

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LA'KIYA IYANNA
PATTERSON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LA'CARA R. WASHINGTON, a/k/a LA'CARA
RENEE WASHINGTON,

Respondent-Appellant.

UNPUBLISHED
January 13, 2009

No. 285817
Wayne Circuit Court
Family Division
LC No. 06-453063-NA

Before: Fort Hood, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), (j), and (k)(iii). We affirm.

The minor child was removed from respondent's care when she was 1½ years old after a complaint was filed alleging physical abuse, neglect, and a failure to protect on the part of respondent. At this time, it was discovered the child had suffered from multiple burns occurring at different times, for which respondent admittedly did not seek medical attention. Respondent explained that on one occasion the child accidentally burned herself with a clothing iron, resulting in a large burn to her leg, and on another occasion the child accidentally burned herself with a flat iron, resulting in several burns to her arm. The medical findings indicated that the burns were not consistent with respondent's explanations of how they occurred and were suggestive of physical abuse. At the time of her removal, the child also had several bald spots and sores on her head, which were later diagnosed as ringworm and fungus inside her scalp. The court assumed temporary jurisdiction over the child pursuant to respondent's no-contest plea and entered its initial dispositional order requiring respondent to comply with services, including parenting classes and therapy intended to address her issues, and to maintain stable, suitable, and safe housing and stable employment.

Respondent claims that the evidence failed to establish statutory grounds for termination of her parental rights. We disagree. In order to terminate parental rights, the trial 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); MCL 712A.19b(5).¹ We review the trial court’s determination for clear error. *Trejo, supra* at 356-357; MCR 3.977(J). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The evidence showed that respondent made some effort toward complying with the terms of her court-ordered treatment plan by participating in parenting classes and therapy, eventually obtaining employment and independent housing, albeit late in the proceedings, and regularly visiting the child. However, the evidence clearly showed that respondent remained unable to provide the child with a safe, stable, and neglect-free environment, especially in light of the child’s multiple burns received while in her care, which were suggestive of physical abuse and/or a serious lack of parental judgment and neglect in failing to seek medical attention for the child. Significantly, the Clinic for Child Study, conducted over one year after the child’s removal from respondent’s care, provided a “poor prognosis” for reunification and recommended termination, citing respondent’s dependency issues, her inability to complete her goals, her lack of motivation, her lack of insight regarding the reason for the child’s removal from her care, and the likelihood that past injury would repeat considering her lack of insight and poor motivation to alter problematic behavior. Additionally, respondent’s recent therapist reported only minimal progress in that respondent still needed to explore her history of dependency, develop awareness of patterns of neglect, and address her lack of action following the burns to the child. The caseworkers also expressed ongoing concerns about respondent’s lack of adequate explanation or assumption of responsibility for the child’s burns. Further, respondent demonstrated a continued inability to properly safeguard the child from potential harm during her unsupervised visits with the child in that she allegedly transported the child in a vehicle without proper safety restraints, left the agreed upon location for the visits with the child and unknown parties who were not authorized to be with the child, and returned the child with a diaper that was soaking wet and smelt of smoke. Testimony further revealed that respondent failed to consistently demonstrate an ability to maintain stable housing and employment during the proceedings.²

¹ Effective July 11, 2008, MCL 712A.19b(5) was amended to provide, “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” This amendment became effective after the date of termination in this case.

² Respondent did not obtain independent housing until approximately 18 months into the proceedings and only one month before termination proceedings began. Before this time, she resided in at least four or five different residences. Respondent also did not obtain employment until approximately 15 months into the proceedings, which she did not maintain throughout the duration of the proceedings. She also failed to complete vocational training or obtain a GED as ordered by the court.

Under the foregoing circumstances, we agree that respondent's efforts to comply with the terms of her treatment plan were not enough to ensure that the child would be safe and properly cared for in her custody, the primary condition that led to the child's adjudication. Likewise, we agree that it remained reasonably likely that the child would be subjected to harm if returned to respondent's home. Respondent's inability to effectively resolve her issues so that she could provide the child with a safe and stable environment in approximately two years since the child's removal clearly established that she would not likely be able to do so within a reasonable time. This is especially true when the child had already been outside of respondent's care for two years (over two-thirds of her life) in a placement in a foster home where she was doing well, and the Clinic for Child Study indicating that the child should not be exposed to ongoing emotional upheaval and turmoil while waiting for a permanent and stable environment. Under such circumstances, delaying the child's permanency any longer by allowing respondent additional time to work toward reunification would be unreasonable. We, therefore, find no clear error in the trial court's decision to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). *Trejo, supra* at 356-357. We also find that the medical opinion indicating that the child's serious burns, which resulted in extensive scarring, were suggestive of physical abuse and were inconsistent with respondent's explanations of how the burns occurred clearly supported termination under MCL 712A.19b(3)(k)(iii). *Jackson, supra* at 25.

Likewise, we find no clear error in the trial court's determination that the evidence failed to establish that termination was clearly not in the child's best interests. *Trejo, supra* at 354; MCL 712A.19b(5). The record revealed a failure on respondent's part to fully address her issues during the proceedings to ensure the child's safety and stability, a lack of significant bond and only limited interaction between herself and the child, and a strong opinion by the Clinic for Child Study against reunification. Considering these facts in light of the lengthy period of time that the young child had already been outside of respondent's care in a stable environment, termination of respondent's parental rights was appropriate.

We disagree with respondent's contention that she was denied any "real opportunity" to bond with the child because of the foster parents' interference with her visits. Although testimony revealed that the foster parents informed the caseworkers about problems they observed during the unsupervised visits, it was respondent's actions, or lack thereof, that led to the termination of the unsupervised visits. In light of the possible serious abuse and/or medical neglect that led to the child's removal from respondent's care, it was reasonable for petitioner to limit the visits to a supervised setting after becoming aware of ongoing safety concerns during the unsupervised visits.

We also disagree with respondent's argument that the court was unduly influenced by the considerable testimony regarding the foster care parents' bond with the child in reaching its termination decision. It was clear from the testimony that the foster parents were concerned about the child's welfare and that the child had bonded to them. However, there is no indication in the trial court's factual findings to suggest that it was influenced by the advantages of the child's current foster home or the bond between the child and the foster parents or that the court unfairly compared the foster parents' ability to care for the child to respondent. The court's opinion did not mention the foster parents at all and correctly focused on respondent's shortcomings and her continued inability to provide a safe, suitable, and stable environment for the child.

We likewise disagree with respondent's argument that the court was unduly influenced by the foster mother's testimony about statements made by the maternal grandmother concerning the circumstances surrounding the child's burns. The court struck this testimony from the evidence, stated on the record that it would not consider this testimony in its decision, and did not reference the testimony at all in its written findings supporting termination. On such a record, it would be mere speculation to conclude that the court was influenced by the testimony in question. Moreover, a trial court conducting a bench trial is assumed to know the law and to consider only the evidence properly before it. *In re Archer*, 277 Mich App 71, 84; 744 NW2d 1 (2007) (citations omitted).

Finally, we reject respondent's remaining unpreserved claims of constitutional error for lack of merit. The record contained no evidence to suggest that the alleged errors deprived respondent of the fundamental fairness required by due process, *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993), or prejudiced the proceedings in any way. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). It was proper for the court to consider the conditions that led to the adjudication of the child, i.e., the child's burns and respondent's failure to seek medical treatment and whether she had adequately addressed her issues, in reaching its termination decision.³ Further, the record did not suggest that respondent was ever deprived of her opportunity or right to cross-examine witnesses during the proceedings, MCR 3.977(G)(2), or that the foster parents and the child's attorney unduly interfered with the proceedings to assure termination of respondent's parental rights.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello

³ Respondent's contention that the court based its jurisdictional decision on the medical findings, indicating that the child's burns were suggestive of physical abuse and inconsistent with respondent's explanations for the burns, was not consistent with the record. The medical findings were not admitted until after the child had been adjudicated and thus could not have been used to support the court's jurisdictional decision. Further, contrary to respondent's contention, the court did not base its termination decision solely on the medical findings, but also considered respondent's failure to make adequate progress toward addressing her pertinent issues.