

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 22, 2012

In the Matter of BRUNO, Minors.

No. 305539
Macomb Circuit Court
Family Division
LC Nos. 2008-000786-NA,
2008-000787-NA,
2011-000010-NA,
2011-000011-NA

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Before: BORRELLO, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated the respondent parents' rights to their minor children based on evidence of abuse and neglect. The children had been in care for 31 months and despite the provision of services during this and an earlier child protective proceeding, respondents had made little improvement. Based on the record evidence, we affirm the termination of respondents' parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j).

I. BACKGROUND

Respondents are the parents of STB (DOB 12-27-1992),¹ PB (DOB 9-23-1997) and SHB (DOB 7-3-2005). Since 1998, Children's Protective Services (CPS) has investigated respondents' home over 12 times. In February 2005, CPS removed respondents' sons, STB and PB, from respondents' care due to physical abuse and neglect. The Department of Human Services (DHS) also took SHB into care after her birth. The DHS provided extensive services to the family and the children were returned to their parents' care in March 2006, 14 months later. The CPS again investigated respondents' home in July 2008, based on allegations of medical neglect in relation to STB. The DHS provided services aimed at retaining respondents' custody of their children. However, the investigation uncovered evidence that STB and PB had sexually abused then three-year-old SHB and that respondents reacted by "spanking" the boys. Despite the earlier domestic-violence-prevention services provided to the family, STB and PB reported continued physical abuse between respondents and instigated by respondents upon the children. CPS investigators also uncovered evidence that SHB shared a bed with respondent father.

The DHS took the children back into care in December 2008. Pursuant to the DHS treatment plan, the court ordered respondents to participate in parenting classes, psychological examinations, counseling, substance abuse assessments, and supervised parenting time. Throughout the proceedings, respondents exhibited anger management problems. Their first counselor discontinued services because of respondents' flagrant hostility. Respondents were prone to angry outbursts during court proceedings and respondent mother threatened the minor children's foster mother in the courthouse.

Respondents were in services for over a year before they would acknowledge that any sexual abuse occurred in their home, despite the consistent stories told by STB and SHB. STB revealed that respondent father had hit him every day on the back with a baseball bat "for his own good." All three children had special needs and required heightened care. Yet, despite their participation in two rounds of parenting classes, the parents had not improved their skills for empathy or understanding age-appropriate milestones and still could not demonstrate appropriate parenting skills.

Moreover, respondents exhibited a lack of empathy and bonding with the minor children during supervised visitation. Respondents attempted to discuss the proceedings with the case worker in front of the children despite repeated instructions not to do so. They counseled STB to violate the rules of his group home placement by meeting them unsupervised at a fast food restaurant. They coached PB on his responses to questions asked during the proceedings. Respondent mother was often aloof with the children during supervised visits and made little attempt to bond. And the children appeared to fear their father during the visits.

Finally, the children's guardian ad litem (GAL) petitioned the court to terminate respondents' parental rights. In the fall of 2010, respondents stopped attending family therapy sessions with SHB. They refused DHS workers access to their home, resulting in the loss of in-home services. Noting the parents' lack of progress and the children's regressive tendencies

¹ STB had reached the age of majority by the time of the termination hearing and was removed from the petition.

after visits with their parents, the GAL requested the court to terminate respondents' parental rights. The DHS subsequently joined the petition and the court ultimately terminated respondents' parental rights on July 27, 2011.

II. STANDARD OF REVIEW

Each respondent maintains that the circuit court erred in finding clear and convincing evidence supporting termination of their parental rights, and in finding that termination was in the children's best interests. The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). This Court reviews for clear error a circuit court's decision to terminate parental rights. MCR 3.977(K). The clear error standard controls our review of "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." *Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, "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). Clear error signifies a decision that strikes the Court as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356.

III. STATUTORY GROUNDS FOR TERMINATION

A. MCL 712A.19b(3)(c)(i)

Clear and convincing evidence justified the termination of respondents' parental rights pursuant to MCL 712A.19b(3)(c)(i), which authorizes termination under the following circumstances:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) 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 conditions that led to the children's January 2009 adjudication, as identified in the March 2009 amended petition, involved respondents' "difficulty providing for their children physically, financially or emotionally." The amended petition alleged that respondents neglected STB's medical needs, failed to protect SHB from sexual abuse, and allowed SHB to sleep with respondent father on a nightly basis. The petition also cited the 2005 removal of STB and PB from respondents' custody due to abuse and neglect, and the respondent parents' failure to benefit from the earlier 14-months of services.

Respondents' inability to provide the children with a safe and stable home environment persisted 31 months later, despite their participation in many services. Respondents never

entirely acknowledged their responsibility for neglecting STB's medical needs. They only began to openly recognize the possibility of SHB's sexual abuse during late 2010 therapy sessions. Respondents withheld important details in their therapy sessions, including STB's and PB's reports of domestic violence against the boys and between respondents. Moreover, even after more than one parenting education course, respondents could not consistently exhibit appropriate parenting skills during supervised visits, but instead repeatedly displayed anger and frustration. The record supports that there is no reasonable likelihood that respondents could rectify these conditions within a reasonable time, given their demonstrated inability to care for the children given that similar conditions led to the children's adjudication in 2005,² and repeated recent efforts at engaging respondents in services had not measurably improved their parenting skills. See *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005).

B. MCL 712A.19b(3)(g)

Clear and convincing evidence also supported the termination of respondents' parental rights pursuant to MCL 712A.19b(3)(g), which contemplates termination of parental rights when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

The circuit court did not clearly err in invoking subsection (g) in terminating respondents' parental rights, in light of respondent mother's 2005 acknowledgement of unfit living conditions for STB and PB due to physical neglect and domestic violence and respondents' inability to significantly improve their parenting skills after participating in extensive services, both during the 14-month child protective proceedings beginning in 2005 and the current 31-month proceedings.

C. MCL 712A.19b(3)(j)

The record further supports the court's termination under MCL 712A.19b(3)(j), which permits a court to terminate parental rights if clear and convincing evidence establishes that "there is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

Termination is supported under subsection (j) based on evidence of the numerous and continuous reports of domestic violence in respondents' home and the repetition in these proceedings of domestic violence reports by STB and PB. Further evidence of potential harm to the children includes respondents' failure to concede their responsibility for neglecting STB's significant medical conditions and their extended reluctance to recognize that their young

² The circuit court had previously exercised jurisdiction over STB and PB on the basis of respondent mother's June 2005 no contest plea to allegations of domestic violence in the home, that "the family home [was] chaotic due to parents arguing over the children and related issues," and that eight CPS referrals had been made between June 1998 and November 2004 for physical abuse and neglect of STB.

daughter had likely suffered sexual abuse at the hands of her siblings. Respondents' prolonged inability to benefit from the extensive services provided to the family also supports that the children faced a reasonable likelihood of harm if returned to their parents' care.³

IV. CHILDREN'S BEST INTERESTS

Respondents also challenge the circuit court's finding that termination of their parental rights would serve the children's best interests. Respondents undisputedly interacted appropriately with SHB and appeared bonded to her during recent family therapy sessions, and PB testified at the termination hearing that he wanted to live with respondents again. However, a wealth of evidence supports the trial court's finding that termination of respondents' parental rights clearly served the children's best interests, most notably: (1) the repeated referrals for respondents' physical abuse of STB and each other between 1998 and 2004; (2) the reappearance in these proceedings of domestic violence reports by STB and PB; (3) respondents' failure to concede responsibility for neglecting STB's significant medical conditions; (4) respondents' extended reluctance to recognize that SHB likely suffered sexual abuse at the hands of her siblings; (5) respondents' prolonged inability to exhibit significant parental improvement over the course of approximately three years of treatment; (6) dramatic improvements in STB's and PB's behaviors after their removal from respondents' custody; and (7) PB's and SHB's strong needs for permanency after their years in foster care.

Affirmed.

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher

³ With respect to respondent father's unpreserved suggestion that the proceedings violated his due process rights, this claim rests on a misapprehension or mischaracterization of the record. Our review of the record simply reveals no substantiation that respondent father endured a due process violation. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009).