhood boys. He also accused RH of causing some of her own injuries.

The DHS took the children into custody on July 14, 2009 “[d]ue to physical abuse to [RH] and the fathers [sic] refusal to believe the child’s report she received the injuries from his LTP, Ms. Yazbeck.” DHS placed the children in their maternal grandmother’s custody. A pediatric abuse specialist examined RH about two weeks later. The physical examination was inconclusive. After reviewing the earlier photographs of RH’s injuries, however, the doctor determined that the child had been physically abused, most likely by being hit with a stick.

The DHS recommended parenting classes and individual therapy for respondent and the children. The court also ordered supervised parenting time. JH reported to the case worker that, at a parenting time session, respondent had whispered a threat to kill the maternal grandmother. Over time, JH hesitated to attend visitation and would run, hide, and fight to avoid being taken. The foster care worker successfully bribed JH to attend a couple more visitation sessions but then JH absolutely refused to attend. RH was more willing to attend visits but adamantly stated that she did not want to live with respondent. The DHS ordered family therapy to try and repair the child-parent relationships. While respondent learned to act more sympathetically around the children, he continued to disbelieve their accounts of abuse. Respondent continued to maintain that the children’s maternal relatives had planted the idea of abuse in the children’s minds and had brainwashed the children against him. Respondent even told his therapist that the maternal grandmother engaged in witchcraft and placed curses upon him. The children ultimately refused to attend further family therapy, specifically indicating that their father did not believe them.

The court had also ordered respondent to maintain suitable housing and a legal source of income and to provide proof of both. Despite several promises to present his income tax return forms, respondent never supplied any evidence proving his source of income. Respondent provided false addresses to the DHS case worker, thereby stymieing the worker’s attempts to conduct home evaluations. Respondent did not provide actual proof of residency until the termination hearing when he finally revealed a signed lease agreement. Yazbeck’s minor son testified that respondent had lived with his mother during the pendency of the proceedings.

On November 10, 2010, the DHS filed a supplemental petition seeking to terminate respondent’s parental rights. The DHS cited respondent’s failure to provide proof of suitable housing and a legal income. More importantly, the DHS cited respondent’s lack of progress in therapy and failure to admit or take responsibility for the abuse of his children. The children consistently reported that they did not want to return to respondent’s care. Family therapy had actually hindered the children’s improvement. JH began acting out aggressively in school and told the school social worker that he feared being returned to respondent. JH lied about his living arrangements during family therapy because he did not want Yazbeck to find him.

The DHS also cited respondent’s aggressive exhibitions during the pendency of the child protective proceedings. The children’s maternal grandmother secured a personal protection order against respondent because he had threatened to kill her and allegedly assaulted her outside the juvenile court building. On October 14, 2010, police were summoned to a restaurant where respondent had physically attacked a relative of Yazbeck. Respondent had asked Naji Yazbeck to lie to police in an ongoing criminal investigation. When Naji refused, respondent threw a knife at him, punched him and pinned him against the wall.

The trial court terminated respondent's parental rights in a short opinion and order on June 9, 2011, almost two years after the children had been taken into custody. The court found that respondent had continuously been noncompliant with the court-ordered service plan and had "not adequately benefitted from his individual therapy." The court cited respondent's failure to provide proof of stable housing and legal income and noted respondent's "elusive and dishonest" conduct. The court further observed that respondent was "still unable to acknowledge and take responsibility for his role in the physical abuse of the children." Accordingly, the court found it "clear that the conditions that caused the children to come into care" had not been rectified and could not be rectified within a reasonable time given the children's ages. Based on the same evidence, the court determined that termination was in the children's best interests.

II. STANDARD OF REVIEW

Respondent contends that the court lacked clear and convincing evidence to support termination of his parental rights under any statutory factor and that termination of his rights was not in the children's best interests. A court may terminate a respondent's parental rights if clear and convincing evidence proves one or more of the statutory grounds listed in MCL 712A.19b(3). Once a statutory ground for termination is established, the court must terminate the parent's rights if the court finds that termination serves the children's best interests. MCL 712A.19b(5). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child[ren]'s best interest[s]" under MCL 712A.19b(5). *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(K). Where, as here, the DHS seeks termination under a supplemental petition, the court must base its decision on "clear and convincing legally admissible evidence" supporting the additional cited grounds. MCR 3.977(F)(1)(b). "A finding is 'clearly erroneous' if 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." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citation omitted). We defer to the trial court's special opportunity to observe and judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

III. ANALYSIS

The trial terminated respondent's parental rights under the following provisions of MCL 712A.19b(3):

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(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.

* * *

(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 did not clearly err in finding clear and convincing evidence to satisfy these statutory grounds. When the children were removed from respondent's care in July 2009, RH had multiple bruises, scratches, and marks on numerous parts of her body. The DHS presented photographic evidence documenting these injuries. The examining doctor testified that the child's injuries were indicative of abuse and were consistent with being hit with a stick. The DHS also presented evidence that the children had reported to the doctor, the foster care worker and their treating therapists that Yazbeck and respondent hit them with sticks, belts, and fists. The DHS presented the children's reports that respondent had failed to protect them against Yazbeck's physical abuse. Most specifically, JH indicated that respondent would hit and punch him by the ears when he tried to protect his younger sister from Yazbeck's attacks.¹

¹ Although such out-of-court statements would generally be hearsay, the trial court conducted a "tender years" hearing and admitted the statements under MCR 3.972(C)'s evidentiary provisions for child protective trials. Specifically, MCR 3.972(C)(2) provides:

Child's Statement. Any statement made by a child under 10 years of age . . . regarding an act of child abuse [or] child neglect . . . performed with or on the

This evidence is more than adequate to support that the children had suffered physical abuse at respondent and Yazbeck's hands and that respondent had failed to protect the children from abuse. The physical abuse committed and allowed by respondent also adequately supports that respondent failed to provide proper care and custody for the children.

The DHS presented evidence that, despite two years of individual and family therapy, respondent still did not believe that Yazbeck had abused the children. Respondent also still had not admitted that he ever abused the children or failed to protect them against Yazbeck.² Rather, as late as April 2011 and despite the physical evidence of abuse, respondent continued to believe that the children's maternal grandmother had brainwashed them literally through witchcraft. In fact, Yazbeck's own son testified that respondent had continued his relationship with Yazbeck during the proceedings despite the abuse allegations. During family therapy sessions, the children sensed that respondent did not believe them. Because of respondent's attitude, the children eventually refused to attend parenting time or family therapy.

"A parent must benefit from services in order to provide a safe, nurturing home." *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Respondent's lack of progress in therapy and his continued reticence to provide basic information to the DHS and the court constitutes clear and convincing evidence of a "reasonable likelihood" that the children would face future abuse, neglect and harm if returned to respondent's care. This evidence also supports termination under subsection (c) as the conditions leading to adjudication had not been remedied. Respondent's refusal to listen to and protect his children further supports that respondent would be unable to provide proper care and custody for the children within a reasonable time. Simply put, respondent's abuse and neglect of his children had placed the children in harm's way in the past and his failure to acknowledge his parental shortcomings and his intentionally evasive behavior placed the children at risk of future harm. The court properly determined that at least one statutory ground for termination was established by clear and convincing evidence, and indeed the DHS established four separate grounds supporting the court's decision.

Respondent argues that the trial court prematurely terminated his parental rights as the DHS allowed the children to unilaterally discontinue parenting time and family therapy. The record supports that the foster care worker and therapist tried to reason with and convince the children to see their father. The case worker resorted to bribery. The maternal grandmother

child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement as provided in this subrule.

(a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.

² Respondent's therapist did opine, however, that respondent had begun to deal with the grief of losing his wife and to better control his anger.

exerted physical force to drag JH from her home and place him in the car so JH could attend sessions with respondent. Short of resorting to the type of corporeal punishment and abuse that led to DHS-involvement in the first place, there was nothing more the court, DHS, or the children's care takers could do.

Although respondent has not specifically argued the issue of best interests, we find no clear error in this regard. MCL 712A.19b(5); MCR 3.977(H)(3), (K); *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). The children deserved a home safe from physical and abuse and neglect, which respondent had not shown he could provide.

Affirmed.

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher