

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of I.F.J., Minor.

UNPUBLISHED
April 11, 2013

No. 312997
Saginaw Circuit Court
Family Division
LC No. 11-033132-NA

In the Matter of I.J.J., Minor.

No. 312999
Saginaw Circuit Court
Family Division
LC No. 11-033135-NA

In the Matter of N.J.J., Minor.

No. 313000
Saginaw Circuit Court
Family Division
LC No. 11-033133-NA

In the Matter of E.C.J., Minor.

No. 313001
Saginaw Circuit Court
Family Division
LC No. 11-033134-NA

In the Matter of E.L.B., Minor.

No. 313003
Saginaw Circuit Court
Family Division
LC No. 11-033268-NA

In the Matter of E.L.B., Minor.

No. 313004
Saginaw Circuit Court

Before: M. J. KELLY, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

In Docket Nos. 312997, 312999, 313000, 313001, and 313003, respondent-mother appeals by right the orders terminating her parental rights to each child under MCL 712A.19b(3)(c)(i), (g), (j). In Docket No 313004, respondent-father appeals by right the order terminating his parental rights to ELB, also under MCL 712A.19b(3)(c)(i), (g), (j). For the reasons stated in this opinion, we affirm.

Respondent-mother had each of the children and is married to respondent-father, but he is legally and biologically only ELB's father. In August 2011, the Department of Human Services removed IFJ, IJJ, NJJ, and ECJ from the home, primarily due to allegations of domestic violence. In October 2011, respondent-mother admitted that she had a history of domestic violence with respondent-father and that the children were present during one or more incidents. She also admitted that she lacked stable housing and was staying at a shelter for domestic violence victims. Based on respondent-mother's plea, the trial court took jurisdiction over the children.

During the pendency of the child protective proceedings, respondent-mother gave birth to ELB. The Department removed ELB from respondents' care in December 2011. And, after respondents entered a plea to allegations in a new petition in March 2012, the trial court took jurisdiction over ELB as well.

In September 2012, the trial court terminated respondent-mother's parental rights to each child. The trial court also terminated respondent-father's parental rights to ELB. The trial court concluded that neither parent benefited from the services provided. Respondents now appeal as of right.

"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." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). This Court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). 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." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The trial court did not clearly err in finding that the statutory grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence for both respondents. Section 19b(3)(c)(i) calls for termination where 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." The primary condition that led to

adjudication was respondents' history of domestic violence. More than 182 days had elapsed since the dispositional orders, and both respondents continued to engage in mutual and dangerous acts of domestic violence.

A review of the record reveals a lengthy and escalating history of domestic violence between respondents. Respondent-father assaulted respondent-mother twice in 2008 and pleaded guilty to domestic violence in 2009. He was placed on a delayed sentence, which he successfully completed; however, respondents continued to be involved in domestic disputes, which led to intervention by police officers. Although respondent-father later denied having reported it, there was evidence that, in December 2011, respondent-mother deliberately rammed her car into respondent-father's car while he was stopped at an intersection and forced him into oncoming traffic. In June 2012, NJJ reported seeing respondent-father drag respondent-mother down the stairs by her leg and hit her in the head with a basketball. In July of that same year, respondent-father was arrested after respondent-mother told officers that he threw a knife at her and choked her to point that she felt like she was going to die; he, in turn, claimed that she tried to stab him. IFJ and NJJ were both present for this assault. IJJ reported seeing respondent-father choking respondent-mother, and NJJ reported seeing him pushing her. There were also several other reports of domestic violence that occurred while the children were not in the home.

These incidents clearly demonstrate that domestic violence remained a continuing and significant problem. And, there is no indication that it could be rectified within a reasonable period of time. The couple participated in domestic violence counseling, yet they showed no progress. Respondent-mother was told to leave the shelter for domestic violence victims because she repeatedly violated the rules and continued to see respondent-father. Further, respondent-mother's counselor stopped working with her because the counselor believed that respondent-mother had no real interest in domestic violence counseling; she was just attending because she had to. Respondent-father participated in Batterers Intervention, but he was discharged due to poor attendance. When he was told that he was out of the program, he indicated that "he didn't care; it didn't matter; he didn't want to do it anyway."

Given the overwhelming evidence that both respondents continue to engage in violent behavior, we cannot conclude that the trial court clearly erred in finding that petitioner had proved that the condition that led to the original adjudication continued to exist and that no reasonable probability existed that either parent would rectify those conditions within a reasonable time. MCL 712A.19b(3)(c)(i). Nor did the trial court clearly err in finding that termination was appropriate under MCL 712A.19b(3)(c)(g) and (j). Regarding MCL 712A.19b(3)(j), when considering termination of parental rights under this subsection, it is appropriate to consider the potential for emotional as well as physical harm to the children. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Considering respondents' history of domestic violence, it was reasonably likely that the children could be either physically or emotionally harmed if returned to respondent-mother's care. And it was similarly reasonably likely that ELB would be harmed if returned to respondent-father's care. The evidence showed that both respondents completely disregarded the emotional harm caused by their continued—and escalating—violence toward each other; similarly, the evidence that the domestic violence included incidents with a knife and a car strongly suggest that a future incident might inadvertently result in physical harm to a child.

The record also reflects that termination was in the best interests of the children. MCL 712A.19b(5). It is undisputed that respondent-mother loves the children and generally has the ability to parent. Likewise, the record shows that respondent-father loves ELB, as well as the other children, and generally has the ability to parent. But the record also shows that both respondents are unable, or unwilling, to solve the problems leading to the violence in their lives, which in turn makes it impossible for them to provide the children with a healthy, safe, and stable environment. The violent nature of their relationship creates a home environment where the children are likely to be either physically harmed or emotionally scarred by the constant exposure to domestic violence. Respondents participated in domestic violence counseling, parenting classes, and marriage counseling, but neither demonstrated a willingness or desire to change the violent dynamic of their relationship. Therefore, the trial court did not clearly err when it determined that termination was in the best interests of the children; the children need a loving, stable home where the adults in their lives model proper behavior.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray