

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EMMANUEL WIMBERLY,
JADE WIMBERLY, and JADA WIMBERLY,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHARON FLEMING-WIMBERLY,

Respondent-Appellant,

and

RYAN WIMBERLY,

Respondent.

In the Matter of EMMANUEL WIMBERLY, JADE
WIMBERLY, and JADA WIMBERLY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RYAN WIMBERLY,

Respondent-Appellant,

and

SHARON FLEMING-WIMBERLY,

UNPUBLISHED
December 15, 2009

No. 292564
Washtenaw Circuit Court
Family Division
LC No. 2007-000089-NA

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Respondent.

Before: Beckering, P.J., and Cavanagh and M.J. Kelly, JJ.

PER CURIAM.

In Docket No. 292564, respondent Sharon Fleming-Wimberly appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). In Docket No. 292565, respondent Ryan Wimberly appeals as of right the same order terminating his parental rights to the same children under the same statutory grounds. We affirm.

I. Standard of Review

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 proven by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). This Court reviews for clear error a trial court's decision that a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's factual findings are clearly erroneous if, although some evidence exists to support the findings, a reviewing court is left with a definite and firm conviction that a mistake has been made, giving due regard to a trial court's special opportunity to observe the witnesses. *In re BZ*, *supra* at 296-297; *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

Once a statutory ground for termination has been established, the trial court shall order termination of parental rights if termination is in the child's best interests. MCL 712A.19b(5); see also *In re Rood*, 483 Mich 73, 102 n 43; 763 NW2d 587 (2009). This Court also reviews the trial court's best interests decision for clear error. *In re Trejo*, *supra* at 356-357.

II. Docket No. 292564

Fleming-Wimberly argues that clear and convincing evidence was not presented to terminate her parental rights. We disagree. 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.¹ See MCR 3.977(J); *In re BZ*, *supra* at 296.

The circumstances that brought the children into care involved Fleming-Wimberly's inability to properly care for them because of her schizophrenia and reaction to her medications as well as domestic violence and the unkempt condition of the home. These conditions still existed in December 2008, approximately 15 months after the children were removed from the home. Respondents' apartment was still unkempt, dirty dishes lined the kitchen counter, half-

¹ Contrary to what Fleming-Wimberly asserts, the record does not indicate that the trial court also relied on § 19b(3)(c)(ii) as an additional statutory basis for termination.

empty and empty soda bottles were scattered about, the furniture was filthy, and respondents' belongings were stored in large storage containers despite the fact that they had moved into the apartment 11 months earlier. There was also no furniture in the bedroom intended for the children.

Moreover, Fleming-Wimberly admitted that Wimberly still became violent and hit her at times and that she had served three months in jail during the previous summer for domestic violence against him. A social worker testified that respondents had engaged in a domestic violence incident as recently as late 2008. Fleming-Wimberly was also hospitalized for mental health reasons in 2008. She admitted that she consumed alcohol during the previous two days before she testified because she "might as well be a druggie" since her doctor kept prescribing her medication that was hurting rather than helping her. She admitted that she had struck Wimberly with an empty vodka bottle and set fire to his shirt when she had consumed alcohol previously. She also admitted that she and Wimberly collected bottles and used the bottle return money to purchase alcohol.

The evidence further showed that Fleming-Wimberly suffers from paranoid delusions, such as believing that people are talking about her, watching her, and coming into her apartment. She feared that these people might harm her or Wimberly. She admitted that she is terrified of people at times because she believes that they want to hurt her. She accused Wimberly of orchestrating an incident on a bus in which someone rubbed up against her. She discontinued her drug screens and provided numerous reasons for doing so, including her suspended visitation with the children. She also admitted that she was not attending parenting classes, had canceled visits with the children, and recognized that the children sometimes urinated on themselves when they became angry. Accordingly, the trial court did not clearly err in finding that termination of Fleming-Wimberly's parental rights was justified under §§ 19b(3)(c)(i), (g), and (j).

Fleming-Wimberly also argues that termination of her parental rights was not in the children's best interests. We disagree. The record supports the trial court's finding that the children could not be kept minimally safe in respondents' care without the constant presence of a competent third party, which was not practical or realistic. Moreover, at the time the children were brought into care, they did not know how to properly bathe, were unkempt, wore dirty clothes, and were underweight. Two of the children had been removed from respondents' care twice previously and had spent nearly three years of their lives in foster care. Despite the previous removals, respondents had made no progress. Further, Fleming-Wimberly expressed her desire to relinquish her parental rights and left the courtroom on the final day of the termination hearing. Thus, termination of Fleming-Wimberly's parental rights was in the children's best interests.

Fleming-Wimberly also argues that petitioner failed to make reasonable efforts to reunite the family. Although it is unclear whether reasonable efforts were statutorily required,² the

² Under MCL 712A.19a(2)(c), reasonable efforts need not be made if a parent's parental rights to a child's sibling were previously involuntarily terminated. Although Fleming-Wimberly's parental rights to an older child were previously terminated, it is unclear whether they were terminated involuntarily.

record reflects that such efforts were made. Fleming-Wimberly was provided with numerous services with respect to the instant removal and with respect to previous removals. In 2008, she attended a co-occurring disorders group session on approximately ten occasions as well as a women's trauma recovery group. She was given contact information for couples counseling, she completed a parenting class, and she learned how to budget her household. She was provided with bus tokens and received in-home intensive reunification services when the children were returned to her care previously. She was enrolled in parenting classes in January 2009 at her request, but failed to attend the classes. She also failed to cooperate with substance abuse services. Although home services, parenting classes, and counseling were previously successful on a short-term basis, they did not prove effective long term. Further, Dr. Joshua Ehrlich opined that without a third party's constant presence in the home, the household would not be able to manage children. The record failed to show that such assistance was available. Thus, the record indicates that reasonable efforts were made to reunify Fleming-Wimberly with the children, but that those efforts were not successful.

Fleming-Wimberly also contends that the trial court's order terminating her parental rights deprives her of her constitutional right to raise her children. We disagree. Both the Michigan Supreme Court and the United States Supreme Court have recognized "the 'essential,' 'basic,' and 'precious' right of parents to raise their children[.]" *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009), quoting *Stanley v Illinois*, 405 US 645, 651; 92 S Ct 1208; 31 L Ed 2d 551 (1972) (further quotations and citations omitted). Our Supreme Court has recognized that "[t]his right is not easily relinquished." *Hunter, supra* at 257. "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Id.*, quoting *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). This right, however, is not absolute. "Once the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under [MCL 712A.]19b(3), the liberty interest of the parent no longer includes the right to custody and control of the children." *In re Trejo, supra* at 355. In this case, because petitioner presented clear and convincing evidence establishing the bases for termination under §§ 19b(3)(c)(i), (g) and (j), Fleming-Wimberly lost her constitutional right to the care and custody of her children.

III. Docket No. 292565

Wimberly argues that petitioner failed to present clear and convincing evidence to terminate his parental rights. We disagree. 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. See MCR 3.977(J); *In re BZ, supra* at 296.

Wimberly contends that he was not afforded an opportunity to rectify the conditions that led to the adjudication because he was not provided appropriate services that took into consideration his mental health condition. The record reflects, however, that Wimberly failed to cooperate with services, failed to comply with his parent-agency agreement, and blamed Fleming-Wimberly for the children's removal from the home. He failed to appear for his last appointment with Dr. Ehrlich, did not reschedule, and claimed that Dr. Ehrlich had avoided him. He also failed to comply with drug screens after petitioner filed its petition to terminate his parental rights, denied having an alcohol problem, failed to cooperate with substance abuse

services, and failed to attend parenting classes in January 2009. Wimberly denied that there existed a problem in the home before the children's removal. He testified that the only problem that led to their removal involved Fleming-Wimberly's disability and delusions. He denied that the house was unkempt, that the children were dirty and smelled of urine, or that the conditions of the home were unsuitable. Thus, the record shows that Wimberly was afforded a reasonable opportunity to rectify the conditions that led to the children's removal but that he failed to cooperate, failed to appreciate the deplorable condition of the home, and instead placed blame on Fleming-Wimberly.

The record also shows that Wimberly was not able to care for the children and was overwhelmed merely attempting to care for himself. Dr. Ehrlich opined that Wimberly appeared disorganized, depressed, unfocused, and was unable to talk about his children in a coherent manner. He was unable to provide his phone number and was discovered lying on the floor of the waiting room on one occasion. Although he had been diagnosed with schizophrenia, he did not know what the term "schizophrenic" meant. He testified that he would be able to care for his children if Fleming-Wimberly received in-home care so that she could parent them.

Substance abuse and domestic violence issues also continued to be a problem. Although Wimberly initially denied ever having consumed alcohol, he ultimately admitted that he had consumed alcohol previously but that his alcohol consumption was a personal matter because it was not illegal. Fleming-Wimberly admitted that she and Wimberly still used substances and that Wimberly sometimes became violent and hit her. Wimberly admitted that the police had been called to the home on numerous occasions, most recently three or four months earlier. Clear and convincing evidence supported the trial court's decision to terminate Wimberly's parental rights under §§ 19b(3)(c)(i), (g), and (j).

Termination of Wimberly's parental rights was also in the children's best interests. As previously indicated, the children did not know how to properly bathe, were unkempt, wore dirty clothes, and were underweight when they were brought into care. Their transformation after being removed from respondents' home was characterized as "night and day." Despite previous removals and the children being raised in foster care for a significant amount of time, respondents had made no progress. With respect to the current removal, Wimberly did not even realize that the conditions of the home were problematic. Thus, the record evidences that termination of Wimberly's parental rights was in the children's best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly