

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
December 28, 2010

In the Matter of D. G. DAVIS and L.  
WHITTAKER, Minors.

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No. 297294  
Wayne Circuit Court  
Family Division  
LC No. 02-412846-NA

In the Matter of D. G. DAVIS, Minor.

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Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother S. Nash 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. 297294. In Docket No. 297295, respondent-father G. Davis appeals as of right the same order, which also terminated his parental rights to the younger child under § 19b(3)(g).<sup>1</sup> Because we conclude there were no errors warranting relief, we affirm.

Both respondents argue that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence, and in also finding that termination of parental rights was in the children's best interests. We review the trial court's findings for clear error, giving deference to the trial court's superior opportunity to judge the weight of evidence and the credibility of the witnesses who appeared before it. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

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<sup>1</sup> Respondent Davis incorrectly asserts that his parental rights were also terminated under MCL 712A.19b(3)(c) and (h). The record indicates that the trial court found that § 19b(3)(c)(i) was established solely with respect to respondent-mother, and that § 19b(3)(h) was established solely with respect to another respondent, A. Whittaker, who is not a party to this appeal.

## I. DOCKET NO. 297294

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. With respect to § 19b(3)(c)(i), the primary condition that led to the adjudication was respondent-mother's marijuana and alcohol use. However, the trial court appropriately viewed respondent-mother's substance abuse as implicating broader issues, such as her emotional instability, particularly considering that substance abuse was also an issue in two prior child protection proceedings involving respondent-mother's older child. A court is permitted to apprise itself of all relevant circumstances bearing on the condition that led to the adjudication. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). The court found that respondent-mother's instability continued to manifest itself while the children were temporary court wards, such as when respondent-mother, while intoxicated, fled from respondent Davis's home following an argument and was struck by a vehicle on the freeway.

Although respondent-mother testified that she did not have a substance abuse problem, it is apparent that the trial court found that her testimony was not credible. Considering that two separate Clinic for Child Study evaluations led to a diagnosis of alcohol abuse, that respondent-mother tested positive for benzodiazepine and amphetamines in 2009 and missed several other drug screens during this case, and that respondent-mother self-reported her continued alcohol use to different service providers throughout the case, the trial court's finding is not clearly erroneous. Further, considering that substance abuse was a problem in the two prior child protection proceedings and respondent-mother's insistence during this proceeding that she did not have a substance abuse problem, despite clear evidence to the contrary, the trial court did not clearly err in finding that respondent-mother failed to benefit from services and was not reasonably likely to do so within a reasonable time considering the ages of the children. Thus, the trial court did not clearly err in finding that § 19b(3)(c)(i) was established.

The trial court also did not clearly err in finding that §§ 19b(3)(g) and (j) were both established by clear and convincing evidence. Although respondent-mother participated in services, including individual and family therapy, she did not benefit from them. "[A] parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). The trial court did not clearly err in finding that respondent-mother's continued substance abuse placed the children at risk such that they could not be safely returned to her care.

Because a statutory ground for termination was established by clear and convincing evidence, the trial court was required to further determine whether termination of her parental rights was in the children's best interests. MCL 712A.19b(5). Respondent-mother has not established any clear error in the trial court's best interests determination. There was evidence that family therapy had enabled respondent-mother to improve her relationship with her older child, and that she had a bond with each child. However, the older child had already been subject to two prior child protection proceedings, and the younger child was less than one year old when he was removed. Given the unlikelihood that respondent-mother would ever be able to provide the stability and permanency the children required, the trial court did not clearly err in

finding that termination of respondent-mother's parental rights was in the children's best interests.

## II. DOCKET NO. 297295

The trial court did not clearly err in finding that respondent-father failed to provide proper care or custody for his child and that there was no reasonable expectation that he would be able to do so within a reasonable time considering the child's age. Respondent Davis did not establish paternity until after this child protection proceeding was filed. A failure to take prompt steps to formally acknowledge paternity may be used as evidence of a biological father's failure to provide proper care and custody. *In re LE*, 278 Mich App 1, 24; 747 NW2d 883 (2008). Although the child was placed in his custody for a period of time, the child was later removed because of respondent-father's criminal activity. Respondent-father's reliance on *People v Tennyson*, 487 Mich 730; \_\_\_ NW2d \_\_\_ (2010), to argue that his criminal conduct of being a felon in possession of a firearm and possession of marijuana while the child was in his care was not indicative of improper care or custody is misplaced. That case involved the sufficiency of evidence to support a criminal conviction for performing an act that tends to cause a child to become neglected or delinquent under MCL 750.145. More importantly, this case does not involve an isolated event of mere criminal possession or a lapse of behavior by a parent, but rather a combination of drug use, criminal acts, and other conduct that affected respondent-father's ability to exercise proper decision-making with respect to his child's care and custody. The trial court did not clearly err in finding that respondent-father failed to provide proper care or custody for the child. Further, giving deference to the trial court's finding that respondent-father was not honest with the court and service providers, we find no clear error in the trial court's determination that he failed to benefit from services and that there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the child's age.

Lastly, considering respondent-father's criminal activity and the continued uncertainty over whether he could provide proper care and custody, we find no clear error in the trial court's determination that termination of respondent-father's parental rights was in the child's best interests. MCL 712A.19b(5); *In re JK*, 468 Mich at 209.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello