STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED December 21, 2010
In the Matter of C. R. RODRIGUEZ, Minor.	No. 298203 Isabella Circuit Court Family Division LC No. 2009-000154-NA
In the Matter of K. C. POZENEL, Minor.	No. 298254 Isabella Circuit Court Family Division LC No. 2009-000153-NA
In the Matter of C. R. RODRIGUEZ, Minor.	No. 298275 Isabella Circuit Court Family Division LC No. 2009-000154-NA

Before: MURPHY, C.J., and METER and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court orders terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(g), (j), and (l). We affirm.

Respondents became involved in a relationship in approximately 2006. In 2007, respondent-mother gave birth to their son. Respondent-mother also had a daughter in her care. Both respondents had a history of prior terminations of parental rights. In 2003, respondent-mother voluntarily relinquished her parental rights to her two oldest children. In 2006, respondent-father's parental rights to a daughter were involuntarily terminated following allegations that respondent-father sexually assaulted his daughter's half sibling. The respondents' relationship was volatile and violent. In the 2½ years that the couple lived together, the police were summoned to the home 32 times on domestic violence complaints. In September

of 2009, the children were removed from the home and a petition was filed seeking termination of respondents' parental rights.

For her first claim of error, respondent-mother argues that the trial court erred when it terminated her parental rights pursuant to MCL 712A.19b(3)(l). We agree, but find such error to be harmless. MCL 712A.19b(3)(l) permits the termination of parental rights if "[t]he parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or similar law of another state." Respondent-mother's parental rights to her oldest two children were previously terminated; however, the termination was not as a result of proceedings under "section 2(b)," i.e., the Juvenile Code. The record supports a finding that, while proceedings were initiated under MCL 712A.2(b), before a termination hearing was held respondent-mother voluntarily released the children to the DHS under the Michigan Adoption Code, MCL 710.21 *et seq.* MCL 712A.19b(l) "does not apply to a voluntary termination under the Adoption Code." *In re Jones*, 286 Mich App 126, 128; 777 NW2d 728 (2009). However, any error in relying on MCL 712A.19b(l) as a ground for termination is harmless where "termination was fully justified under MCL 712A.19b(3)(m)." *Id.* at 129.

MCL 712A.19b(3)(m) provides a basis for terminating parental rights if "[t]he parent's rights to another child were *voluntarily* terminated following the *initiation* of proceedings under section 2(b) of this chapter or a similar law of another state" (emphasis added). During her plea, respondent-mother admitted that her two oldest children were removed from her care through child protective proceedings because of improper supervision and neglect. She also admitted that she released her parental rights to the children after approximately two years of failing to comply with, and make progress in, the case treatment plan. Respondent-mother testified in a similar fashion at the termination hearing. Based upon this testimony, there was sufficient evidence for a court to find that respondent-mother's parental rights to other children were voluntarily terminated following the initiation of proceedings under section 2(b). Therefore, termination of respondent-mother's parental rights to the children in the instant case would have been fully justified under MCL 712A.19b(3)(m), and the trial court's reliance upon MCL 712A.19b(3)(l) was harmless error. *Jones,* 286 Mich App at 129.

Next, respondent-mother argues that there was a lack of clear and convincing evidence to support termination of her parental rights pursuant to MCL 712A.19b(g) and (j). We disagree. "We review for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The evidence overwhelmingly established that respondent-mother failed to provide proper care and custody to her children. The children were being raised in an environment where domestic violence appeared to be the norm. Respondent-father testified that physical altercations occurred at least twice a month over the course of respondents' 2½-year relationship. This volatile and violent relationship was taking its toll on the children.

Moreover, there was no evidence that respondent-mother was going to be in a position to properly parent and protect her children within a reasonable time considering their ages. The evaluating psychologist, treating therapist, and parenting class instructor all uniformly agreed that respondent-mother failed to recognize the risks associated with raising children in a home with domestic violence. They similarly found that respondent-mother failed to take any

responsibility for the domestic violence in the home when it was readily apparent that she was both a perpetrator and a victim. Further, respondent-mother failed to demonstrate that she could apply what she had learned in her parenting class to the parenting of her own children. Because respondent-mother failed to recognize the risk to her children and the role she may have played in creating that risk, the witnesses agreed that respondent-mother had little or no ability to make consistent changes in her life. Considering the foregoing, the children would clearly be at risk of harm in their mother's care. The trial court did not clearly err when it terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(g) and (j).

Respondent-mother, however, argues that she would have been in a position to properly parent her children if the petitioner had offered her services to work toward reunification. Despite representations to the contrary, respondent-mother was provided services. Petitioner referred her for parenting classes and counseling, homemaker services, a psychological evaluation, and parenting time. Respondent-mother initially was uncooperative. When she did participate, she failed to make any progress. Indeed, she was terminated from therapy for lack of progress. Thus, contrary to respondent-mother's representation, she was offered services.

For her final argument, respondent-mother argues that termination of her parental rights was not in the children's best interests. We disagree. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights . . . ." MCL 712A.19b(5). The trial court's decision regarding a child's best interests is reviewed for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence supported the trial court's conclusion that termination of respondent-mother's parental rights was in the children's best interests. In their relatively short lives, the children had been exposed to an inordinate amount of violence. Respondent-mother's daughter indicated that it would be "bad" if she returned to her mother's care. She also indicated that she was afraid of respondents' volatile behavior. When the child first came into care, she was engaging in self-harming behavior. She would begin to wet the bed before and after visits with her mother. Clearly, this child had been traumatized by the domestic violence in the home. The evidence suggested that, should the children be returned to respondent-mother's care, she would be in no better position to parent her children than when the children were removed. Indeed, the children would be at risk of harm if placed with their mother. Considering this, the trial court did not clearly err when it found that termination of respondent-mother's parental rights was in the children's best interests. These children required stability to ensure their continued growth and development.

Finally, we turn to the claims of error raised by respondent-father. In his statement of the issue, respondent-father states that there was a lack of clear and convincing evidence to support termination of his parental rights. However, in his discussion section, respondent-father simply argues, in a cursory fashion, that the termination of his parental rights was inappropriate because petitioner failed to offer him services. Respondent-father also contends that, because he was illiterate, he should not have been expected to seek services on his own.

In this case, petitioner was not required to offer respondent-father services to work toward reunification. Generally, DHS is required to make reasonable efforts to rectify the conditions that caused a child's removal from the parent's home by adopting a service plan and providing necessary services to facilitate reunification. MCL 712A.18f; *In re Terry,* 240 Mich

App 14, 25-26; 610 NW2d 563 (2000). There are, however, certain exceptions. MCL 712A.19a(2)(c) provides that reasonable efforts to reunite the child and family are not required if "[t]he parent has had rights to the child's sibling involuntarily terminated." In this case, respondent-father's parental rights to his daughter were involuntarily terminated following accusations that respondent-father sexually assaulted her half-sister. Because petitioner was not required to provide services to respondent-father, we find no merit to this claim of error. We also reject respondent-father's cursory and inadequately briefed accompanying argument that his constitutional due process rights were violated because no services were provided.

Further, there was clear and convincing evidence to support termination of respondent-father's parental rights pursuant to MCL 712A.19b(3)(g), (j), and (l). There were several significant issues affecting respondent-father's ability to safely parent his child, including issues of domestic violence, several allegations of sexual assault of other children, and respondent-father's failure to address his alcohol consumption. Indeed, respondent-father testified that he probably should be attending AA; however, he was not doing so. Similarly, respondent-father was court ordered to participate in an anger management class as part of his sentence for a domestic violence conviction; however, he failed to do so. The psychological evaluation noted that respondent-father had limited insight, externalized the responsibility for the domestic violence, was impulsive, and had difficulty with regulating his emotions. Considering these traits and his use of alcohol, which was a "dis-inhibitor," the experts concluded that respondent-father was at risk of "offending behavior." In addition, respondent-father had a prior involuntary termination of his parental rights. Considering the foregoing, there was clear and convincing evidence to support termination of respondent-father's parental rights.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher