STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED November 30, 2010
In the Matter of MCELWEE, Minors.	No. 297358 Genesee Circuit Court Family Division LC No. 08-123798-NA
In the Matter of MCELWEE, Minors.	No. 297360 Genesee Circuit Court Family Division LC No. 08-123798-NA

Before: BECKERING, P.J., and JANSEN and TALBOT, JJ.

PER CURIAM.

In this consolidated appeal, respondents-appellants appeal by right the trial court's order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g) and (j). The trial court also terminated respondent father's parental rights under MCL 712A.19b(3)(b)(*i*) and respondent mother's rights under MCL 712A.19b(3)(b)(*ii*). We affirm.

The trial court did not clearly err by finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). There was legally admissible evidence supporting the court's findings and conclusion. This child protective proceeding was initiated on March 20, 2008, when a referral source noted extensive bruises on J.C.N.'s face, and investigation revealed deplorable conditions in respondents' home. Jurisdiction was assumed pursuant to respondent mother's no contest plea to J.C.N.'s bruises, previous medical neglect of E.J.N., and the unfit condition of the home, all of which constituted failure to provide proper care for the children. Upon further investigation, additional conditions arose, including respondents' medical neglect of other children, particularly A.J.M., physical abuse of and failure to protect the children, inability to properly control or discipline the children, respondent mother's inability to control her anger, and respondent father's cognitive limitations. More than 182 days elapsed between the April 29, 2008 adjudication and the March 10, 2010 termination, and between the notice to rectify the other conditions and the March 10, 2010 termination.

Respondents argue on appeal that the trial court improperly terminated their parental rights based on "other conditions" that were not established by legally admissible evidence, including respondent father's cognitive limitations, his physical abuse of the children, and respondent mother's failure to protect the children from abuse. See MCR 3.977(F)(1)(b). In addition, respondents argue that the evidence showed they had rectified all conditions leading to adjudication and were able to provide proper care for the children within a reasonable time, but the trial court improperly based termination on keeping the children in "better" placements instead of returning them to respondents' home.

The trial court did not clearly err by finding that respondents had failed to rectify the original condition of unsuitable housing. Respondents moved to a new home, but testimony established that respondents denied the DHS caseworker entry. In addition, while the landlord testified that respondent's home was clean, he did not specify his standard of cleanliness, and the home's total unmodified size of 845 square feet was too small to accommodate nine people.

The trial court also did not err by finding that respondent father had cognitive deficits. Testimony by the DHS caseworker and family therapist, and the trial court's own observation of respondent father when he testified, supported the trial court's finding. Nothing in the record established that this was a condition that could be rectified within a reasonable time.

The primary conditions that respondents needed to rectify were lack of parenting skills, inability to control the children, neglect of the children's medical, educational and special needs, and respondent mother's inability to control her anger. Respondents received notice to correct these conditions, hearings, and a reasonable opportunity over a two-year period of time to rectify the conditions through services that were provided. The trial court did not err by finding that respondents failed to rectify these conditions, and would not likely do so within a reasonable time. The court noted that respondents had complied with services, but remained concerned that neglect and physical abuse would continue if the children returned home. Respondents were able to articulate appropriate means of discipline and resolving family conflict, but the family therapist raised the issue of cognitive deficits and could not state whether respondents were truly able to change their parenting style. While some evidence regarding respondent father's cruel and inappropriate corporal punishment of the children remained hearsay, the trial court received legally admissible testimony by the DHS caseworker regarding her personal observation of extensive bruises and wounds on J.C.N.'s face and body, as well as wounds to the other children's heads at the time of removal. In his testimony, respondent father denied he imposed any form of discipline other than occasionally hitting the children with a hand if time outs and loss of privileges were not effective; but he also admitted to hitting G.I.L. with a bat. He insisted that the children obtained their injuries from classmates or fighting with one another. In her testimony, respondent mother tearfully refused to implicate respondent father in any wrongdoing and pleaded lack of memory regarding any discipline other than hitting or slapping with a hand, and the incident with the bat. We must defer to the trial court's ability to judge the credibility of the witnesses who appeared before it. *In re Miller*, 433 Mich at 337. Based on the testimony it heard, the trial court concluded that respondent father inflicted abusive corporal punishment upon the children and respondent mother failed to act to protect them.

Additional evidence showed that respondent father did not complete counseling, that respondent mother took prescribed medication but remained unable to control her temper and did

not discuss with her therapist the substantive issues regarding her relationship with respondent father and the children, and that respondent mother refused to attend therapy sessions unless the therapist addressed topics that she found acceptable. Respondents continued to distrust the DHS, refused the caseworker access to their home, and resisted or excessively delayed in following up on certain services, all of which strongly suggested that they would not proactively address the children's many special needs and would resist monitoring if the children were returned to their home. Given the evidence presented to the trial court in this case, we perceive no error in the court's findings that the statutory grounds for termination were proven by clear and convincing evidence.

The evidence also showed that termination of respondents' parental rights was in the children's best interests. MCL 712A.19b(5). The parties agreed that respondents and the children were bonded and loved one another. The family therapist, however, testified that the children desired closure and needed immediate permanency, and that the worst outcome would be to further delay permanency by prolonging these proceedings. The evidence affirmatively established that respondents would not rectify the conditions within a reasonable time, and the trial court therefore did not err by finding that termination was in the children's best interests.

Lastly, respondents argue that the trial court's order of termination was based on keeping the children in a "better" home rather than on clear evidence of parental unfitness. However, as noted previously, the evidence supported the statutory grounds for termination. Once the statutory grounds were met, comparison of alternative homes was permitted. See *In re Mathers*, 371 Mich 516, 530; 124 NW2d 878 (1963). The record did not reveal comparison of homes, but rather that the trial court gave thoughtful consideration to the impact on each child of termination, reunification, or reunification of some of the children but not others. The court properly noted that the children had made progress since being placed with relatives, and did not clearly err by finding that termination of respondents' parental rights was in the children's best interests. MCR 3.977(J).

Affirmed.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Talbot