STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CODY HAKALA and ASHLEY OLSON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KERRI OLSON,

Respondent-Appellant,

and

EDWARD OLSON, JR.,

Respondent.

UNPUBLISHED
April 22, 2004

No. 250461
Dickinson Circuit Court
Family Division
LC No. 02-000506-NA

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

EDWARD OLSON, JR.,

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and

KERRI OLSON,

Respondent.

No. 250482
Dickinson Circuit Court
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Before: White, P.J., and Markey and Owens, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother Kerri Olson appeals as of right the termination of her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g) and (j), and respondent-father Edward Olson, Jr., appeals as of right the termination of his parental rights to his daughter pursuant to the same statutory grounds. We affirm.

Respondents challenge the trial court's findings concerning the statutory grounds for termination. 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 established by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If the court determines that a statutory ground for termination has been established, the court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). We review the trial court's decision to terminate parental rights for clear error. *In re Trejo*, *supra* at 356-357; *In re Sours*, *supra* at 633. The decision "must strike us as more than just maybe or probably wrong . . . ." *Id*. (internal quotation marks and citations omitted). Due regard is given to the special ability of the trial court to judge the credibility of the witnesses before it. See MCR 2.613(C).

The children came into care because respondent-father threw his stepson, lied about the incident, and instructed respondent-mother to lie and his stepson to withhold information when asked about the injury. Respondent-mother was aware that on several occasions respondent-father's discipline was excessive, yet she did not intervene. She accommodated the court's no-contact order between respondent-father and her son by leaving her son with a babysitter for days at a time. When the court later ordered respondent-father to leave the home, respondent-mother left their daughter with a babysitter for an excessive period of time so that she could be with respondent-father.

During the year that this case was pending, respondents failed to fully comply with the court's orders, particularly with respect to cooperating with the caseworkers. Respondents deceived caseworkers with respect to an injury that respondent-father caused to respondent-mother. Respondent-mother also deceived a caseworker concerning her contacts with respondent-father and was untruthful in her responses to a diagnostic survey concerning domestic abuse that she completed for Caring House. Both respondents refused to provide their phone numbers. They also refused and failed to cooperate with services. While they complied with some of the orders, some of the time, the court properly regarded their failure to substantially comply with the court's orders and case service plan as evidence of their inability to provide proper care and custody. *In re Trejo*, *supra* at 360-363. Moreover, their failure to substantially comply with the court's orders and case service plan was an indication that the neglect that had been shown would continue because they did not demonstrate a willingness to change. *In re Miller*, 182 Mich App 70, 83; 451 NW2d 576 (1990).

Respondent-mother contends that the trial court erred in finding a reasonable likelihood of harm if the children were returned to her care because there was no evidence that she was

abusive. Although she did not abuse the children herself, and recognized at times that her relationship with respondent-father was abusive, she ultimately decided to end divorce proceedings and resume her relationship with him because he "might not be that violent," and she "didn't want to be on [her] own." While respondent-father might have made some limited progress, there was no basis to conclude that he would suddenly become nonviolent, non-controlling and non abusive. The trial court's conclusions that, to her children's detriment, respondent-mother elected to choose respondent-father over the children, and that there was a reasonable likelihood the children would be harmed if returned to respondents' care were supported by the record.

Respondent-father contends that there was no evidence suggesting a likelihood of harm to his daughter if she were returned to his care. However, his mistreatment of his stepson is evidence of how he would be likely to treat his daughter. *In re Schmeltzer*, 175 Mich App 666, 678; 438 NW2d 866 (1989).

Accordingly, the trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g) and (j) were each established by clear and convincing evidence with respect to both respondents.[1] *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999).

Because a statutory ground for termination was established, the court was required to terminate respondents' parental rights absent clear evidence on the whole record that termination was not in the children's best interests. *In re Trejo*, *supra* at 354; MCL 712A.19b(5). No such "clear evidence" existed in this case. Respondents' relationship was unstable and abusive, and neither respondent demonstrated a willingness to place the needs of the children first.

Affirmed.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Donald S. Owens

[1] The trial court also cited § 19b(3)(c)(ii) as a statutory basis for termination, but it did not specify what "other conditions" caused the children to come within the court's jurisdiction. Because only one statutory ground is required to support termination of parental rights, it is unnecessary to consider whether termination was appropriate under § 19b(3)(c)(ii).