

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JENNIFER MARIE
WESTMORELAND and ALYASSA LYNN
NORTON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHERRY LYNN NORTON,

Respondent-Appellant,

and

DAVID WESTMORELAND II,

Respondent.

UNPUBLISHED

January 13, 2004

No. 249145

Kalamazoo Circuit Court

Family Division

LC No. 00-000214-NA

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent-appellant clearly failed to provide proper care and custody for the minor children when she moved in with a convicted child abuser after knowing him only two days. When the clear risk of harm materialized and respondent-appellant's live-in partner, Michael Adams, abused the children by striking them with the buckle end of a belt, respondent-appellant failed to intervene and denied that the abuse had occurred. Further, because overwhelming evidence, including jail visitor logs, indicated that respondent-appellant continued to have contact with the children's abuser despite various court orders, the trial court was justified in concluding that respondent-appellant would not be able to provide a safe environment for the children in the reasonable future. Respondent-appellant's testimony that she could now protect the children and would call the police if Adams came to her home was unconvincing in light of the overwhelming evidence that she continued to have a relationship

with him as well as her continuing insistence that he never struck the children, and it was the trial court's prerogative to disbelieve her testimony. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The psychological evidence indicating a strong likelihood that respondent-appellant would continue to place her children in situations where they were likely to be abused or neglected also supported the trial court's conclusion. The trial court did not clearly err by terminating respondent-appellant's parental rights pursuant to MCL 712A.19b(3)(g).

Respondent-appellant contends on appeal that her completion of the parent-agency agreement indicates her fitness as a parent, and that the trial court erred by terminating her parental rights based upon her violation of court orders prohibiting contact with Adams. The Michigan Supreme Court noted in *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003) that a parent's compliance with the parent-agency agreement is evidence of her ability to provide proper care and custody. In this case, although respondent-appellant did comply with most of the provisions of the parent-agency agreement, she did not comply with the provision barring her from having unrelated persons in her apartment or with the court orders specifically barring any contact with Adams. These were critical provisions because the primary issue in these proceedings was respondent-appellant's placing her children at risk of harm because of her dependent personality disorder and her poor judgment in adult relationships. Because respondent-appellant did not comply with critical provisions of her parent-agency agreement and court orders, her compliance with other provisions of the agreement does not compel the conclusion that she could provide proper care and custody for the minor children.

Respondent-appellant's argument that the trial court improperly terminated her parental rights merely because she violated a court order is also without merit. This Court held in *In re Draper*, 150 Mich App 789, 801-802; 389 NW2d 179 (1986), vacated in part on other grounds 428 Mich 851; 397 NW2d 524 (1987), that "[p]arental rights cannot be terminated for failure to abide by a court order. They can only be terminated based upon a finding of one of the criteria listed in § 19a [now 712A.19b(3)] of the juvenile code." However, this Court also noted that a parent's failure to abide by a court order may be considered to the extent that it is relevant to show the parent's inability to provide a fit home. *Id.* See also *In re Bedwell*, 160 Mich App 168, 176; 408 NW2d 65, 69 (1987). As previously noted, respondent-appellant's history of poor judgment in adult relationships made respondent-appellant's violation of the no-contact order critically relevant to her ability to provide the children with a safe and suitable home. The findings of the trial court indicate that the court terminated respondent-appellant's parental rights not because she disobeyed a court order, but because she could not protect her children. This conclusion was based not only on respondent-appellant's violation of the no-contact order, but also on testimony from respondent-appellant's therapist as well as the results of her psychological evaluations.

The evidence establishing that respondent-appellant would be unable to provide proper care and custody in the reasonable future also demonstrates that the minor children would likely be harmed if returned to respondent-appellant's home. Respondent-appellant's conduct in maintaining her relationship with Adams, considered in conjunction with her continuing insistence that he never struck the children, strongly suggests that the children would be at risk of abuse by Adams if returned to respondent-appellant's care. More generally, the psychological evidence showed that respondent-appellant has a high tendency to place the children in situations where they may be abused or neglected because of her adult relationships. In view of all this

evidence, we conclude that the trial court did not clearly err by terminating respondent-appellant's parental rights under MCL 712A.19b(3)(j).

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Although the children love their mother, they do not want to return to her care unless they know she can protect them. The evidence at trial showed that respondent-appellant had not severed her relationship with Adams. Respondent-appellant's continuing denial that Adams ever struck the children indicates respondent-appellant's continuing inability to protect them from future harm at his hands.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen