

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 20, 2011

In the Matter of ROYAL, Minors.

No. 303387
Wayne Circuit Court
Family Division
LC No. 05-440397

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

The respondent-mother, CR, appeals the trial court's termination of her parental rights to her four oldest children: TJR (DOB 01-06-1998), NLR (DOB 11-15-2001), TDR (DOB 02-11-2004) and AJR (DOB 01-31-2006).¹ Petitioner presented significant evidence that CR physically and verbally abused the children, has anger management and psychological issues, engages in unhealthy romantic relationships, and denies any wrongdoing in relation to her children. CR did not benefit from services after two separate child protective proceedings. Based on this record, we affirm the trial court's termination of CR's parental rights under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood of harm to the child if returned).

I. BACKGROUND

CR has a long history with Child Protective Services (CPS). CR was placed in the foster care system herself between the ages of 17 and 19. CR received her first CPS referral in 2002; however, CPS was unable to locate CR to investigate the allegations levied against her. TDR tested positive for marijuana when he was born in February 2004, instigating another CPS referral. In the hospital, CR indicated that she had been unaware that she was pregnant and wanted to place TDR for adoption. Even so, CPS kept the children in CR's care. In March 2005, CPS received a referral that CR had physically abused TJR. The children were not taken

¹ CR gave birth to a fifth child, DR, on September 18, 2010. The infant was removed from his mother's care three months later and placed with his siblings in his maternal grandmother's home. CR's rights to DR were not terminated in the current order and the status of DR's child protective proceeding is not indicated in the record.

into care until August 2005. During the 2005 child protective proceedings, CR received psychological and psychiatric evaluation and treatment, individual and family therapy, anger management and substance abuse counseling, and parenting classes. The children were returned to CR's care in June 2006. CPS received two more reports of CR's physical abuse against the children in 2008. The allegations were investigated and dismissed. In April 2009, however, the children were removed from CR's care based on substantiated allegations that CR had beaten TJR with a broomstick, a tent pole and a cooking pot. The court cited as grounds for jurisdiction CR's failure to provide necessary care and support for her children and CR's provision of "an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity." The four children were placed with their maternal grandmother who eventually became a licensed foster care provider and continues to have custody of the children.

During the child protective proceedings, TJR testified that CR had stomped on the heads of the three oldest children on several occasions. TJR recounted an incident when CR could not understand then-four-year-old TDR because he suffered from a speech delay. CR threw TDR to the ground and told him to "shut the f' up." TJR testified that CR had beaten her with a belt, broomstick, pot and tent pole in the past and showed the court scars left by a 2007 attack. TJR testified that CR threatened to kill her if she reported their family affairs to anyone.²

Although the children were taken into custody in April 2009, CR did not actively participate in her case service plan until the summer of 2010. In a November 2009 psychological evaluation, the evaluating therapist described CR as "extremely angry," "sarcastic and condescending," and unwilling to provide more than "brief and cynical" answers. CR told the evaluating therapist that TJR had fabricated the reports of abuse. After four or five separate referrals, CR finally began individual counseling and completed a parenting class. The parenting class provider ultimately was forced to organize individual sessions for CR because the teacher had to diffuse an aggressive verbal altercation between CR and TJR's father. CR's treating therapist testified that CR self-reported improvement in her anger management skills, but still denied physically abusing her children. CR also missed several mandatory weekly drug screens throughout the proceedings and tested positive for alcohol on April 16 and November 16, 2010.

The foster care worker testified that CR had exercised weekly supervised visitation with the children. Although CR's interaction with the children was usually appropriate, CR had used "vulgar" language in a message left on the maternal grandmother's answering machine. The children's therapist also witnessed CR's verbal abuse of the children's grandmother. And the parenting time supervisor reported that CR had become verbally aggressive toward her when she intervened in an attempt to redirect the children.

² CR was convicted of third and fourth-degree child abuse in relation to the 2009 events. It is unclear from the record whether CR entered a plea of guilty or *nolo contendere*. As a *nolo contendere* plea cannot be used as an admission in another proceeding, *Shuler v Michigan Physician's Mut Liability Co*, 260 Mich App 492, 512; 679 NW2d 106 (2004), we will not consider that evidence in our review of the statutory grounds for termination.

Following a supplemental petition, the trial court terminated CR's parental rights to her four oldest children on March 9, 2011. The court noted CR's failure to benefit from provided services, inability to secure unsupervised visitation with the children, history of child abuse and complete denial of wrongdoing against her children. The court further noted CR's continued lack of stable housing and failure to consistently report for drug screens. After two child protective proceedings, CR still had not benefited from services and posed a danger of future abuse to the children. Accordingly, the court terminated CR's parental rights.

II. STANDARD OF REVIEW

A court may terminate a respondent's parental rights if clear and convincing evidence proves one or more of the statutory grounds listed in MCL 712A.19b(3). Once a statutory ground for termination is established, the court shall order termination of parental rights if it finds that termination serves the child's best interests. MCL 712A.19b(5). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest" under MCL 712A.19b(5). *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(K). Where, as here, the petitioner seeks termination under a supplemental petition, the court must base its termination decision on "clear and convincing legally admissible evidence" supporting the additional cited grounds. MCR 3.977(F)(1)(b). "A finding is 'clearly erroneous' if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (internal quotation omitted). This Court gives deference to a trial court's special opportunity to observe and judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

III. STATUTORY GROUNDS FOR TERMINATION

The trial court terminated CR's parental rights under the following provisions of MCL 712A.19b(3):

- (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
- (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Petitioner presented clear and convincing legally admissible evidence to support both grounds for termination. CR has a documented history of verbal and physical abuse of her children and presents a continuing risk to their safety. CPS substantiated claims of abuse leading to the children's removal from CR's care in both 2005 and 2009. The children provided further evidence of physical and verbal abuse during therapy sessions and on the witness stand. Even in the face of physical evidence of abuse, CR continued to deny mistreating her children. CR's

history of abuse and failure to benefit from services to recognize and avoid this behavior was more than sufficient to determine that the children would likely be harmed if returned to her care.

Petitioner presented evidence that CR's romantic entanglements had placed her children in harm's way in the past and would continue to do so in the future. CR admittedly engaged in relationships with inappropriate men. The children witnessed incidents of domestic violence between their mother and the father of TJR and the father of TDR and AJR. TJR's father sold illegal drugs from their home. CR described NLR's father as a "sugar daddy" who exchanged material benefits for sexual favors. The foster care worker was never able to locate him. The father of TDR and AJR was married throughout his relationship with CR, had no relationship with his children and could not be located by foster care workers. CR described the father of DR, who was conceived and born during these proceedings, as a long-time friend with whom she occasionally enjoyed a sexual relationship. Although CR initially indicated that she and the infant's father were no longer romantically involved, CR brought evidence to the termination trial that the two were purchasing a home together.

Petitioner also presented evidence that CR's belated participation in counseling was insufficient to remedy her parental difficulties. CR received individual counseling in both the 2005 and 2009 child protective proceedings. The goal in both proceedings was to resolve CR's anger management issues and help her recognize her abusive behavior and conduct. Despite two separate rounds of services and counseling, CR continued to deny that she abused her children. CR's continued denial of wrongdoing is evidence that she failed to benefit from the services provided. "[I]t is not enough to merely go through the motions [of a treatment plan]; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the child would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 N2d 708 (2005).

IV. BEST INTERESTS

We further agree with the trial court's determination that termination of CR's parental rights was in the children's best interests. TJR and NLR stated that they were afraid of their mother and wanted to remain with their grandmother. The children faced the danger of child abuse if returned to their mother given her admitted belief that she treated her children appropriately. Moreover, CR had a history of engaging in relationships with violent or dangerous men and planned to cohabitate with her latest paramour with the children.

We note that termination is not required where children are "being cared for by relatives." MCL 712A.19a(6)(a). Relative placement is "an explicit factor to consider in determining whether termination was in the children's best interests." *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010). In this case, the court did not make a specific finding on the record that termination was warranted despite the placement of the children with CR's mother. However, it is clear from the record that the court weighed this fact in rendering its decision. Throughout the proceedings, petitioner had alternate goals—to reunify CR with her children, or, in the event reunification proved impossible, to prepare the maternal grandmother to take permanent custody. Petitioner presented evidence that CR had verbally abused her mother during these proceedings and blamed her mother for taking her children. The maternal grandmother attempted to supervise CR's visitation for a period of time but CR was too

aggressive toward her, requiring the Department of Human Services to resume supervision. The petitioner attempted to facilitate a lesser remedy than termination and the court clearly gave serious consideration to the alternative. However, termination was clearly in the children's best interests given CR's antagonistic relationship with her mother and the potential for future abuse of the children.

Affirmed.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher