STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DESTINY ANN MARIE BEAN and NEVAEH MARIE BEAN, Minors.

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

Petitioner-Appellee,

v

DONALD BEAN, a/k/a DONALD JOSEPH BEAN,

Respondent-Appellant,

and

TIFFANY ZARVES, a/k/a TIFFANY NICOLE ZARVES, a/k/a TIFFANY BEAN, a/k/a TIFFANY NICOLE BEAN,

Respondent.

UNPUBLISHED
December 28, 2006

No. 270363
Wayne Circuit Court
Family Division
LC No. 04-429736-NA

In the Matter of DESTINY ANN MARIE BEAN, NEVAEH MARIE BEAN, BREANNA SHAWN HENDRIX, KAYLEE NICOLE ZARVES, and SHAWNA MICHELLE ZARVES, Minors.

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

Petitioner-Appellee,

v

No. 270364
Wayne Circuit Court
Family Division
LC No. 04-429736-NA

TIFFANY ZARVES, a/k/a TIFFANY NICOLE ZARVES, a/k/a TIFFANY BEAN, a/k/a TIFFANY NICOLE BEAN,

Respondent-Appellant,

and

DONALD BEAN, a/k/a DONALD JOSEPH BEAN, and STEPHEN LELLOS, a/k/a STEPHEN BRIAN LELLOS,

Respondents.

Before: Jansen, P.J., and Sawyer and Bandstra, JJ.

PER CURIAM.

In these consolidated appeals, respondents Donald Bean and Tiffany Zarves appeal as of right from the trial court orders terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (g), and (j). Respondent-father Bean is the father of Destiny and Nevaeh only. Respondent-mother Zarves is the mother of all five children. We affirm.

To terminate parental rights, a trial court must find that at least one of the statutory grounds contained 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). Once this has occurred, the trial court must terminate parental rights unless it finds that termination is clearly contrary to the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). We review the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Trejo*, *supra* at 356-357.

The trial court did not clearly err by finding at least one statutory ground for termination of the parental rights of each respondent was established by clear and convincing evidence. MCR 3.977(J). The primary condition of adjudication was the failure of both respondents to protect and supervise the children, resulting in the sexual abuse of at least one of the children by respondent-mother's 13-year-old brother. Although respondent-father testified that he completed parenting classes, his failure to engage in counseling to which he was referred suggests that his ability to protect the children was not improved. Respondent-mother's repeated criminal activity and incarceration during the pendency of this matter substantially interfered with her ability to carry out her parent-agency agreement, as it surely would have also interfered with her ability to protect and supervise her children on an ongoing basis. According to the Clinic for Child Study, the prognosis for either respondent to become an adequate parent is poor. Based upon the record before us, we are not left with a definite and firm conviction that the trial court made a mistake by finding that the conditions of adjudication continued to exist with respect to both respondents and that there was no reasonable likelihood that they would be rectified within a reasonable time. MCL 712A.19b(3)(c)(*i*); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Respondent-father argues that termination under statutory subsection (c)(*i*) was improper because the court did not consider a case service plan before entering the initial dispositional order as required by MCL 712A.18f(4) and MCR 3.973(F)(2). We agree that, in general, when a child is removed from the custody of the parents, the agency is required to make reasonable efforts to rectify the conditions that caused the removal by adopting a service plan. MCL 712A.18f. Further, the trial court should consider that plan before entering any dispositional orders. MCL 712A.18f(4). However, the statute does not explicitly prevent the entry of an order of disposition as a consequence of the court's failure to review the service plan. Indeed, case service plans are not even mandated in all situations. *In re Terry*, *supra*, at 25 n 4. Moreover, we are not entirely convinced that the court did not consider the service plan in this case. The mere failure of a trial court to comment regarding a specific matter on the record does not conclusively establish that the court never considered that matter in reaching its decision. Finally, although the agency provided a case service plan in this case, there was evidence that respondent-father either did not comply with the plan in its entirety, or did not benefit from the plan. Where it is clear that the parties were provided with a service plan and referrals for services directed toward reunification, we conclude that the mere failure of the trial court to specifically consider the case service plan on the record before its initial dispositional order is harmless error. We will not reverse on the basis of error that is not decisive to the outcome. *In re Gazella*, 264 Mich App 668, 675; 692 NW2d 708 (2005); see also MCR 2.613(A).

The trial court also did not clearly err by terminating the parental rights of respondents on the ground that they failed to provide adequate care and custody for the children and would be unable to do so within a reasonable time considering the ages of the children. MCL 712A.19b(3)(g). Respondents failed to provide proper care and custody by allowing a ten-month-old infant and a two-year-old child to be unsupervised in the bath resulting in the near drowning of the infant, and later by failing to protect the children from sexual abuse.

The trial court did not clearly err by finding that there was no reasonable likelihood that respondent-father would be able to provide proper care and custody for the children within a reasonable time considering their ages. MCL 712A.19b(3)(g). At the time of the termination trial, he lacked housing for the children as he was living with a friend. He never documented his income as required by the treatment plan, never provided evidence of engaging in counseling, and visited the children irregularly, missing a substantial number of visits. Moreover, he demonstrated repeated instances of profound lack of judgment concerning the children, first by leaving the two youngest children unattended in the bath, and then by leaving the children in the home with respondent-mother's younger brother while himself leaving that home because of the brother's violent tendencies. We are not persuaded by respondent-father's argument that he did not knowingly allow an abusive environment to continue. First, statutory subsection (g) applies expressly "without regard to intent." MCL 712A.19b(3)(g). Furthermore, it is sufficient under MCL 712A.19b(3)(g) for a parent to allow "the continuance of an environment in which the children were likely to be continually abused." *In re Parshall*, 159 Mich App 683, 690; 406 NW2d 913 (1987); *In re Rinesmith*, 144 Mich App 475, 483; 376 NW2d 139 (1985). Where respondent-father was so disturbed by the violent tendencies of respondent-mother's brother that he left the home, it is reasonable to infer that by leaving the children in the home, respondent-father allowed an environment to continue in which the minors were likely to be abused.

Similarly, the evidence clearly indicated that there was no reasonable likelihood that respondent-mother would be in a position to provide proper care and custody for the children within a reasonable time. MCL 712A.19b(3)(g). Until shortly before the termination trial, she continued to demonstrate a pattern of instability that precluded her from providing adequate care for the children. Respondent-mother has not engaged in substantial counseling or completed parenting classes during the pendency of this matter, again because of her repeated criminal activity. Under these circumstances, we are left with no impression that the trial court made a mistake by finding that there was no reasonable likelihood that respondent-mother would be able to provide proper care and custody for the minor children within a reasonable time considering their ages. *In re Terry*, *supra* at 22.

In addition, the trial court did not clearly err by finding that there was a reasonable likelihood that the children would be harmed if returned to either respondent. MCL 712A.19b(3)(j). The current protective proceedings began less than three months after the dismissal of an earlier wardship that had resulted from the near drowning of Destiny in April 2004. Respondents had demonstrated a grave lack of judgment by allowing Destiny, then aged ten months, and Breanna, then aged two years, to be left in the bathtub unattended. When the police arrived at the home, Breanna was still in the bathtub unattended while respondent-father talked on the telephone. Respondent-mother was in the home throughout this time. Services were provided to the family and the wardship was terminated in August 2004, because the worker believed that the family had dramatically stabilized. Clearly, respondents had not benefited as much as was believed. Less than three months later, the failure of respondents to protect the children from sexual abuse came to light, resulting in the instant proceedings. The evidence indicated that respondent-mother failed to take action after the sexual abuse was reported to her, even permitting the perpetrator to continue to reside in the home. Respondent-father for his part again demonstrated a gross lack of judgment by leaving the children in the home with an individual whom he knew to be violent and aggressive, even while respondent-father himself moved out of the house. Both respondents received referrals for counseling, but there was no indication that either respondent received substantial counseling pursuant to these referrals. Under the circumstances of this case, the trial court did not clearly err by finding that there was a reasonable likelihood that the children would be harmed if returned to either respondent.

Respondent-father's argument that "conduct" under statutory subsection (j) requires that he "actively contributed" to the problem or knowingly allowed an abusive environment to continue is not persuasive. The language of subsection (j) does not suggest that any level of knowledge or intent is required, especially since it also allows for termination when a parent's "capacity" is such that a child is likely to be harmed in the parent's care. MCL 712A.19b(3)(j). In any event, respondent-father's active conduct in leaving an infant and two-year-old unattended in the bathtub, and in leaving the children in the home while himself moving out because of the violent tendencies of respondent-mother's brother, indicate a reasonable likelihood of harm to the children if returned to the care of respondent-father.

Finally, the trial court did not clearly err by finding that termination of respondents' parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Respondents have failed to demonstrate the stability necessary to care for the children, and little

or no evidence appears on the record to suggest that they have gained the ability to adequately protect and supervise the children, or that they will do so within a reasonable time.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Richard A. Bandstra