

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 14, 2012

In the Matter of J. D. SEHY, Minor.

No. 306370
Kent Circuit Court
Family Division
LC No. 10-051878-NA

In the Matter of A. M. JACQUES, Minor.

No. 306371
Kent Circuit Court
Family Division
LC No. 10-051879-NA

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) (conditions of the adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (likelihood of harm). Neither child's father is a party to this appeal. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

A. PETITION FOR REMOVAL OF CHILDREN

On June 9, 2010, the Department of Human Services (DHS) filed a petition for the trial court to issue an order removing J.D., A.M., and another minor child of respondent mother, J.S., from the home of respondent mother and respondent father. According to the petition, respondent mother was previously married to Benjamin Sehy. J.S. and J.D. were born during that marriage. Sehy was not J.D.'s biological father, but he was her legal father. Respondent mother and Sehy subsequently divorced, and in 2009, respondent mother married Joseph Jacques. Jacques was arrested for domestic violence against respondent mother six times. At the time of the sixth incident on April 11, 2010, respondent mother was six months pregnant with

A.M., for whom Jacques is the biological father.¹ J.S. and J. D. were living with respondent mother and Jacques, and they were present for the incident. Respondent mother subsequently paid Jacques's jail bond and, despite a no-contact order, permitted Jacques to spend time with her and the children in their home and elsewhere. In May 2010, DHS referred respondent mother and Jacques for domestic violence treatment at the YWCA. They both missed appointments. On May 31, 2010, respondent mother gave birth prematurely to A.M. Respondent mother and Jacques visited the hospital together almost every day to see A.M. despite the ongoing no-contact order.

B. PRELIMINARY HEARING

At the preliminary hearing, the parents waived a showing of probable cause. DHS caseworker Crystal Burnett testified that respondent mother and Jacques had a violent relationship and that neither of them appreciated the effect that exposure to violent behavior could have on children. Burnett was concerned that respondent mother allowed Jacques to have contact with her, J.S. and J.D. while the no-contact order was in place, effectively placing Jacques above the well-being of her children. Burnett was also concerned about the premature birth of A.M. A.M. was still in the hospital and would likely require special care after being discharged. The trial court authorized the petition and ordered that J.S. and J.D. be placed with Sehy and that A.M. be placed in foster care or with relatives after being discharged from the hospital. Respondent mother and Jacques were granted supervised visitation and ordered to comply with the service plan.

C. ADJUDICATION AND DISPOSITION HEARING

At the adjudication and disposition hearing on July 28, 2010, Burnett testified about the facts alleged in the petition. According to Burnett, DHS had previously investigated respondent mother. The DHS reports that Burnett had reviewed alleged that: in 2004, respondent mother smoked marijuana in front of the children and their home was filthy; in 2006, respondent mother beat up her mother and was arrested in front of the children; in 2007, respondent mother used marijuana and crack cocaine, she had sex in front of the children, J.S. missed a lot of school, the family moved frequently, there was violence in the home, and the children were dirty and lacking proper care; and in 2008, respondent mother slapped J.S., the family continued to move frequently, and the places where they stayed were not appropriate. Not all of the allegations in the reports, however, were fully substantiated. J.S. told Burnett that she had attended approximately seven different schools because of moving from place to place. J.S. stated that she had lived in many different places with respondent mother and had also lived at different times with her grandmother and Sehy. Sehy told Burnett that after he and respondent mother divorced in March 2005, J.S. initially lived with him. He subsequently allowed J.S. to live with respondent mother because respondent mother threatened to commit suicide if he did not. In 2006, J.S. lived with him for a month because respondent mother's then boyfriend was violent.

¹ The trial court terminated Jacques' parental rights to A.M., but he is not a party to this appeal.

Burnett further testified that between April 2008 and April 2010, there were six police reports filed regarding domestic violence perpetrated by Jacques against respondent mother. In April 2008, J.S. called the police and reported violence in the home. Jacques was subsequently arrested. He was released, however, after respondent mother claimed that there had been no violence and it was all a misunderstanding. In May 2008, respondent mother reported that Jacques grabbed her face and slammed her to the wall and then the floor. Jacques was arrested after her report. In June 2008, respondent mother reported that Jacques broke into the family home and assaulted her. She had two black eyes and bruising and scratching on her arms. Jacques was again arrested. In 2009, respondent and Jacques married. In August 2009, respondent mother called the police, reporting that Jacques punched, choked, and kicked her during an argument. She had a bleeding, black eye. Jacques was arrested. In November 2009, respondent mother reported that Jacques punched her in the face and kicked her three times in the ribs. They had both been drinking heavily. On April 11, 2010, respondent mother reported another incident of domestic violence, for which Jacques was arrested. Respondent mother told Burnett that in the hours leading up to the incident, she and Jacques had been fighting over money and Jacques “got a little drunk.” Respondent and her mother locked themselves inside a bedroom in the family home, and Jacques kicked the bedroom door open. When respondent mother tried to call the police, Jacques smashed a computer on the floor and ran outside. J.S. and J.D. were inside the house during the incident. J.S. was able to describe what had happened in detail and reported that she was afraid of Jacques.

Burnett interviewed respondent mother on April 14, 2010. At the time, Jacques was in jail for the April 11th domestic violence incident. When Burnett questioned respondent mother about all of the previous incidents, respondent mother admitted that Jacques had punched her on occasion. But, she minimized the violence in the home and stated that she did not believe Jacques would ever hurt the children. She felt that Jacques was a good man, and she wanted them to have a successful marriage. Burnett warned respondent mother that she must not allow Jacques to have any contact with her or the children if a no-contact order was put in place, and that if she violated a no-contact order, DHS would petition to remove the children from her care. Jacques was released from jail on bond on April 30, 2010, and the no-contact order was put in place as a condition of bail.² Burnett visited the home of respondent mother and Jacques on May 12, 2010. Respondent mother seemed very nervous and initially stated that she had not seen or heard from Jacques since his release. Later during the same visit, however, Burnett saw Jacques in the home. Respondent mother then admitted that Jacques had been staying in the house for the past three days. She allowed him to stay there because he had nowhere to go and she felt sorry for him. Burnett also learned that respondent mother and her mother had paid Jacques’s bond. Burnett informed respondent mother that Jacques posed a risk of harm to the children and that he needed to leave the home or the children would be removed. Burnett told respondent mother that she “was giving her one more chance to prove that she would keep her kids safe

² Burnett later explained that the no-contact order specifically prohibited contact between Jacques and respondent mother, but that Burnett had also advised respondent mother not to allow the children to have contact with Jacques.

before worrying about her husband.” On April 18, 2010, Burnett returned to the home. Respondent mother admitted that she had allowed Jacques to spend time with her and J.D. at the park. When Burnett said that she was still violating the no-contact order and not considering the safety of her child, respondent mother became angry and said that the order was “bullshit.”

In June 2010, Burnett became aware that both respondent mother and Jacques had missed appointments with their YWCA therapist, Mary Scoggins. Burnett believed that respondent mother missed her appointment because of A.M.’s birth. A.M. was born in May, 2010, at 33 weeks gestation. On June 3, 2010, Burnett visited J.S. at her school. J.S. stated that she had not seen Jacques in the house since Burnett’s last visit, but that she knew respondent mother took Jacques plates of food and kept a mattress in the basement. Burnett was concerned that Jacques was staying in the basement. In addition, Burnett subsequently learned that respondent mother and Jacques were visiting the hospital together every day to see A.M. On June 8, 2010, Burnett confronted respondent mother about her contact with Jacques. Respondent mother responded with anger.

Scoggins testified that she is a therapist for the YWCA. Between May and July 2010, she had six sessions with respondent mother. They discussed domestic violence and healthy relationships. Scoggins believed that the sessions were going well, but that respondent mother still had a “long road ahead of her” given her history of dysfunctional, violent relationships. Scoggins recommended that respondent mother continue in individual counseling. Scoggins had one session with Jacques. During that session, he minimized the domestic violence in the home, although he acknowledged that he had kicked in the bedroom door and smashed the computer, which could instill fear in children even if they were not physically harmed. At the time of the hearing, Jacques was attending domestic violence group therapy. Both respondent mother and Jacques told Scoggins that they grew up in homes where domestic violence took place.

Claudia Triestram testified that she was the foster care supervisor assigned to this case. After his release from the hospital, A.M. was placed with his maternal great uncle and aunt. He was doing very well. J.S. and J.D. were placed with Sehy. In regard to respondent mother and Jacques, Triestram testified that respondent mother was working on domestic violence issues, emotional stability, and housing. Respondent mother and Jacques were in counseling, but they both denied to Triestram that Jacques had ever struck respondent mother. Respondent mother indicated that she would do whatever was necessary to have her children returned to her care, but that her preference was to remain in a relationship with Jacques. Jacques also indicated that he would like to maintain their family unit. The no-contact order remained in place, and Triestram believed that respondent mother and Jacques were violating the order. The week before the hearing, respondent mother was evicted from their house for failing to pay the rent. Triestram did not know where respondent mother was staying or if she was employed. Jacques was staying with a cousin and had a full-time job. Respondent mother had several parenting sessions with the children. She was very engaged with the children and appeared bonded to them.

At the conclusion of the adjudication and disposition hearing, the trial court held that there were statutory grounds to exercise jurisdiction over the children. The court ordered that A.M. remain in his current placement, that J.S. and J.D. remain with Sehy pending a DHS investigation into the care they were receiving in his home, and that the parents comply with the service plan.

D. REVIEW HEARINGS

The trial court held a review hearing on October 27, 2010. Scoggins testified that she had individual therapy sessions with respondent mother on a weekly basis. They discussed domestic violence, safety planning, setting boundaries, and healthy relationships. Scoggins believed that respondent mother was progressing very well and was ready to move onto group therapy and monthly individual therapy sessions. Jacques continued to participate in group therapy. During therapy sessions, he appeared engaged and acted appropriately. He had admitted to engaging in domestic violence and expressed willingness to change. Scoggins recommended that J.S. and J.D. receive counseling and that Jacques undergo a substance abuse assessment. Triestram testified that the children were doing well. J.S. continued to indicate that she was afraid of Jacques and did not want to see him. Respondent mother and Jacques had joint parenting sessions with A.M. Respondent mother also had parenting sessions with the three children together. Respondent mother and Jacques attended all of the sessions available to them. They were also participating in a parenting nurturing program. They were both employed full-time and, six days before the hearing, obtained housing. The house was clean and appropriate for children. Jacques had participated in random drug and alcohol screens, and all of the screens were negative. He had acknowledged that he became violent when he drank alcohol and was committed to sobriety. Considering that both respondent mother and Jacques were following and apparently benefiting from their service plan, Triestram was supportive of their desire to remain a couple. The court ordered that the children remain in their current placements.

At a review hearing on January 26, 2011, Triestram testified that the children were doing well. Respondent mother and Jacques had both made substantial progress. They had unsupervised parenting time with all three of the children in their home. Weekend visits had recently started. Respondent mother and Jacques had completed the parent nurturing program. Respondent mother had also completed her individual therapy and was supposed to start group therapy. Jacques was still participating in group therapy. He had acknowledged perpetrating domestic violence, and his group therapy supervisor did not believe that he would reoffend. Jacques continued to undergo alcohol screens, and all of the screens were negative. Triestram had set February 18, 2011, as a tentative date for the children to return home. The court ordered that the children remain in their current placements and then, once a family reunification program (FRP) was in place, be placed with respondent mother and Jacques.

The trial court held another review hearing on May 10, 2011. Triestram and Teresa Keyes, a FRP supervisor, testified about what had occurred since the children were returned to the care of respondent mother and Jacques on February 18, 2011. Approximately three weeks after the children were returned, respondent mother and Jacques began having financial problems. They were only able to pay their rent and electricity bill in February with DHS and FRP assistance. They subsequently received assistance to pay their gas bill. When respondent mother and Jacques began having financial problems, they also began fighting. Respondent mother reported that Jacques was being emotionally and verbally abusive to her and that she was afraid for her safety and of how the abuse might impact the children. J.S. reported that Jacques was becoming increasingly angry. Respondent mother and the children moved in with her aunt and uncle temporarily, and a no-contact order was put in place regarding contact between respondent mother and Jacques. Once Jacques moved out of the family home, respondent mother and the children returned. But, when their electricity was cut off a few days later,

respondent mother and the children moved back in with her aunt and uncle. Approximately a week and half before the hearing, J.S. was placed with Sehy. In regard to Jacques, Triestram testified that Jacques did not understand why there was a no-contact order, as he had tried to manage his anger by being quiet and retreating into himself. He denied that there was any emotional or verbal abuse. All of his alcohol screens had been clean, and he was attending individual and group therapy. Triestram and Keyes both believed that although respondent mother had been focused on her children, her focus had recently shifted to her relationship with Jacques. They recommended that J.S. continue in her placement with Sehy, that J.D. and A.M. be placed with their great aunt and uncle with whom they had been living, and that the no-contact order remain in place except for couple's therapy. The trial court followed their recommendation.

E. PERMANENCY PLANNING HEARING

At the permanency planning hearing on June 8, 2011, Triestram testified that all of the children were doing very well in their placements. Respondent mother had "steadily declined," however, since the last hearing. She had moved out of her aunt and uncle's house, where J.D. and A.M. were placed. She then stayed at a motel for a short period of time. Triestram was not sure where respondent mother was currently living, but she believed that respondent mother might have moved in with a friend. Respondent mother had been visiting the children, but not regularly. Most recently, she was supposed to attend A.M.'s birthday party, but she did not appear for the party or call to cancel, which was very disappointing to J.D. Respondent mother had reported leaving her full-time job for a part-time job closer to where she was living, but she had not provided Triestram with proof of her new employment. Respondent mother reported to Triestram that she had been drinking heavily over one weekend, and Triestram scheduled an alcohol screen, but respondent mother did not appear for the screen. Triestram scheduled a second alcohol screen for the day before the hearing, but respondent mother refused to appear. Respondent mother and Jacques had attended three sessions of couple's counseling. Two days before the hearing, however, respondent mother informed Triestram that she desired to file for a divorce from Jacques because he was involved with another woman. Respondent mother had stopped returning most of Triestram's telephone calls and had not met with her, despite being asked to do so several times. She was not present at the hearing because of her work schedule. Jacques was living in housing for former criminal offenders. He was still attending therapy, but in Triestram's opinion, minimized the domestic violence that had occurred. He denied committing any emotional or verbal abuse after the children were placed back in the home. Triestram recommended termination of respondent mother's parental rights to J.D. and A.M., but not to J.S., and termination of Jacques's parental rights to A.M. The trial court ordered DHS to initiate termination proceedings.

F. TERMINATION HEARING

DHS filed an amended petition to terminate respondent mother's parental rights to J.D. and A.M. and Jacques' parental rights to A.M. on August 5, 2011, and the trial court held the termination hearing on August 31, 2011. Ashley Wellman, a FRP family worker, testified that she was assigned to this case from the time that the children were returned home in February 2011 through May 2011. Things went well in the home for approximately one month. Thereafter, however, respondent mother and the children moved in with her aunt and uncle.

Respondent mother reported that she and Jacques had argued and she did not believe it was safe for her and the children to remain in the family home. J.S. also reported that Jacques had been angry before they left the home. She “demonstrated an awareness of past events in the domestic violence cycle,” expressing that Jacques had been at the last step in his general “progression of anger” before physically hurting respondent mother. According to Wellman, respondent mother disengaged during discussions about her relationship with Jacques and domestic violence. When she first left the home with the children, respondent mother indicated that she was concerned for their safety. She was upset, anxious, and seemed genuinely concerned. But, by May 2011, she indicated that there was no reason for a no-contact order, any problems in her relationship with Jacques were her fault, and that he would never physically hurt her again.

Triestram testified that after the children were initially removed from her care in June 2010, respondent mother participated in individual therapy and a parent nurturing program. The children were returned to the home of respondent mother and Jacques in February 2011. Within two weeks, however, they informed Triestram that they were having financial problems. They also reported problems in their relationship. Jacques told Triestram that respondent mother was upset about the friends he had on Facebook and a tattoo of a woman’s name on his ankle. Respondent mother reported that Jacques was not pulling his weight in the home. In March 2011, she reported that Jacques had been verbally and emotionally abusing her. Jacques denied that any abuse occurred. J.S. told Triestram that Jacques’s anger had been escalating and that she feared for respondent mother’s safety. J.S. had created her own safety plan in case Jacques physically abused respondent mother, where she would take her siblings into her bedroom and call for help. When respondent mother reported that Jacques had been verbally and emotionally abusive, she was crying, upset, and fearful. She was agreeable to a no-contact order and wanted to file for a divorce. At that point, respondent mother and the children moved in with her aunt and uncle. It was supposed to be a temporary arrangement, but they stayed there because respondent mother could not afford her own housing. By May 2011, however, respondent mother was taking responsibility for any emotional or verbal abuse that had occurred and minimizing the effect that any of the abuse had on the children, which was indicative of her being caught in a typical domestic abuse cycle. Respondent mother wanted to participate in couple’s counseling and, in Triestram’s opinion, was more invested in her relationship with Jacques than with the children. The children were then removed from respondent’s care a second time.

Triestram testified that in May 2011, after the children were removed from respondent mother’s care, respondent mother participated in three sessions of couple’s counseling with Jacques. She was supposed to follow-up with more individual counseling, but she had not participated in any services since May. Respondent mother was offered liberal visitation with the children at her aunt and uncle’s house, but she only appeared for visitation approximately 50 percent of the time. During visitation, she was not very engaged with the children, and when she failed to appear for visits, it was very upsetting to J.S. and J.D. Respondent mother had not visited the children at all in the five weeks leading up to the hearing. Since leaving her aunt and uncle’s house in May, respondent mother had lived in a motel and with friends, but Triestram was not sure where she was currently living. Respondent mother had been working part-time, but Triestram had not received proof of her employment in a month. Shortly after respondent mother indicated her desire to divorce Jacques in June 2011, she reported dating another man. When Triestram questioned respondent mother about the relationship and indicated that her new

boyfriend should be a part of her service plan, respondent mother was very offended, refused to provide any more information about the relationship, and did not understand how the relationship was relevant to the children. Respondent mother had not been in regular contact with Triestram over the past few months, and their last communication was on August 8, 2011, three weeks before the hearing. Triestram had called and texted respondent mother several times since then without any response. During their last face-to-face meeting, which was at the end of July, respondent mother indicated that she wanted her children back, but that she was very angry with the process and was not open to participating in more services at that time. Respondent mother was not present for the hearing.

The trial court terminated respondent mother's parental rights to J.D. and A.M. under MCL 712A.19b(3)(c)(i), (g), and (j). The court further held that termination was in the children's best interests.

II. ANALYSIS

To terminate parental rights, the trial court must find that at least one statutory ground for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's factual findings and determination whether a statutory ground for termination of parental rights was proved by clear and convincing evidence. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "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).

Respondent mother's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(c) 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.

* * *

(g) The 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.

* * *

(j) 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.

The trial court did not clearly err by concluding that the statutory ground for termination set forth in MCL 712A.19b(3)(c)(i) was met by clear and convincing evidence. The conditions that led to the adjudication were domestic violence and unstable housing. There were several incidents of domestic violence inflicted on respondent by Jacques. Although a parent's rights may not be terminated "solely because he or she is a victim of domestic violence," termination is properly based on a respondent's own behaviors that directly harm the children or expose them to harm. *In re Plump*, 294 Mich App 270, 273; ___ NW2d ___ (2011). Here, despite participating in months of therapy, respondent mother continued to place her relationship with Jacques above the well-being of her children, took responsibility for abuse that had occurred, and minimized the effect that violence in the home could have on the children, which was a primary factor in the children being removed from her care a second time.³ Respondent mother claims on appeal that more should have been done to prevent the children's second removal, but caseworkers attempted to counsel her regarding domestic violence, she was referred to group therapy, which she declined to attend, and at the time of the removal, she was supportive of the children being placed with relatives, at least temporarily. Further, although respondent apparently ended her relationship with Jacques before the termination hearing, she failed to demonstrate that she had ended the pattern of domestic violence in her life or rectified the other condition that led to adjudication.

In regard to housing, while respondent mother and Jacques had obtained suitable housing for a few months during the proceedings, they were eventually unable to pay the rent and utilities. Respondent mother and the children then lived with relatives. After the children were removed from her care the second time, respondent mother lived at a motel and with friends. At the time of the hearing, it was unknown where she was living or if she could afford housing suitable for the children. Thus, the conditions that led to the adjudication continued to exist at the time of termination. Further, given respondent mother's long history of violent relationships

³ Although J.S. is the child who expressed fear regarding her mother's relationship with Jacques and the need to develop a safety plan if Jacques again attacked her mother, the record demonstrates that J.D. was home when Jacques attacked respondent mother while she was pregnant with A.M., and both J.D. and A.M. were living in the home when respondent mother's and Jacques' relationship began another downward spiral in 2011, leading to the children's removal a second time (at which time respondent mother indicated she did not believe it was safe for her and the children to remain in the family home). We conclude that respondent mother's inability to provide a proper home environment for the children, as reflected by J.S.'s comments, applied to all children, and in light of the facts, could be anticipated to occur to the minor children in the future. See *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973) and *Matter of Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1977).

and unstable housing, along with her unwillingness to participate in any more services, it was not reasonably likely that those conditions would be rectified within a reasonable amount of time.

There was also clear and convincing evidence to terminate respondent mother's parental rights under MCL 712A.19b(3)(g). "[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). By the time of the termination hearing, respondent mother would not provide her caseworker with any information about her new boyfriend or her whereabouts and had refused to participate in any more services. She had not seen the children in five weeks and did not appear for the hearing. Moreover, as noted, it was not reasonably likely that she would be able to provide the children with a suitable home within a reasonable amount of time.

Finally, the trial court did not clearly err by concluding that the statutory ground for termination set forth in MCL 712A.19b(3)(j) was met by clear and convincing evidence. Given respondent mother's long history of violent relationships, refusal to participate in additional services, and failure to fully recognize the effect that violence in the home could have on her children, the trial court did not err by finding that it was reasonably likely that the children would be harmed if returned to her care.

Respondent has not challenged the trial court's best interests finding. See MCL 712A.19b(5). We therefore do not consider it.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens