

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

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UNPUBLISHED  
December 11, 2012

In the Matter of COOK, Minors.

No. 310347  
Washtenaw Circuit Court  
Family Division  
LC Nos. 2010-000135-NA;  
2010-000136-NA;  
2010-000137-NA

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Before: TALBOT, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

R. Cook appeals as of right the trial court's order terminating her parental rights to her three minor children.<sup>1</sup> We affirm.

The events that led to the termination of Cook's parental rights began in 2008 in Montgomery County, Texas. Child Protective Services ("CPS") in Texas became involved after "DM," the father of the two younger children, severely beat one of the minor children. Cook did not report the beating and did not seek medical attention for the injured child. Because of this incident, Cook was ordered not to have any contact with DM. Nevertheless, Cook continued to live with DM, and CPS drafted an affidavit to remove the children from the home in 2010. There was also an outstanding warrant for DM's arrest at this time. Shortly thereafter, Cook and DM moved the children to Michigan.

Upon moving to Michigan, the Department of Human Services ("DHS") received complaints that DM physically abused Cook as well as the minor children. DM was arrested in October of 2010 on child abuse charges in Michigan and extradited to Texas for child abuse charges in that state related to one of the minor children at issue. Cook admitted that she did not report the abuse that occurred in Michigan or Texas. In February of 2011, Cook was arrested in Michigan and extradited to Texas because she had an outstanding warrant for her arrest in that state. Cook pleaded guilty to injury to a child by omission in Texas and was sentenced to six

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<sup>1</sup> MCL 712A.19b(3)(b)(ii) (failure to prevent physical abuse), (g) (failure to provide proper care and custody), (j) (child will be harmed if returned to parent), and (k)(iii) (parent committed battery on the child).

months in jail. On March 23, 2011, DHS filed a second amended petition and sought termination of both Cook and DM's parental rights at the initial dispositional hearing.

Cook was released from jail in Texas in August of 2011. She did not return to Michigan, where her children were, and has not seen her children since January of 2011. DHS provided Cook with a case services plan that required her to participate in a parenting skills course, submit to a psychological evaluation and follow up with the recommendations of that evaluation, participate in individual therapy, complete substance abuse screenings, obtain appropriate housing, and obtain employment. Cook partially complied with the plan by submitting to a psychological evaluation and substance abuse screenings, participating in a parenting class, and by obtaining housing with relatives. Cook, however, failed to obtain employment and there was no record of her having undergone counseling or following up with recommendations made in the psychological evaluation.

On appeal, Cook challenges the reasonableness of the case services plan and argues that the plan did not provide reasonable efforts toward reunification. She contends that the plan should have enabled her to live in the same state as the children, either through a relative placement out of Michigan or by providing housing for her in Michigan.

"Generally, when a child is removed from the parents' custody, [DHS] is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan."<sup>2</sup> DHS, however, "is not required to provide reunification services when termination of parental rights is the agency's goal."<sup>3</sup>

In this case, DHS sought termination of Cook's parental rights in the second amended petition before it offered her the case services plan to which she now objects. Because DHS sought termination, not reunification, Cook was not entitled to reunification services, and her arguments related to the case services plan are without merit.<sup>4</sup> That notwithstanding, we note that Cook failed to comply with the services that she was offered under the case services plan. When a parent fails to participate in the services given to her, she cannot allege that the services were inadequate or that DHS failed to make reasonable efforts toward reunification.<sup>5</sup> Cook's failure to comply with the services available to her precludes her from claiming the services were inadequate or unreasonable; it also renders meritless her claim that the services plan deprived her of reunification with her children.<sup>6</sup>

Additionally, although not challenged by Cook, we note that the trial court did not clearly err by finding that there were statutory grounds for termination, or that termination of Cook's

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<sup>2</sup> *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009).

<sup>3</sup> *Id.* at 463.

<sup>4</sup> *Id.*

<sup>5</sup> *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

<sup>6</sup> *Id.*

parental rights was in the best interests of the children. “In a termination of parental rights proceeding, a trial court must find by clear and convincing evidence that one or more grounds for termination exist and that termination is in the child’s best interests.”<sup>7</sup> An appellate court “review[s] for clear error both the [trial] court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the [trial] court’s decision regarding the child’s best interest.”<sup>8</sup> The trial court’s termination decision “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.”<sup>9</sup>

The trial court did not clearly err when it found that there were statutory grounds for termination.<sup>10</sup> A trial court may terminate a parent’s parental rights if a child suffered physical injury or physical or sexual abuse, and “[t]he parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.”<sup>11</sup> In this case, Cook failed to act despite several instances where DM physically abused and injured the children. Moreover, Cook attempted to protect DM from allegations of abuse and refused to report the abuse. Given the repeated instances where Cook failed to respond, the trial court did not clearly err when it found that she “had the opportunity to prevent” physical abuse and failed to do so, and there was a “reasonable likelihood” the children would suffer physical abuse or injury in the future if returned to Cook’s home.

Additionally, the trial court did not clearly err when it found that termination of Cook’s parental rights was in the children’s best interests. The record reveals that Cook repeatedly failed to act in the face of DM’s physical abuse of the children. Moreover, the record reveals that Cook failed to comply with the case services plan and that she did not return to visit the children after she was released from jail. Additionally, the children indicated that they were afraid of Cook and did not want to return to her care. Given the forgoing, the trial court did not clearly err in finding that termination of Cook’s parental rights was in the best interests of the children.

Affirmed.

/s/ Michael J. Talbot  
/s/ Jane E. Markey  
/s/ Michael J. Riordan

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<sup>7</sup> *In re HRC*, 286 Mich App at 459.

<sup>8</sup> *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

<sup>9</sup> *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

<sup>10</sup> MCL 712A.19b(3)(b)(ii).

<sup>11</sup> *Id.*