STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MARIAH MONE' McKISSACK, SARIYAH MIRANDA McKISSACK, and KIMIYAH MICHELLE McKISSACK, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GREGORY JAMES McKISSACK,

Respondent-Appellant,

and

SUNJAH MONIQUE HARRIS,

Respondent.

UNPUBLISHED
May 14, 2009

No. 287522
Wayne Circuit Court
Family Division
LC No. 03-419427-NA

Before: Markey, P.J., and Fitzgerald and Gleicher, JJ.

PER CURIAM.

This matter is before this Court for the second time. Respondent-appellant [hereinafter appellant] previously appealed an order terminating his parental rights to Mariah and Sariyah.[1] This Court reversed, finding that the failure to notify appellant of the child protective proceedings for more than one year after their commencement had denied him due process, and remanded for further proceedings.[2] Approximately two and one half years after remand, the trial court again terminated appellant's parental rights. Appellant now appeals as of right from the order terminating his parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

[1] Kimiyah was not yet born at that time.

[2] *In re McKissack/Jones/Harris*, unpublished opinion per curiam of the Court of Appeals, issued January 24, 2006 (Docket Nos. 262816/262817).

In February 2006, appellant was provided with a treatment plan that required him to participate in various services, including anger management counseling and parenting classes, and to obtain and maintain suitable housing and legal income. After Kimiyah's birth on April 7, 2006, she was removed from the care of appellant and the mother of the children based on the mother's admission that she had other children in care. By January 2007, however, the case worker reported that appellant was in full compliance with his treatment plan, and she felt he was ready to have the children returned to him. Kimiyah was returned to appellant's care on February 16, 2007, and Mariah and Sariyah were returned to his care on March 2, 2007.

The record reveals that the children were exposed to domestic violence after their return to appellant's care, and appellant admitted that he used excessive force to discipline one of the children in December 2007. On December 28, 2007, the children were removed from appellant's care. A petition seeking the termination of his parental rights was filed on May 2, 2008.

The trial court did not clearly err by finding that 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). Appellant failed to provide proper care and custody for the children by engaging in domestic violence in their presence and by using excessive force in disciplining one of the children. MCL 712A.19b(3)(g). The record is also sufficient to support the trial court's conclusion that there is no reasonable likelihood that appellant will be able to provide proper care and custody for the children within a reasonable time considering their ages. *Id.* Shortly after this case was remanded in January 2006, appellant was directed to participate in anger management and domestic violence services. An agency report issued in January 2007 indicated that appellant was participating in anger management therapy and in domestic violence therapy, and receiving positive reports from the providers of these services, including Moses Boone, who reported that appellant had completed the goals of the services. However, subsequent to the completion of services, appellant used excessive force to discipline one of the children and repeatedly engaged in domestic violence with his living together partner, Christine Wells, in the presence of the children. During one of those incidents, one of the children was struck by glass from a window that Ms. Wells kicked out.

During the termination trial, Boone indicated that he had felt appellant would be able to safely care for the children after his first completion of services with Boone. However, the trial court justifiably viewed this prognosis with skepticism in light of Boone's previous erroneous judgment of appellant's progress. Further, it also appears that appellant may not have been entirely forthright with Boone during his most recent treatment, as he minimized the number of domestic violence incidents, and failed to reveal any inappropriate interaction with his daughter despite having admitted in these proceedings that he used excessive force to discipline one of the children in December 2007. Ms. Williams, who also counseled appellant regarding anger management subsequent to the December 2007 removal of the children, indicated that she had noticed a difference in appellant's accountability and receptiveness, but that he could benefit from additional therapy.

This case presents a difficult scenario in which appellant appeared to benefit from services before the children were placed with him, but then demonstrated that he had not benefited as had been believed. Under these circumstances, we are unable to say that the trial court was more than "maybe" or "probably" wrong in concluding that appellant's apparent

progress in his second round of anger management/domestic violence services was untrustworthy. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Consequently, we conclude that the trial court did not clearly err by finding that there was no reasonable likelihood that appellant would be able to provide proper care and custody for the children within a reasonable time given their ages. MCL 712A.19b(3)(g).[3]

The same evidence that establishes that there is no reasonable likelihood that appellant would be able to provide proper care and custody for the children within a reasonable time, MCL 712A.19b(3)(g), equally establishes that there is a reasonable likelihood that the children would be harmed if returned to his care, MCL 712A.19b(3)(j), and the trial court did not clearly err by relying on statutory subsection (j) as a basis for the termination of appellant's parental rights.[4]

The trial court did not clearly err by finding that termination of appellant's parental rights was in the best interests of the children. MCL 712A.19b(5). Mariah and Sariyah have been under the jurisdiction of the court since June 2003, and Kimiyah since October 2006. The history of this case has led to prolonged instability for the children. The older children were removed from their mother's care in May 2003,[5] and the parental rights of both parents were terminated in April 2005. Following this Court's reversal of the termination of parental rights, the children were in February and March 2007 returned to appellant's care, where they were exposed to repeated domestic violence. Appellant's arrest for domestic violence in early December 2007 caused the temporary placement of the children in the care of a paternal aunt. Appellant was again arrested for domestic violence on or about December 28, 2007, resulting in the removal of the children from his care. Also in December 2007, appellant used excessive force in disciplining one of the children. Despite having received extensive services, appellant repeatedly exposed the children to domestic violence after they were placed with him. In light of appellant's failure to benefit from past services, it is questionable whether the children can safely be returned to his care at any time. The trial court was justified in concluding that the best interests of the children weigh in favor of terminating the parental rights of their father rather than risking further trauma to the children. As the guardian ad litem for the children expressed this, the children "can't be bounced again." The trial court did not clearly err by finding that

[3] Additionally, at the time of the termination trial, appellant resided with an uncle who had not received clearance as an acceptable person to reside in the same household as the children. The failure to receive clearance was due to appellant's failure to provide the worker with the uncle's social security number and other information required to perform the clearance. At the time of the termination trial, appellant did not have suitable housing for the children and there is no indication that he would have suitable housing within a reasonable time considering the ages of the children.

[4] We do not rely on MCL 712A.19b(3)(c)(i) in affirming the termination of appellant's parental rights, as review under this statutory subsection raises several subsidiary issues that have not been addressed by the parties.

[5] Appellant was incarcerated at that time.

termination was in the best interests of the children.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald