

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
January 10, 2013

In the Matter of NABERS/REED, Minors.

No. 308818  
Oakland Circuit Court  
Family Division  
LC No. 2007-739244-NA

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Before: WILDER, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Respondent T. Reed appeals as of right from the trial court's order terminating her parental rights to three minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent's children were made temporary court wards in 2000 and again in 2007. The children were returned to respondent's care in November 2008, and the trial court terminated its jurisdiction over the children in February 2009. A month later, respondent's oldest child, her daughter JN, was arrested following a violent altercation with respondent over JN's possession of a cellular telephone. Respondent initiated incorrigibility proceedings. The Department of Human Services (DHS) filed a petition for temporary jurisdiction over JN and later amended the petition to include respondent's three younger children. An adjudicative trial on the petition was held in February 2010, after the incorrigibility proceedings involving JN concluded. A jury determined that a statutory basis for the court's jurisdiction was established under MCL 712A.2(b).

The trial court tried various different relative and residential placements for JN, but none were successful. Respondent blamed the DHS for not restraining JN's behavior and keeping her safe. The three younger children were initially placed with respondent, but she allowed her son, KR, to live with his grandfather. A foster care worker testified that DHS had not given approval for this placement. Respondent's relationship with the DHS deteriorated and, in July or August 2010, respondent and her daughters NR and RR relocated to Georgia without the DHS's knowledge or consent. Georgia authorities cooperated with the DHS to return the two girls to Michigan, where NR was placed in foster care and RR was placed with her paternal grandmother.

In March 2011, the DHS filed a supplemental petition to terminate respondent's parental rights to all four children. Following a bifurcated hearing, the trial court found that statutory grounds for termination were established pursuant to §§ 19b(3)(c)(i), (g), and (j) and that

termination of respondent's parental rights was in the best interests of JN, KR, and RR but was not in NR's best interests. Accordingly, the court terminated respondent's parental rights to JN, KR, and RR, but not NR.

Respondent argues on appeal that the DHS was not justified in pursuing court wardship over all of her children when the only child she had difficulty parenting was JN. Respondent avers that the DHS pursued the child-protection proceedings to retaliate against her for her objections to the management of JN's incorrigibility proceedings. These arguments are directed at the trial court's exercise of jurisdiction over the children. Where, as here, termination was not ordered at the initial dispositional hearing, the trial court's exercise of jurisdiction can only be challenged by direct appeal of the initial dispositional order. MCR 3.993(A)(1); *In re SLH, AJH, & VAH*, 277 Mich App 662, 668; 747 NW2d 547 (2008); *In re Bechard*, 211 Mich App 155, 159; 535 NW2d 220 (1995). Thus, respondent is precluded from collaterally attacking the trial court's exercise of jurisdiction over her children in this appeal from the order terminating her parental rights. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993).

Respondent also argues that the trial court erred in finding that the stated statutory grounds for termination were established. In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination in MCL 712A.19b(3) exists. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). The trial court's decision is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356. A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which permit termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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(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.

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(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.

With respect to § 19b(3)(c)(i), respondent's children were made court wards because of respondent's inability to manage JN's behavior. Respondent's treatment plan required her to address her parenting deficiencies through counseling and parenting classes. Significantly, respondent refused to cooperate with the DHS and instead moved to Georgia. A foster-care worker testified that respondent never provided documentation regarding parenting classes or counseling in Georgia. A subsequent worker testified that she received a certificate regarding parenting classes only the day before the termination hearing, but she could not say whether respondent benefited from the classes.<sup>1</sup> The evidence, as a whole, failed to indicate that respondent had made progress in addressing her problems in managing JN's behavior. Respondent's inconsistency in her actions and her own testimony tended to demonstrate that she had not learned how to appropriately respond to a child's rebellious behavior. In addition, the director of the Court Appointed Special Advocate program in Oakland County testified that respondent's treatment of JN was germane in terms of how she would be able to deal with her other children.

The trial court did not clearly err in finding that respondent failed to rectify the conditions that led to the adjudication or in finding that, given respondent's past history, those conditions were not likely to be rectified within a reasonable time. Thus, the trial court did not err in finding that termination of respondent's parental rights was warranted under § 19b(3)(c)(i).

The circumstances also supported termination of respondent's parental rights under §§ 19b(3)(g) and (j). In addition to her problems with JN and her unauthorized relinquishment of custody over KR to his grandfather, respondent removed her younger daughters from Michigan without the court's knowledge or consent, and her efforts at visitation after the children were removed were minimal. Respondent did not seem able to admit that her problems with JN foreshadowed possible serious problems in raising the younger children. The evidence supported the trial court's finding that there was no reasonable expectation that respondent would be able to provide proper care and custody to her children within a reasonable time and that the children were reasonably likely be harmed if returned to her home. See MCL 712A.19b(3)(g) and (j).

Respondent argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. Once a statutory ground for termination is established, the trial court must order termination of parental rights if it finds that termination is in the child's

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<sup>1</sup> At the best-interests hearing, the worker testified that the parenting-class certificate respondent provided appeared, based on her research, to have been provided by an organization dealing specifically with disabled and autistic children (respondent's children are not disabled or autistic). The worker also testified that a counselor respondent saw in Georgia was "not in line with what we generally use" because the counselor did not have a college degree.

best interests. MCL 712A.19b(5). The trial court's best-interests decision is reviewed for clear error. *In re JK*, 468 Mich at 209.

The evidence overwhelmingly demonstrated that respondent's relationship with JN was hopelessly antagonistic and irreparably damaged. The trial court did not clearly err in finding that it was in JN's best interests to end that relationship. The evidence showed that KR had very little relationship with respondent, primarily because respondent did not feel that she was capable of adequately raising a son. Similarly, the evidence showed that RR, who was only six years old at the time of the best-interests hearing, rarely discussed respondent or exhibited signs of missing her. The trial court did not clearly err in finding that KR and RR were both in need of permanence and stability, which respondent could not provide, and that KR's and RR's best interests would be better served by finally terminating respondent's parental rights instead of continuing their uncertain and unstable tie with respondent. Although the fact that KR and RR were placed with relatives was a relevant factor, see *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), the court did consider these placements and nonetheless concluded that termination was the most appropriate outcome. We cannot conclude that the court clearly erred in reaching this conclusion.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter  
/s/ Elizabeth L. Gleicher