STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ALEXANDRIA NELMARK,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LISA PHILLIPS,

Respondent-Appellant,

and

RANDALL NELMARK,

Respondent.

UNPUBLISHED
May 6, 2008

No. 280076
Kent Circuit Court
Family Division
LC No. 06-050629-NA

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Respondent-appellant appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j).[1] We affirm.

Respondent-appellant's sole argument on appeal is that the evidence failed to establish a statutory ground for termination of her parental rights. We disagree. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Jackson,* 199 Mich App 22, 25; 501 NW2d 182 (1993). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo Minors*, 462 Mich 341,

[1] The court also terminated the parental rights of the child's father after he voluntarily released his rights. He is not a party to this appeal.

354; 612 NW2d 407 (2000); MCL 712A.19b(5). We review the trial court's determination for clear error. *Trejo, supra* at 356-357.

The child at issue was removed from her parents' care in February 2006 after she was hospitalized and diagnosed with serious injury consistent with nonaccidental causes. At the time of the adjudication in April 2006, respondent-appellant was unable to provide the child with a safe environment considering that neither parent offered any explanation regarding the cause of the child's injuries, they both denied any involvement (the only caregivers identified were the parents and the father's mother), and respondent-appellant's older children had also suffered unexplained injuries in the past, leading to their removal from her care.[2] Although the record contained no direct evidence indicating that respondent-appellant or the child's father caused the injury, the unexplained nature of the child's injury coupled with the unexplained physical injuries to her older children also occurring while in her custody, suggested a serious failure on the part of respondent-appellant to adequately protect her children from harm. Under these circumstances, the child clearly was at a risk of harm and respondent-appellant was unable to provide proper care or custody for her.

In April 2006, the court entered its dispositional order, and over the next 14 to 15 months respondent-appellant made progress with services, including participating in parenting classes and counseling, submitting to a psychological evaluation, obtaining employment and maintaining housing, attending visits with the child, and demonstrating appropriate parenting techniques. The evidence, however, clearly indicates that respondent-appellant's notable efforts towards compliance with her treatment plan were not enough to insure that the child would be safe and properly cared for in her custody. Pertinent was the ongoing uncertainty about how the child sustained her serious and nonaccidental injury while in respondent-appellant's care, along with respondent-appellant's history of failing to provide a safe environment for her older children who also suffered unexplained physical injury while in her care. Also of concern was her continued involvement with and dependence on the child's father despite warnings by the caseworker and the court that she needed to end her involvement with him because of the significant risk of harm he posed due to his serious substance abuse and anger management issues. She also exercised poor parental judgment in allowing the child to be cared for by the paternal grandmother who she knew abused marijuana and had a "bad temper." Finally, there were ongoing concerns about her emotional state expressed by her counselor and the evaluating psychologist. On this record, we agree with the trial court that it remained reasonably likely that the child would be subjected to harm if returned to respondent-appellant's home. MCL 712A.19b(3)(j).

We further agree that respondent-appellant's inability to effectively resolve her issues so that she could provide the child with a safe and stable environment in over 17 months since the child's removal, despite her compliance with services, clearly established that she would not likely be able to provide proper care and custody for the child within a reasonable time. MCL

[2] At the time of the older children's removal from her care, respondent-appellant was married to another man, who physically abused her. Her older children were not returned to her care and were placed under a full guardianship with their maternal grandmother in 1999.

712A.19b(3)(c)(i) and (g). This is especially so, considering the young age of the child and that she had already been outside of respondent-appellant's care for over 17 months (over half of the child's life) in a placement with her maternal grandparents and half-siblings where she was thriving and progressing. Under such circumstances, we conclude that delaying the child's stability and permanency any longer by allowing respondent-appellant additional time to work towards reunification would be unreasonable. Therefore, despite her noteworthy efforts towards complying with services, we find no clear error in the trial court's determination that the evidence clearly established grounds for terminating respondent-appellant's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). *Trejo, supra* at 356-357. In light of the foregoing evidence, we likewise find no clear error in the trial court's determination that termination of respondent-appellant's parental rights was in the child's best interests.[3]

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski

[3] The trial court went beyond the best interest inquiry required under MCL 712A.19b(5). The statute does not require that the court affirmatively find that termination is in the child's best interests. *Trejo, supra* at 364 n 19.