

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* BROWN/BRADBURN, Minors.

UNPUBLISHED  
November 25, 2014

No. 322009  
Clare Circuit Court  
Family Division  
LC No. 12-000085-NA

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Before: OWENS, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Respondent appeals of right an order terminating her parental rights to her daughter, SMB, and son, AJB, based on MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

Respondent is the mother of both minor children and was living with AJB's father at the time the children entered protective custody. The court took the children into protective custody due to a history of domestic violence in the home and respondent's then denial of any abuse. Further allegations, including failing to protect the children from abuse at the hands of AJB's father, exposing the children to an alternative sexual lifestyle, and that the children had access to pornography on the family computer, were presented at a plea hearing. AJB's father admitted to the allegations and respondent pleaded no contest. Respondent and AJB's father were both eventually charged with criminal child abuse.

An initial condition of respondent's bond was that she was to have no contact with her children. The bond condition was lifted in early November 2013, and weekly visits were scheduled. Out of the scheduled visits, respondent cancelled five and simply did not show up or call for seven others.

With respect to all three statutory factors, the court noted that it had originally taken jurisdiction over respondent's children based on her admissions that her daughter had become "highly sexualized" and "was sexually abused by a relative while in the mother's care." The court then noted that respondent had attempted to put SMB in contact through Facebook with a man who was convicted of third-degree criminal sexual conduct and was currently in a relationship with a man, who she intended to marry, who was on both the Michigan and Ohio registries for child abuse. The court considered and gave credit to the testimony of respondent's

counselors regarding her lack of insight and inability to take responsibility for the dangerous environment in which the children had been placed when discussing MCL 712A.19b(3)(c)(i), took notice of respondent's lack of consistency in parenting time when discussing MCL 712A.19b(3)(g), and that respondent neither had a plan to protect her children from potential dangers nor was able to see the parallels between her own past and her present situation when discussing MCL 712A.19b(3)(j). The court found by clear and convincing evidence that the petitioner had met its burden with respect to all three statutory factors. Finding that termination was in the best interests of the children, the court terminated respondent's parental rights.

On appeal, respondent does not contest the sufficiency of the trial court's findings with respect to either the statutory factors or the best interests of her children. Instead respondent argues that the state violated her due process rights by bringing criminal proceedings against her which created the grounds it then used to move for terminating her parental rights. Respondent argues that the criminal proceedings created trust issues with her counselors and prevented her from being able to adequately visit her children. She also argues that the failure of her service plan to address sexual abuse issues created the circumstances that prevented her from progressing in therapy and ultimately that led to the termination of her parental rights.

We review an order terminating parental rights under the clearly erroneous standard. MCR 3.977(K). A decision of the trial court is clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Questions of constitutional law are reviewed de novo. *In re B and J*, 279 Mich App 12, 17; 756 NW2d 234 (2008).

A natural parent's fundamental liberty interest in the custody of her child is protected by the United States and Michigan Constitutions. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). When the state intervenes to terminate the relationship between a parent and her children, it must be "accomplished by procedures meeting the requisites of the Due Process Clause." *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). "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.*

The state violates the due process requirement when it takes action "with the purpose of virtually assuring the creation of a ground for termination of parental rights, and then proceeds to seek termination on that very same ground." *In re B and J*, 279 Mich App at 19-20. In *In re B and J*, the Department of Human Services had been investigating the possible sexual abuse of a child by his step-grandfather, the first respondent, and investigating the child's mother, the second respondent, for failure to protect. The child lived with his mother, grandmother, and step-grandfather and the grandmother and grandfather were the parents of two children B and J. *Id.* at 14-15. Both respondents were citizens of Guatemala and were illegally residing in the United States. *Id.* at 14. DHS reported the illegal status of the respondents to Immigration and Customs Enforcement, who deported respondents to Guatemala. *Id.* at 15-16. At a dispositional hearing, the trial court noted that prior to deportation, the respondents had been participating fully in the proceedings and attempted to visit their children. *Id.* at 16. The trial court found, however, that because the respondents were deported they were unable to provide proper care

and custody for their children and that termination of their parental rights was thus proper. *Id.* at 17.

This Court held that § 19b(3)(g) could not be used as a grounds for terminating the respondent's parental rights because the only reason they were unable to provide the proper care and custody to their children was because the petitioner had seen to it that they were deported. *Id.* at 19. This Court determined that "the state may not set out with the overt purpose of virtually assuring the creation of a ground for termination of parental rights." *Id.*, citing *In re Shane P*, 58 Conn App 234, 241; 753 A2d 409 (2000).

That is not what occurred in this case. One of the two counselors that worked with respondent indicated that the possibility of criminal proceedings would make a person more guarded. However, respondent was acting guarded and refusing to take responsibility for the circumstances involving her children prior to being arrested on the criminal charges. Further, the evidence shows that respondent had made little to no progress in her counseling before charges were filed and her problems in counseling were present even in matters that would not affect her criminal case. In fact, one counselor testified that respondent's problems in counseling extended beyond issues that would affect her criminal case.

Additionally, respondent's argument that the criminal case was the cause of her inability to visit her children is without merit. While it is true that the criminal charges did prevent respondent from visiting her children while in jail and while subject to a bond condition, the evidence showed that respondent neglected to visit her children even when she was able.

To the extent the service plan failed to address sexual abuse issues that also cannot be said to be the cause of the termination of respondent's parental rights. One of respondent's counselors testified that respondent had an inability to deal with her own past, and an unwillingness to give out information that inhibited her from making progress. The other testified that respondent was unable to gain insight and accept responsibility for past instances of abuse. Respondent's own inability to progress past a basic level in her counseling and her inability to accept rudimentary responsibility for her children's present circumstances were the cause of her parental rights being terminated. Furthermore, respondent did not make any argument concerning the lack of sexual abuse services in her service plan until the termination hearing. "The time for asserting the need for accommodation in services is when the court adopts a service plan, not at the time of a dispositional hearing to terminate parental rights." *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000).

The trial court was also heavily concerned with the fact that respondent had attempted to get her daughter in contact with a registered sex offender and was in a relationship with a man who had a history of child abuse. No action of the state was the cause of these questionable associations. And, finally, there is also no indication that bringing a criminal case against respondents was done for the purpose of making it easier to terminate respondent's parental rights. See *In re B and J*, 279 Mich App at 19-20.

Respondent was not deprived of due process in the proceedings before the trial court because the state did not create the grounds that led to the termination of her parental rights.

Affirmed.

/s/ Donald S. Owens

/s/ Jane E. Markey

/s/ Deborah A. Servitto