

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of FLENER/PEYERK/ROSS/
WATSON, Minors.

UNPUBLISHED
November 5, 2013

No. 314474
Macomb Circuit Court
Family Division
LC No. 2010-000616-NA

Before: MURPHY, C.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her five minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist with no reasonable likelihood that conditions will be rectified within a reasonable time) and (j) (reasonable likelihood children will be harmed if returned to the parent).¹ We affirm.

The evidence established that respondent has a long history of inflicting abusive corporal punishment on her children, including beating them with a hairbrush, spoon, horsewhip, and objects in general, requiring them to kneel on pencils, and requiring them to stand with their nose against a wall and arms outstretched for extensive periods. One child related being hit in the face by respondent, causing a nose bleed. When a therapist asked respondent what she would do if a particular physical punishment being doled out was not effective in changing a behavior, respondent replied that she would try something "harsher." There was evidence of one incident in which respondent duct-taped together the hands of one of the children to stop her from sucking her thumb. There was also evidence that respondent emotionally abused the children.

The oldest of respondent's five minor children suffers from post-traumatic stress disorder as a result of the abuse. The next child also suffers from psychological problems as a result of the abuse. Following a lengthy termination hearing, the trial court found that grounds for terminating respondent's parental rights were established under §§ 19b(3)(c)(i) and (j) and that termination was in the children's best interests.

¹ Another child reached the age of majority while this action was pending and the court terminated its jurisdiction over that child.

On appeal, respondent argues that the trial court erred in finding that petitioner offered sufficient reunification services and in ruling that she failed to benefit from services. She also argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proven by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A. 19b(3) and (5); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011); *In re Moss Minors*, ___ Mich App __; ___ NW2d __, issued May 9, 2013 (Docket No. 311610), slip op at 3. "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "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, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Generally, 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 and providing reunification services. *In re HRC*, 286 Mich App at 462-463. 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 re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

The evidence clearly and convincingly established that respondent received ample reunification services, that she failed to benefit from the services, and that respondent failed to even develop a mindset for benefitting from services. Although respondent articulated statements about alternative methods of discipline, she failed to acknowledge that she had abused her children and that they were harmed by the abuse. She persisted in minimizing the abuse and presenting herself as a victim of the children's fathers, petitioner, and the children's therapists. Although respondent presented her own version and interpretation of the evidence, this Court defers to the trial court's determination of the witnesses's credibility and the weight of the trial testimony. *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). The trial court did not err by giving greater credence to the children's reports of abuse and to their therapists' findings than to respondent's testimony. Respondent emphasizes that Dr. Ryan and Dr. Shirtz opined that reunification might be achievable with family therapy, but the trial court was free to give little weight to these witnesses, especially in view of Dr. Ryan's and Dr. Shirtz's limited opportunity to work with respondent. Similarly, the trial court also was free to give little weight to Dr. Rea's favorable testimony in view of evidence that respondent was selective in her disclosures to Dr. Rea. Indeed, respondent had failed to disclose the physical abuse of her children to Dr. Rea. The trial court did not clearly err in finding that petitioner offered sufficient reunification services and in finding that respondent bore responsibility for the failure of those services.

Respondent also argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. Petitioner presented overwhelming evidence that termination of respondent's parental rights was in the best interests of the two oldest minor children. Both children suffer from severe psychological problems as a result of their abusive upbringing by respondent. Both children consistently opposed visitation with respondent because of the emotional trauma it caused. The evidence also established that termination of respondent's parental rights was in the best interests of the three younger children. The trial court was entitled to rely on the doctrine of anticipatory abuse or neglect to find that respondent's conduct with respect to the older children was probative of how she would treat her other children. *In re HRC*, 286 Mich App at 460-461; *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). Respondent's longstanding pattern of inflicting harsh corporal punishment, her failure to acknowledge and understand the harm caused by her physical abuse, and her failure to benefit from the provided services create a danger that the younger children would be harmed physically and emotionally by respondent. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens