

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GENESIS UNDERWOOD and
ELIJAH UNDERWOOD, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARVIN BELSER,

Respondent-Appellant,

and

PLEZSHETTE THOMAS,

Respondent.

In the Matter of GENESIS UNDERWOOD and
ELIJAH UNDERWOOD, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PLEZSHETTE THOMAS,

Respondent-Appellant,

and

MARVIN BELSER,

Respondent.

UNPUBLISHED
November 14, 2006

No. 268681
Wayne Circuit Court
Family Division
LC No. 04-434359-NA

No. 268682
Wayne Circuit Court
Family Division
LC No. 04-434359-NA

In the Matter of MARVIN BELSER and
PRECIOUS RENA BELSER, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARVIN BELSER,

Respondent-Appellant.

No. 268803
Wayne Circuit Court
Family Division
LC No. 04-432670-NA

In the Matter of LATRINA MARIE BELSER,
Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARVIN BELSER,

Respondent-Appellant.

No. 268907
Wayne Circuit Court
Family Division
LC No. 95-332901-NA

Before: Whitbeck, C.J., and Sawyer and Jansen, JJ.

PER CURIAM.

Respondent father Marvin Belser appeals as of right the orders terminating his parental rights to his minor children.¹ Respondent mother Plezshette Thomas appeals as of right the order terminating her parental rights to her minor children.² We affirm.

¹ MCL 712A.19b(3)(b)(i) (sexual abuse), (g) (failure to provide proper care and custody), (j) (likely harm if returned), and (k)(ii) (sexual abuse involving penetration).

² MCL 712A.19b(3)(b)(ii) (failure to prevent sexual abuse), (g), and (j)

I. Belser's Appeal

A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence.³ Here, petitioner Department of Human Services provided clear and convincing evidence that Belser committed criminal sexual conduct involving penetration against at least one of his daughters.⁴ The lower court has a special opportunity to judge witness credibility.⁵ The daughter provided consistent testimony of repeated sexual abuse, as well as physical and emotional abuse. The only contrary evidence was that of her brother, who was considerably less credible and seemed emotionally manipulated by Belser. The continuing pattern of abuse made it reasonably likely that the children would be abused or injured if returned⁶ and reasonably likely that Belser could not provide proper care and custody in a reasonable time.⁷

Whenever a lower court finds a statutory ground for termination, it must terminate parental rights unless termination was clearly against the children's best interests.⁸ There is no specific burden on either party; rather, the trial court should weigh all evidence available.⁹ We conclude that Belser's ability to provide housing and whatever bond his children felt for him was outweighed by the sexual, physical, and emotional abuse and his failure to properly meet his children's significant needs. Therefore, the lower court did not err when it held termination was not clearly against the children's best interests and terminated Belser's parental rights.

II. Thomas's Appeal

The lower court terminated Thomas's rights, primarily because of her failure to prevent the abuse. Contrary to the Department's assertion on appeal, the lower court excluded all documentary evidence regarding events in Alabama. However, there was testimony that the daughter was abused for three years by her stepfather, before and after Thomas went into the hospital. There was also testimony that Thomas knew her older daughter accused Belser of sexual abuse in Alabama, although he was found not guilty and regained custody of another daughter placed temporarily in foster care. Thomas left her children alone with Belser for many hours, even after her daughter needed hospitalization for drinking alcohol and she suspected something was wrong. Even after Thomas moved out and learned of the abuse, she did not realize her daughter spent a month meeting her father for sexual intercourse and bringing home money.

³ *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

⁴ See MCL 712A.19b(3)(k)(ii).

⁵ *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁶ MCL 712A.19b(3)(b)(i) and (j).

⁷ MCL 712A.19b(3)(g).

⁸ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 352-353; 612 NW2d 407 (2000).

⁹ *In re Trejo*, *supra* at 354.

Both children required serious intervention to protect them from Belser and other predators, and Thomas repeatedly proved herself unable to provide assistance. The children were reasonably likely to be abused or injured if returned,¹⁰ and it was reasonably likely that Thomas could not provide proper care and custody in a reasonable time.¹¹ Although the children spent most of their lives with Thomas and at least one child did not want her parental rights terminated, the children needed stability and safety. Their difficulty separating from an abusive father demonstrated emotional needs that Thomas failed to meet. Therefore, the lower court did not err when it held that termination was not clearly against the children's best interests and terminated Thomas's parental rights.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kathleen Jansen

¹⁰ MCL 712A.19b(3)(b)(ii) and (j).

¹¹ MCL 712A.19b(3)(g).