# STATE OF MICHIGAN

# COURT OF APPEALS

UNPUBLISHED
January 10, 2013

In the Matter of TRIPLETT, Minors.

No. 310130
Kalamazoo Circuit Court
Family Division
LC No. 2010-000149-NA

Before: HOEKSTRA, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), (j), and (k)(*iii*). For the reasons set forth in this opinion, we affirm.

Respondent's interactions with Child Protective Services (CPS) began in January of 2004 when a complaint was filed alleging that respondent was homeless and struggling to feed and provide for the basic needs of her children. Ultimately, that complaint was resolved when one of respondent's minor children was placed in a full guardianship with a family member. In 2005, respondent was arrested and convicted of domestic assault against the father of her minor children. In January of 2008, the trial court, on a motion by respondent, terminated the full guardianship and respondent regained custody of her children around March of 2009. By the time the proceeding that is the subject of this appeal was before the trial court, respondent had three minor children: L.T., K.T., and C.T. On or about April 14, 2010, roughly a year following full re-unification with L.T. and K.T., respondent beat L.T. with a wooden switch, resulting in multiple lacerations and bruises on L.T.'s body. Respondent initially lied to CPS about the source of L.T.'s injuries. Following a CPS investigation, the trial court removed L.T. and K.T. from respondent's custody. About three weeks later, respondent gave birth to C.T. The trial court allowed C.T. to remain in respondent's custody. Approximately one month after C.T.'s birth, C.T. was admitted to the hospital with a broken femur. Respondent reported that a three-year-old relative caused C.T.'s injury. The physicians determined that the injury was not consistent with respondent's account. On June 11, 2010, the trial court removed C.T. from respondent's custody. The permanency goal for all of the children was reunification with respondent. On December 15, 2011, petitioner filed a supplemental petition seeking termination of respondent's parental rights to the children. Following a termination trial, the trial court terminated respondent's rights on April 20, 2012.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id*. "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009). If the trial court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interest, the court must order termination of parental rights and that additional efforts for reunification of the child and parent not be made. *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010); see also MCL 712A.19b(5). "That determination is to be made on the basis of the evidence on the whole record and is reviewed for clear error." *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008).

In this case, the trial court did not clearly err in finding that petitioner established one or more statutory grounds for termination by clear and convincing evidence. MCR 3.977(J); *In re VanDalen*, 293 Mich App at 139. A trial court may terminate parental rights under MCL 712A.19b(3)(k)(*iii*) when "[t]he parent abused the child or a sibling of the child and the abuse included" battery or other severe physical abuse. MCL 712A.19b(3)(k)(*iii*). Battery is "the willful and harmful or offensive touching of another person which results from an act intended to cause such contact." *Smith v Stolberg*, 231 Mich App 256, 260; 586 NW2d 103 (1998). Respondent admitted to intentionally beating and seriously injuring L.T. Thus, the trial court did not clearly err by finding that respondent abused "the child or a sibling of the child and the abuse included" battery. MCL 712A.19b(3)(k)(*iii*).

Having found that the trial court did not clearly err in terminating respondent's parental rights to the minor children under MCL 712A.19b(3)(k)(*iii*), we need not consider the additional grounds upon which the trial court based its decision. *In re Trejo*, 462 Mich at 360; *In re HRC*, 286 Mich App at 461. Regardless, we find the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j). It was undisputed that respondent physically abused L.T. As discussed below, there was ample evidence that respondent had not rectified the condition that placed her children at harm and led to the adjudication in this case, and there was no reasonable likelihood that respondent would rectify that condition in a reasonable time.

Respondent nevertheless argues that her compliance with the service plan negated a finding of statutory grounds for termination. The record established that although respondent substantially complied with her service plan, she did not benefit from her service plan. Respondent's case workers repeatedly made mention of this fact in their series of reports to the trial court. Case workers stated that respondent's compliance with services would not sufficiently ensure that her children would not be harmed if returned to her. One of respondent's case workers, Timothy Crawford, summarized his and other's concerns as follows:

> There is a concern that even if [respondent] completes services toward reunification her children will still be at risk. There were several caseworkers that reported that [respondent] was an appropriate parent prior to her daughter's removal. There were caseworkers that reported no parenting concerns after her daughter's injury and prior to her son's injury. Caseworkers continue to report

> appropriate parenting though she has two children who sustained serious injuries in her care. [Respondent] had the skills to parent appropriately prior to her children's removal and chose not to use them. She continues to have appropriate skills however her emotional stability is uncertain and her children remain at risk if they were returned to her care.

In *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds by statute as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010), Judge Owens, writing for this Court stated:

> 'Compliance' could be interpreted as merely going through the motions physically; showing up for and sitting through counseling sessions, for example. However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement or case service plan. For example, attending parenting classes, but learning nothing from them and, therefore, not changing one's harmful parenting behaviors, is of no benefit to the parent or child.

Our review of the record evidence leads us to conclude that while respondent did attend and participate in most of the services offered to her, she was unable to benefit from any of those services to a degree that would alleviate, to any degree of certainty, the harm that would be caused to the minor children if they were returned to her care and custody. Such a conclusion is based, in part, on the testimony of respondent's therapist that after more than one year of counseling, respondent still had not obtained sufficient insight into her past behavioral patterns and remained unable to take full responsibility for those decisions. In addition, we base this finding on the testimony of the doctor who conducted respondent's parenting assessment and the children's therapist. Each testified that respondent failed to fully acknowledge her past actions and remained unable to provide a safe environment for the children. Even those service providers who testified to being "shocked" that respondent had beaten her minor child admitted that respondent was deceitful regarding the April 14, 2010 incident. One service provider testified that it was difficult to reconcile respondent's April 14, 2010 beating of L.T. with respondent's previously stated desire to provide her children with a better childhood. The service provider observed that respondent was "so forthright in some things that you generally might not want other people to know, that that tends to make me lean towards believing her." Such an observation is in accord with the findings of one of respondent's therapists who testified that respondent demonstrated a narcissistic personality disorder, and it appeared that her focus was more on how her children met her needs, rather than how respondent would meet her children's needs. This conclusion manifested itself when respondent requested that she and L.T. participate in joint therapy. When L.T. was asked to tell respondent what caused her the most concern, L.T. told respondent of her fear of continued beatings similar to those she had received in the past. Respondent called L.T. a liar, and the sessions were terminated due to the anxiety and fear they brought to L.T. Reviewing these sessions, Dr. Henry concluded that respondent did not acknowledge or take responsibility for what she had done, but instead remained focused

on what had happened to her and actually blamed L.T. for their poor mother-daughter relationship.

In addition, the record reveals that from the inception of these proceedings, respondent engaged in violent behavior. She was convicted of a domestic assault against the father of her minor children, felony child abuse, and while on probation for the latter, malicious destruction of property for kicking down her brother's front door. Considered in the aggregate, all of the evidence presented over this lengthy proceeding leads us to conclude that the trial court did not clearly err by concluding that respondent did not sufficiently benefit from her services. *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009) ("Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error.")

Respondent also argues that the trial court improperly "relied significantly upon" C.T.'s broken leg and improperly presumed respondent to be responsible for C.T.'s injury. Given the evidence which was before the trial court and its conclusions as stated on the record, we find this argument devoid of merit. Contrary to respondent's assertion, the trial court specifically stated that it would terminate respondent's parental rights based solely on the injury that L.T. suffered, regardless of C.T.'s injury. While the trial court characterized what happened to C.T. as "more frightening than what happened to L.T.," for the reasons previously stated, we find that clear and convincing evidence supported a finding of statutory grounds for termination irrespective of any evidence regarding C.T.'s injury.

The trial court additionally did not clearly err by finding that termination of respondent's parental rights was in the minor children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 354. At the time the trial court terminated respondent's parental rights, L.T., K.T., and C.T. had been in the custody of the court for approximately two years. Evidence supported that the children would still be at risk of harm in respondent's care. The trial court found that the minor children needed permanency and stability, which was supported by the evidence of record. Further, L.T. and K.T.'s therapist testified that respondent had traumatized them and that it was her strong opinion that termination of respondent's parental rights to all three minor children was in children's best interests. Thus, we find that the trial court did not clearly err by determining that termination of respondent's parental rights was in the children's best interests. *In re Trejo*, 462 Mich at 364 ("[W]e cannot conclude that the court's assessment of the children's best interests was clearly erroneous. . . . The court did not clearly err by refusing to further delay permanency for the children, given the uncertain potential for success and extended duration of respondent's reunification plan.")

Respondent also argues that the trial court violated due process and Michigan's policy for reunification by ignoring respondent's compliance with her service plan and by relieving petitioner of its burden to prove the grounds for termination by clear and convincing evidence. "Both the Michigan Constitution and the United States Constitution preclude the government from depriving a person of life, liberty, or property without due process of law." *Reed v Reed*, 265 Mich App 131, 159; 693 NW2d 825 (2005). "Parents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Moreover, "[g]enerally, when a child is removed from the parents' custody, the petitioner is

required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App at 462; see also *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

Rather than ignore respondent's compliance with her service plan, the trial court acknowledged respondent's compliance with her service plan, but found that respondent failed to sufficiently benefit from these services. See *In re Gazella*, 264 Mich App at 676. Further, the trial court did not relieve petitioner of its burden of proof by presuming that respondent would neglect or harm her children in the future solely on the basis of respondent's past behavior. Rather, the trial court relied on evidence supporting that respondent failed to make progress despite services and continued to pose a risk of harm to her children. *In re JL*, 483 Mich 300, 331-333; 770 NW2d 853 (2009) (holding that the trial court did not improperly presume the respondent's unfitness on the basis of her past conduct where "the evidence concerning respondent's past conduct established that she was an unfit parent in the past, and the current evidence revealed that she continued to make choices that demonstrated a lack of maturity and ability to care for a child"). We further find that the trial court attempted, for a considerable period of time, to provide respondent with the opportunity to regain the care and custody of her minor children. Given the time and effort undertaken by the trial court to provide such an opportunity, we conclude that the trial court did not err by determining that reasonable reunification efforts were made. See *In re Fried*, 266 Mich App at 542-543. Respondent received a case service plan, multiple caseworkers and parent aides, a psychological examination, a substance abuse assessment, parenting classes, and supervised parenting time. The trial court properly ordered all of these services be provided to respondent, who ultimately failed to benefit from any of the assistance offered to her.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra