

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYLER JOSEPH MCNETT,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHARON MCNETT,

Respondent-Appellant.

UNPUBLISHED

August 23, 2007

No. 276232

Kalamazoo Circuit Court

Family Division

LC No. 04-000337-NA

Before: Bandstra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Respondent appeals as of right the family court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

To terminate parental rights, the family 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*, 462 Mich 341, 354; 612 NW2d 407 (2000); see also MCL 712A.19b(5). We review the family court’s findings for clear error, MCR 3.977(J); *Trejo, supra* at 356-357, and recognize the court’s special opportunity to assess the credibility of the witnesses, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent first argues that the statutory grounds for termination were not sufficiently proven by clear and convincing evidence. We begin by noting that this argument is strictly unpreserved for appellate review because respondent did not challenge any of the individual statutory grounds in the court below. In fact, the family court’s findings were based in large part on the allegations in the petition, and respondent pleaded no contest to all but two of these allegations. Respondent may not assign as error on appeal something that she deemed proper in the court below because this would allow her to harbor error as an appellate parachute. *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002).

Nonetheless, we perceive no error in the family court's finding that MCL 712A.19b(3)(c)(ii) and (g) were proven by clear and convincing evidence.¹ Although respondent's alcoholism was not specifically enumerated as one of the original grounds for adjudication, it was listed among the allegations in the supplemental petition. Respondent was properly notified of this allegation, and petitioner worked extensively with respondent on her alcohol addiction problem over a significant period of time. However, even after substantial services and several treatment programs, respondent continued to drink and to suffer from severe alcoholism. In light of petitioner's lengthy involvement in respondent's battle with alcohol, the family court's knowledge of the repeated and extensive steps taken to assist respondent in attempting to overcome this disease, and the unsuccessful results achieved, the family court did not err in finding that § 19b(3)(c)(ii) was established by clear and convincing evidence. *In re Conley*, 216 Mich App 41, 43; 549 NW2d 353 (1996).

Nor did the family court err in finding that § 19b(3)(g) was sufficiently established. Respondent's severe alcoholism rendered her incapable of providing proper care and custody for the child, and in light of respondent's repeated pattern of relapse, there was no likelihood that she would become able to properly care for the child within a reasonable time. *Conley, supra* at 44; see also *In re Shawboose*, 175 Mich App 637, 641; 438 NW2d 272 (1989).

Finally, the family court did not err in determining that termination was not clearly contrary to the child's best interests. MCL 712A.19b(5). The weight of the evidence showed that while termination might not overly benefit the child, it would not harm or negatively impact the child either. The family court properly noted that Michigan law no longer requires a finding that termination would be in the child's best interest; instead, the law now requires the court to enter an order of termination so long as termination would not be clearly contrary to the child's best interests. *Trejo, supra* at 354; *In re Gazella*, 264 Mich App 668, 674; 692 NW2d 708 (2005). On the record before us, and in light of the family court's superior opportunity to judge the credibility of the witnesses, we cannot conclude that the family court clearly erred in this regard. MCR 3.977(J); *Trejo, supra* at 356-357.

Affirmed.

/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen

¹ We need not determine whether MCL 712A.19b(3)(c)(i) and (j) were proven in this case because only one statutory ground is required to affirm the termination order. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).