STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of EMILY MARIE BOZARTH,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DENA MARIE MICHEL,

Respondent-Appellant.

UNPUBLISHED
December 7, 2006

No. 268621
Oakland Circuit Court
Family Division
LC No. 05-705965-NA

Before: Murray, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(g), (i), (j), (l), and (m). As with most fact-intensive cases decided by a bench trial, we must apply a standard of review that is deferential to the trial court's findings of fact. And, of course, those findings of fact have a significant impact on the ultimate conclusion reached by the trial court. In applying this standard of review, and recognizing this is a close case, we are compelled to affirm.

I. Facts and Procedural History

Respondent's involvement with petitioner began in February 2003, when her two older children were removed from her care due to environmental neglect of a serious nature. During the 20-month proceedings involving those children petitioner provided respondent with services, but she failed to comply. In September 2004, respondent voluntarily terminated her parental rights to her older children after petitioner filed a termination petition.

One month later, in October 2004, respondent gave birth to the child at issue here. Petitioner did not immediately file a petition requesting the court to take jurisdiction over the child because the child remained in the hospital for two months due to her premature birth. Instead, petitioner "opened a case" and began providing intensive services to respondent and the child's father, which they actively participated in. The child was eventually released from the hospital to the care of respondent and the child's father, and by all accounts respondent did well by providing a clean, neat and appropriate home, the child appeared clean and appropriately provided for, respondent appropriately interacted with and cared for the child, she was cognizant

of the child's needs, and she made sure that the child attended her many doctor appointments despite not having her own transportation.

Despite continued compliance with services, in April 2005 petitioner filed a petition requesting the court to terminate respondent's parental rights to the child at the initial disposition, which the court authorized after finding that a risk of harm existed based on respondent's past neglect of her older children and the concern about her ability to sufficiently care for the child without services in her home. The court, however, allowed the child to remain in the care of respondent and the child's father with continued in-home services. Shortly thereafter, the family was evicted from their home because of nonpayment of rent, and the child was removed from their care. Significantly, respondent never indicated to her caseworker or the service providers that the family was having problems maintaining their apartment, nor did she seek assistance from them. The court subsequently assumed temporary jurisdiction over the child after the father pleaded no contest to allegations of neglect stemming from the eviction. The court allowed respondent parenting time with the child.

At the trial on the adjudication in late September 2005, testimony revealed that respondent had maintained employment and independent housing in a one-room apartment for a few months, which admittedly was not suitable for the child. Respondent was also participating in counseling, parenting classes, and anger management classes, which she obtained on her own. At the conclusion of the trial, the court found that, although respondent had made progress since the termination of her rights to her older children, she remained unable to maintain housing or provide proper care and custody for the child and concluded that the evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(g), (i) and (l). Afterward, respondent was allowed supervised visits with the child, wherein she continued to appropriately care for and interact with the child.

Testimony during the hearing on the best interests determination held in January 2006 revealed that respondent continued to make significant progress following the adjudicative phase of the proceedings, but, by her own admission, was not yet ready for the child to return to her care. Specifically, she had maintained her employment and independent housing, although it was not suitable for the child, completed parenting classes, and continued to attend counseling and anger management classes to work on life skills, such as handling frustrating situations, building self-esteem, and gaining independence. According to her service providers, respondent had shown improvement in these areas and was motivated to make the necessary changes for the child to return to her care. Her counselor and the custodial grandmother believed that respondent, at some point, would be capable of caring for the child. In addition, a psychological evaluation conducted after the adjudicative phase indicated that there remained a "reasonable possibility" that the child could be returned to respondent's care in the near future given her significant efforts to rectify the circumstances that led to the child's removal. That evaluation recommended that respondent be given an additional six months with services to demonstrate an ability to maintain suitable housing and employment. The evaluating psychologist opined that at that time termination would not be in the child's best interests.

Testimony at the best interests hearing, however, also revealed that respondent had not yet bonded with the child, although the custodial grandmother believed there was a potential for a bond. The grandmother also expressed concern about respondent's continued failure to request assistance when needed, especially when the child's interests were at stake, and felt it would take

"a while" for her to establish proper housing for the child and to demonstrate more development in parenting and requesting assistance when needed. Even considering respondent's progress, the caseworker testified that she would not be able to provide proper care and custody for the child within a reasonable time because she still did not have a "solid plan in place" for the child even with intensive services, she continued to fail to seek assistance when needed to the child's detriment, and she had a pattern of behavior that was not rectifying.

After conducting a best interests hearing, the trial court reiterated that the evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(g), (j), and (m). The court then determined that termination was in the child's best interests considering that respondent still required a lot of assistance with housing and still had no plan in place for the child, despite the lengthy time frame that services had already been in place, and that the child had special needs and had not yet bonded with respondent. The court then proceeded to terminate respondent's parental rights, and this appeal ensued.

II. Analysis

Respondent first claims that the trial court erred in terminating her parental rights because the evidence did not clearly and convincingly establish a statutory ground for termination. We disagree. In order 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 met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993), citing *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). We review the trial court's determination for clear error. *Trejo, supra* at 356-357. A finding is clearly erroneous if, although there is evidence to support it, we are 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), citing *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, to be clearly erroneous the decision must be "more than just maybe or probably wrong." *Trejo, supra* at 356, quoting *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Although not addressed on appeal, respondent's voluntary terminations to her older children alone served as a basis for termination under MCL 712A.19b(3)(m). While noting that only one statutory ground for termination is required, *Sours, supra* at 632, we also find no clear error in the trial court's conclusion that termination was also warranted under MCL 712A.19b(3)(g), (i), and (j).[1]

While it is clearly apparent that respondent addressed the past neglectful environmental conditions that led to the removal of her older children by maintaining a clean home and appropriately caring for the child, the fact that she remained unable to maintain suitable housing

[1] We note that termination under subsection (l) is clearly not applicable in this case because respondent voluntarily terminated her parental rights to her older children.

for the child even with intensive services revealed a continued inability to provide proper care for her child. The record revealed that she lost housing when the child was in her care and was unable to obtain housing suitable for the child during the remainder of the proceedings. It was especially concerning to the trial court and some witnesses that respondent never sought assistance before the family's eviction from their home from any of her multiple service providers or her caseworker, who could have potentially prevented the loss of her housing and the removal of the child from her care. There was also evidence supporting the trial court's ongoing concern about her ability to properly care for the child without continued services or dependence on others. Notably, respondent had already received extensive services during the proceedings involving her older children and again during these proceedings, but still had not progressed enough in terms of parenting and housing for the child to return to her care.

Given the foregoing, the evidence supported the trial court's conclusion that respondent would not likely be able to provide proper care or custody for the child within a reasonable time, especially considering the child's tender age and her special needs, MCL 712A.19b(3)(g), and the trial court's conclusion that prior attempts to rehabilitate respondent have been unsuccessful. MCL 712A.19b(3)(i).

Finally, the foregoing, coupled with her lengthy Protective Services history and the serious neglect of her older children, *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *Jackson*, *supra* at 26, established that the child would be at a risk of harm if returned to her home, especially considering the child's special needs. MCL 712A.19b(3)(j). Although this is definitely a close case, on this record we are not left with a definite and firm conviction that the court made a mistake in deciding that termination was warranted under subsections (g), (i) and (j). *JK*, *supra* at 209-210.[2] In so concluding, we note that the trial court was very familiar with this case as well as respondent's other cases involving her older children. *Miller*, *supra* at 337.

Respondent next claims that termination was premature because the evidence, particularly the psychological evaluation, established that termination was clearly not in the child's best interests. Again, under this applicable standard of review, we must disagree.

After reviewing the record in its entirety, we again find that the evidence weighing against termination was strong and presented a very close case. However, giving regard to the special ability of the trial court to judge the credibility of the witnesses who appeared before it, *Miller*, *supra* at 337, and considering the child's tender age and special needs, the lack of a significant bond between respondent and the child, and the uncertainty regarding respondent's ability to make further improvements with additional services given the length of time she had already been provided with services, we cannot say that the trial court clearly erred in

[2] Respondent contends briefly that the trial court erred in authorizing the petition seeking termination at the initial disposition because petitioner failed to establish the necessary "risk of harm" as required by MCL 722.638. We disagree. There is no question that, given respondent's history of seriously neglecting her older children and the department's concern about her ability to properly care for the child without services in her home, the evidence established that the child was at a risk of harm. Moreover, petitioner later amended the petition to add allegations regarding the loss of her housing, which clearly placed the child at an unreasonable risk of harm.

terminating her parental rights, instead of delaying the child's permanency. *Trejo, supra* at 354. We recognize and commend respondent's significant strides towards addressing her issues, which demonstrated her strong desire to reunify with her child. However, her potential for success with continued services remained uncertain in light of her inability to obtain or maintain suitable housing for the child even with intensive services, her history of serious neglect of her older children, and her continued failure to seek assistance when needed to the child's detriment. On this record, the trial court did not clearly err in concluding that termination was in the child's best interests. *Trejo, supra* at 354.[3] The primary beneficiary of the court's opportunity to find that termination is clearly not in the child's best interests afforded under the best interests provision is intended to be the child, not the parent. *Trejo, supra* at 356.

While we are cognizant of respondent's favorable psychological evaluation recommending that she be afforded additional time and services, we cannot say, with a firm and definite conviction, that the trial court erred in disagreeing with the recommendation. It is evident from the court's findings that it gave more weight to respondent's continued inability to eliminate her shortcomings after having already received intensive services for a significant period of time during these and the prior proceedings, her lack of a plan for the child, and her lack of a bond with the child. These facts were clearly supported by the evidence and supported the court's conclusion that there was no reasonable expectation that respondent could meet the child's needs within a reasonable period of time. Furthermore, the evaluating psychologist noted that respondent "presented with an unwillingness to be candid about her psychological feelings and problems," "tended to place herself in an overly favorable light," "was unwilling to admit even minor flaws, and displayed an effort to be deceptive about her motives and level of adjustment," which arguably lessoned the weight of her recommendation.

Affirmed.

/s/ Christopher M. Murray
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood

[3] The trial court went beyond the best interests inquiry under MCL 712A.19b(5), as the statute does not require that the court affirmatively find that termination is in the child's best interests. *Trejo, supra* at 364 n 19.