

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
October 18, 2011

In the Matter of K. L. DUMAS, Minor.

No. 303136  
Wayne Circuit Court  
Family Division  
LC No. 10-495490

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Before: WILDER, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Respondent E. Boudah appeals as of right from a circuit court order terminating her parental rights to the minor child, K.L., pursuant to MCL 712A.19b(3)(b)(i) (parent injured or abused the child or a sibling), (b)(ii) (parent failed to prevent injury or abuse to a child or a sibling), (c)(i) (the conditions that led to the adjudication continue to exist), (c)(ii) (other conditions exist that have not been rectified), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood the child will be harmed if returned to the parent's home). Because the trial court did not clearly err in finding that §§ 19b(3)(b)(i), (g), and (j) were each established by clear and convincing evidence, and, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests, we affirm.

The trial court's finding that a statutory ground for termination has been proven by clear and convincing evidence is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court erred in relying on §§ 19b(3)(b)(ii), (c)(i), and (c)(ii) as statutory bases for termination. Contrary to petitioner's and the minor child's arguments, § 19b(3)(b)(ii) does not apply where a parent fails to protect a child from the parent's own conduct. Rather, § 19b(3)(b)(i) applies when a child is abused or injured by the parent's own conduct, and § 19b(3)(b)(ii) applies when another person abuses or injures the child and the parent had the ability to protect the child from the other person and failed to do so. *In re Jenks*, 281 Mich App 514, 517-518; 760 NW2d 297 (2008); *In re Archer*, 277 Mich App 71, 74-75; 744 NW2d 1 (2007). Here, there was no evidence that respondent failed to protect the child from anyone other than herself. The trial court also erred in relying on §§ 19b(3)(c)(i) and (c)(ii) because 182 or more days had not elapsed since the issuance of the initial dispositional order. However, the

trial court's erroneous reliance on these statutory grounds was harmless because the trial court did not clearly err in finding that the remaining statutory grounds for termination were established by clear and convincing evidence. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Our review of the record reveals that the trial court did not clearly err in finding that § 19b(3)(b)(i) (parent injured or abused the child or a sibling) had been proven by clear and convincing evidence. It was undisputed that respondent had physically abused K.L. by slapping her. Evidence in the record demonstrates that respondent "admitted to slapping [K.L.] in the face as a form of discipline." Respondent's mother, L. Boudah, testified to seeing respondent strike K.L. for no apparent reason. When K.L. was removed from the home, she had a small bruise under one eye, a healing scab on one arm, and red scrapes on the back of one thigh. Her clothing was dirty, the soles of her feet "were black," she had dirt under her fingernails and toenails, and her hair was unkempt. Based on this evidence, the trial court did not clearly err in finding that §§ 19b(3)(b)(i) had been proven by clear and convincing evidence.

We also conclude that the trial court did not clearly err in finding that § 19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood the child will be harmed if returned to the parent's home) had been proven by clear and convincing evidence. Respondent's admissions at the adjudication established that she had been unable to provide proper care or custody for the child. Respondent was the perpetrator of domestic violence against both her mother and her daughter. Respondent had an unresolved substance abuse problem and had serious mental health problems that left her unable to take care of herself, let alone a child. Respondent was offered services to address these issues, but made little effort to participate because she was consumed by thoughts that K.L. was being abused by her foster family, which thoughts led her to actually physically kidnap the child during a scheduled family visit.

At the time of the hearing, respondent had been attending substance abuse and anger management counseling and receiving medication reviews for only two months and the documents from Team Mental Health Services (TMHS) did not indicate whether respondent's problems had been resolved and, if not, when they were likely to be resolved. Respondent claimed to have been clean and sober since July 2010, but never substantiated it by submitting to random drug screens. Respondent's mother testified that respondent still had problems controlling her temper. There was also evidence that respondent's mental illness continued to present problems for respondent evidenced by the fact that she set fire to her house a week before the hearing. Respondent failed to appreciate the harmful consequences of those actions. And the record from the termination hearing showed that respondent was still suffering from the effects of mental illness.<sup>1</sup> Given respondent's ongoing problems, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide

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<sup>1</sup> At the hearing, respondent apparently experienced auditory hallucinations because she kept complaining about strange noises emanating from the open telephone line, yet the referee stated at one point, "I'm sitting right next to this telephone. I am not hard of hearing. There is nothing coming through this telephone."

proper care and custody within a reasonable time, and that it was reasonably likely that the child would be injured or abused in the foreseeable future if returned to respondent's custody.

Although respondent correctly asserts that parental rights are constitutionally protected, see *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993), because petitioner presented clear and convincing evidence establishing a basis for termination under § 19b(3), respondent's liberty interest in the continued custody and control of her child was eliminated. *In re Trejo*, 462 Mich at 355-356. Considering respondent's history of abuse and neglect, her unstable mental health that caused her to place the child in dangerous situations, the child's lack of attachment to respondent and the child's fearful reaction to respondent during visits, and the child's need for permanence and stability, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Mark J. Cavanagh  
/s/ Pat M. Donofrio