STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED September 28, 2010
In the Matter of SHEPPARD Minors.	No. 296828 Saginaw Circuit Court Family Division LC No. 07-031210-NA
In the Matter of R. F. ASKEW, Minor.	No. 296831 Saginaw Circuit Court Family Division LC No. 07-031209-NA
In the Matter of SHEPPARD Minors.	No. 296852 Saginaw Circuit Court Family Division LC No. 07-031210-NA
In the Matter of S. A. BROWN, Minor.	No. 296855 Saginaw Circuit Court Family Division LC No. 08-032060-NA
In the Matter of D. R. D. CONLEY, Minor.	No. 296905 Saginaw Circuit Court Family Division LC No. 07-031208-NA

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

In Docket No. 296828, respondent-father T. J. Sheppard appeals as of right from the trial court's order terminating his parental rights to minor children, T. Sheppard and J. Sheppard under MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions of adjudication), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if child returns to parent's care). In Docket Nos. 296831, 296852, 296855, and 296905, respondent-mother A. Brown appeals as of right from the same order terminating her rights to T. Sheppard and J. Sheppard, as well as D. Conley, R. Askew, and S. Brown, all under the same subsections. We affirm.

DOCKET NO. 296828

Respondent-father first argues that the trial court violated his due process rights when it permitted his attorney to withdraw during the termination hearing. We disagree. Having reviewed the record, we conclude that respondent-father's rights were not violated by the withdrawal of counsel.

Respondent-father was represented by counsel prior to the termination hearing. On the first day of the termination hearing, respondent-father met with his counsel briefly. Counsel then went for a meeting in chambers. Upon his return, he was informed that respondent-father had left. Counsel requested to withdraw at that time because he could not represent respondent-father without knowing respondent-father's position or having his input. The trial court declined the request at that time, indicating that it would give respondent-father "a little bit of time" to see if he returned to the proceedings.

Petitioner's first witness, the children's foster care worker at Holy Cross Children's Services, was called. After her direct examination, the trial court inquired as to whether respondent-father had returned. Counsel indicated that he had not. The trial court noted that it had had its staff determine whether respondent-father had been taken into custody for some reason, and indicated that respondent-father was not in jail. Counsel indicated that his understanding was that respondent-father "walked away from the building." The trial court instructed counsel to cross-examine the DHS worker, which counsel did. The second witness, the DHS worker, was then called. His testimony was focused solely on respondent-mother, however, and counsel indicated he had no questions for the witness. After the witness was excused, petitioner rested. Counsel then renewed his motion to withdraw as counsel for respondent-father, which the trial court granted, holding:

> I will not that we have had—ah—no communication from the gentleman. As noted, he is not in custody. He was here and voluntarily left. Counsel cannot represent someone who will not appear and/or assist you. You are herewith relieved of responsibility. I'm satisfied you've made a good effort.

We recognize that a parent in a termination procedure has the right to counsel. *In re Powers*, 244 Mich App 111, 121; 624 NW2d 472 (2000). However, parents are charged with some responsibility under the court rule and statute and the right to counsel may be waived or relinquished. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). This Court has previously held that a father who "without explanation or effort to contact the court beforehand of any problems, did not attend the termination hearing and never contacted his appointed counsel in an effort to prepare a defense" had waived his right to counsel. *In re Warren Minors*, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2005 (Docket No.

260147). See also *In re N. A. Ball*, unpublished opinion per curiam of the Court of Appeals, issued October 23, 2003 (Docket No. 247822) ("Where respondent failed to contact counsel for an extended period, and did not attend hearings, respondent effectively terminated the attorney-client relationship and waived the right to counsel.") Indeed, even our Supreme Court permits counsel to withdraw from termination cases where there is a failure to communicate. *In re Sours Minors*, 459 Mich 624, 651; 593 NW2d 520 (1999) (CAVANAGH, J., concurring in part and dissenting in part, "[T]his Court permitted counsel for [the father] to withdraw on the basis of a lack of contact with him.").

Here, where respondent-father came to the hearing, but voluntarily elected to leave before it began, without notifying or contacting his counsel, we believe he made a choice not to put forth a defense. Indeed, when respondent-mother testified, respondent-father's counsel would have been at a loss of how to cross-examine her without respondent-father's help, particularly where respondent-mother accused respondent-father of abuse and he was not there to assist counsel in his defense. Under these circumstances, we conclude that respondent-father effectively waived his right to counsel, such that there was no due process violation when the trial court permitted counsel to withdraw.

DOCKET NOS. 296828, 296831, 296852, 296855, 296905

Both respondent-mother and respondent-father allege that the trial court erred in concluding that sufficient grounds to terminate their parental rights were established by clear and convincing evidence. We disagree.

Termination of parental rights is appropriate where petitioner proves at least one ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(J); *Sours*, 459 Mich 624 at 633.

Respondents' parental rights were terminated under MCL 712A.19b(3)(c)(*i*), (g), and (j), which provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *

> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
>
> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

We conclude that clear and convincing evidence supported termination of both parents' parental rights on each of the above grounds.

Respondent father made little effort to comply with services. Although he did well with his children when he visited, during the 18 months the children were in care, he missed most visits and came to one intoxicated. He also failed to address the problems that brought the children into care. Domestic violence was the reason the children were removed; one of the children was cut on the arm in an affray between the parents in July 2008. Nevertheless, respondent father did not attend parenting classes, domestic violence treatment, or individual counseling. There was evidence that he and respondent-mother were still having physical altercations (slapping and hitting one another) in front of the children, in October 2009. Thus, there was clear and convincing evidence that the conditions brining the children into care continued to exist and that respondent-father had done nothing during the 18 months the children were in care to remedy the problems.

Respondent-mother alleges that she benefited from services for domestic violence, anger management, and parenting, and that there was no evidence that respondent-father or any of the children were cut or injured by her. She contends that if respondent-father had not broken into her home and assaulted her, the children would have been returned to her ten days later. She argues that because she had ended her relationship with respondent-father and obtained a new protection order, there was no risk to the children.

We do not agree with respondent-mother's recitation of the evidence contained in the record. The trial court took judicial notice of its files. Contained in these files was evidence that on July 3, 2008, respondent-father was holding one of the children when respondent-mother stabbed respondent-father, also injuring the child. The detective who responded to the call indicated that respondent-mother was telling conflicting stories and was uncooperative. The records indicated that respondent-mother had already been in counseling since 2007 at this point. Additionally, at the termination hearing, a police officer testified that when he arrived on the scene regarding the October 20, 2009 incident, it was respondent-father who was cut and bleeding and medical records supporting respondent-father's injuries were admitted. Thus, contrary to respondent-mother's contention, there was evidence that respondent-mother cut respondent-father and one of the children.

Additionally, there was evidence that respondent-mother had not ceased her relationship with respondent-father as she had been advised. The evidence indicated not only that

respondent-mother permitted her protection order to expire, but that respondent-mother and respondent-father were living together at the time of the October 2009 altercation. Two of the three children old enough to talk with the foster-care workers reported that respondent-father was living with respondent-mother, as did both respondent-father and his mother. One of the children reported that respondent-mother and respondent-father were slapping and fighting with each other when the children were present for unsupervised weekend visits. The security logs at the apartment also showed respondent-father making multiple visits to the apartment well before the October 20, 2009 incident where respondent-father was cut. Thus, there was significant evidence that respondent-father had not broken into respondent-mother's apartment and assaulted her, but rather was living there at the time the incident occurred. Additionally, the record evidence was that respondent-father was injured, not respondent-mother.

Although no children were present for the altercation on October 20, 2009, where the father was cut with a knife, this would be a very unhealthy and dangerous atmosphere for a child. As the trial court observed, this occurrence was similar to the one that brought the children into care. While respondent-mother testified that the parents were not in a relationship, the court found that her testimony "does not ring entirely true" and that she told Officer Rocha, who was "absolutely credible," that respondents "went back to bed" after the incident. The trial court was in the best position to judge the credibility of the witnesses.

We also disagree with respondent-mother's characterization that she benefited from the services she received.[1] According to her psychological evaluation, respondent-mother had anger issues and volatility problems. Although she was to receive domestic violence counseling as both a perpetrator and a victim, she refused any services related to her being a perpetrator. Although she completed parenting classes, respondent-mother still did a poor job of watching the children during supervised visitations. She also testified that she was unwilling to retake the classes because, "why should I go back through it when I did . . . everything?" She summarized what she learned from anger management classes as, "Just think before you do anything stupid." She testified that she was taught to call the police whenever respondent-father came around, but that she never called them because she did not want to lose her visitation.

More important, she admitted to refusing to report anything to DHS for fear that her unsupervised visitations would be taken away. She took her children to her sister's house even though unsupervised visits were to occur at her own home. She claimed she took the children there to keep them safe from respondent-father, but admitted that she never informed DHS that she was doing so, again for fear it would take the visits away. When asked why she never told DHS she was afraid of respondent-father, she gave the same excuse—she did not want to lose visitation. She gave the same response when questioned as to why she failed to call the police when respondent-father allegedly broke in and assaulted her and cut himself, why she failed to tell her maintenance people that respondent-father has allegedly broken in, and why she lied to the maintenance people and said she was "okay." She insisted that she had never needed services because she had not done anything wrong and that she only participated for her kids.

[1] A parent must benefit from services in order to provide a proper home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Respondent-mother essentially took the attitude that it was better to lie to DHS to keep her unsupervised visits, even when it put the children at in harm's way because DHS remained unaware of the risk to the children created by respondent-father's presence. Thus, after more than 18 months, respondent-mother had received no benefit from services, refused to take any responsibility for her actions, and admitted to lying to DHS and violating the rules. The trial court did not clearly err in finding sufficient evidence to prove the statutory grounds as to both respondents.

Respondents next allege that the trial court erred in concluding that terminating their parental rights was in the children's best interests. As before, we disagree.

Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights if termination is in the children's best interests. MCL 712A.19b(5). We review for clear error the trial court's best interests determination. *Trejo*, 462 Mich at 356-357.

Respondent-father argues that he had positive interactions with his children and was able to redirect them. He contends that he should be given additional time to participate in services toward reunification. The record reveals that although the children were under the jurisdiction of the court for 18 months, respondent father participated sporadically and inconsistently in visitation and services. The record indicated that respondent-father engaged in abusive behaviors in the presence of the children, but had done nothing to resolve these issues in the 18 months the children were in care. He provided no plan for the children or any evidence that he could offer the children a stable and safe environment. The trial court did not err in concluding that termination was in their best interests.

As for respondent-mother, although she participated more regularly in services, she also could not offer the children a stable, safe environment. While respondent-mother was thought to have progressed sufficiently for unsupervised and overnight visits, the domestic violence incident of October 20, 2009 clearly showed that the children would not be safe in her care. Her coping strategy, to refrain from telling police, security, or caseworkers about the problem, was the opposite of the appropriate response.

Ultimately, the children would not be safe in either parent's care, and the court did not clearly err in its best interests ruling.

Affirmed as to all dockets for both respondents.

/s/ Peter D. O'Connell
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro