

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C. R. BISSON, C. N. LEMIEUX,
and D. G. BUSMAN, Minors.

UNPUBLISHED
July 15, 2010

No. 295909 and 295910
Muskegon Circuit Court
Family Division
LC No. 07-036780 - NA

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals an order terminating her parental rights to CRB, CNL, and DGB under MCL 712A.19b(3)(c)(i) (182 days have elapsed since issuance of initial disposition order and conditions that led to the adjudication continue to exist), (c)(ii) (other conditions exist that have not been rectified), (g) (failure to provide proper care or custody), and (j) (risk of harm if returned to parent); and respondent father appeals the same order terminating his parental rights to DGB under MCL 712A.19b(3)(g).¹ We affirm.

This Court reviews the trial court's findings of fact in termination proceedings for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). The trial court is required to terminate parental rights if a statutory ground for termination is established by clear and convincing evidence, unless the trial court finds doing so is clearly not in the child's best interests. *Id.* at 301. Because establishment of only one statutory ground is necessary, erroneous termination on one ground is harmless if another ground was also properly established. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Notwithstanding the above, this Court will not disturb a lower court's order unless "failure to do so would be inconsistent with substantial justice." *In re TC*, 251 Mich App 368, 370-371; 650 NW2d 698 (2002), citing MCR 2.613(A).

The petition in this case was filed by the Department of Human Services (DHS) in December of 2007, at which time the parties stipulated to probable cause, but the DHS had been monitoring the children since May of 2006. The trial court ultimately found that

¹ The legal fathers of CRB and CNL are not parties to this appeal.

[t]he conditions that led to adjudication in this case were the failure of Michelle Busman to maintain stable housing and to meet her children’s educational, medical, and psychological needs. Specifically, Michelle Busman moved the children to several different homes and exposed the children to a number of unstable relationships with live-in boyfriends. The children had excessive school absences and tardies, and their education was interrupted due to the frequent moving. She would leave the children alone and unsupervised, with her child [DGB, who was diagnosed with ADHD and autism] being found several times wandering on the street. She did not see to it that the children consistently attended their counseling appointments, and did not supervise [DGB] to assure that he took his medication regularly. When the other new conditions of the sexual abuse came to light, Michelle Busman did not comply with the treatment plan and see to it that her daughters fully attended their counseling appointments, resulting in her daughters missing the majority of their counseling therapy.

The “new conditions of sexual abuse” refers to respondent leaving the children alone with John Dennis, who molested both CRB and CNL; although the trial court found that respondent was unaware of, and had no reason to anticipate, the abuse,² the trial court “note[d] that Michelle Busman’s response to John Dennis’ acts [when they came to light] was at first not to support her daughters and then to not fully invest in their treatment plan.”

The record amply supports the trial court’s findings. More than 182 days had passed since the initial disposition order was issued. The evidence at the termination hearing and the written reports in the record demonstrate that respondent mother made only the most minimal attempts to comply with the requirements of the agency and the court, and she continued to deny any responsibility for her actions in failing to supervise her children, take them to counseling sessions, improve her parenting skills, and maintain a stable home for them. She attended parenting classes but did not actively participate, and she missed scheduled appointments with Work First, which caused her to lose her cash assistance from the state. Therefore, the trial court did not clearly err in finding clear and convincing evidence that the conditions that led to the adjudication continued to exist, that respondent mother had made no attempt to rectify those conditions or the other conditions that came into play during the case, and that there was no reasonable likelihood that they would be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i) and (ii).

A parent’s failure to comply with the parent/agency agreement is evidence of a parent’s failure to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 360-363; 612 NW2d 407 (2000). The evidence showed that respondent mother failed to comply with the court’s orders and the agency requirements to supervise her children, provide stability for them, maintain their school attendance, take her children to counseling, and arrive on time for appointments and visitation. She never accepted any responsibility for the removal of the children and failed to benefit from any of the services

² Thus, the court found that MCL 712A.19b(3)(b)(ii), (the parent had the opportunity to protect a child from abuse and failed to do so) had not been established by clear and convincing evidence.

offered to her. She had not complied with the requirements to find stable housing, establish an income, or understand her children's needs through parenting classes and counseling. We find no clear error in the trial court's findings that respondent mother's children had been harmed and neglected when they were in her care, her conduct during this case demonstrated that they would be harmed if returned to her care, and there was no reasonable expectation that respondent mother would be able to provide proper care and custody within a reasonable time considering the ages of the children. MCL 712A.19b(3)(g) and (j). Finally, we agree with the trial court's conclusion that all of the above reasons also show that termination is not contrary to the children's best interests. MCL 712A.19b(5).

As to respondent father, there is no dispute that he had not provided proper care or custody for his child. He admitted that he had been incarcerated for more than half of the child's lifetime, and he had never provided financial support for the child. The evidence of his long criminal history, that he had never held a job for longer than four months, and his diagnosed antisocial personality all indicated that he would not be able to provide proper care and custody within a reasonable time considering the child's age and particularly considering the child's serious special needs. He admitted that it could take a year or two, or maybe longer, before he could be in a position to provide proper care and custody for his son. For the child, who had already been in foster care for a year and a half, another year or two, or maybe longer, or maybe not at all, was not reasonable. We agree with the trial court's commendation for the efforts respondent father made to improve himself, we find that the trial court did not clearly err in finding by clear and convincing evidence that respondent father would not be able to provide proper care or custody within a reasonable time and that termination was not contrary to the child's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Alton T. Davis