

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KEITH SHAMAR BROWN, JR.,
and SPARKLE SUE DAVIS, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
February 14, 2006

Petitioner-Appellee,

v

SHERYL JACQUELINE DAVIS,

Respondent-Appellant,

and

KENNETH BROWN and TRACEY MCCOY,

Respondents.

No. 263208
Wayne Circuit Court
Family Division
LC No. 87-264094-NA

Before: Donofrio, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). Because the respondent failed to appeal the trial court's assumption of jurisdiction over the children and the termination of respondent's parental rights was properly grounded in law and fact, we affirm.

Respondent first contends that the trial court erred in finding that the children came within the court's jurisdiction under MCL 712A.2(b)(1) and (2). However, respondent may not appeal from a trial court's assumption of jurisdiction as part of her appeal of right from the order terminating her parental rights. MCR 3.993(A)(1); MCR 7.204(A)(1)(a); *In re Hatcher*, 443 Mich 426, 439-440, 444; 505 NW2d 834 (1993).

Next, respondent asserts that the evidence was not sufficiently clear and convincing to warrant termination under MCL 712A.19b(3)(c)(i), (g), and (j). 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 McIntyre*, 192 Mich App 47,

50: 480 NW2d 293 (1993). We review the trial court's decision under the clearly erroneous standard. 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). In applying the clearly erroneous standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

We find clear and convincing evidence to support termination under MCL 712A.19b(3)(c)(i). The original disposition order was entered into the record on January 17, 2003, more than 182 days before the termination trial. Respondent was not in compliance with the parent/agency agreement. She provided proof of attendance at one parenting class, but her inappropriate parenting of her children demonstrated that she had not benefited from the parenting class. The psychologist and psychiatrist who evaluated respondent both stated that she lacked insight into her problems as well as her children's problems and recommended additional parenting classes. Respondent refused to comply with the recommendations. Two years after the court took jurisdiction over the children, and almost three years after her son was placed in foster care, respondent had not demonstrated that she would comply with the requirements of the parent/agency agreement. We conclude there was clear and convincing evidence to support a finding that the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable time considering the children's ages.

There was also clear and convincing evidence to support termination 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, supra* at 214; *In re Trejo*, 462 Mich 341, 360-363; 612 NW2d 407 (2000). Respondent did not comply with the parent/agency agreement. Her noncompliance, refusal to cooperate with the agency workers, and inappropriate behavior with her children showed that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time, considering the amount of time the children had been wards of the court and their ages. *In re JK, supra* at 214.

With respect to MCL 712A.19b(3)(j), there was clear and convincing evidence to support termination. Respondent lacked the capacity to properly parent her children. She had been diagnosed as "mentally impaired" and demonstrated that she did not gain any insight from the parenting class that she did complete. Respondent obtained personal protection orders against the workers and the foster parents and refused to comply with the parent/agency agreement. This conduct demonstrated her instability. Although respondent completed one parenting class, it was clear that she did not benefit from the classes. A parent must actually benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. *In re Gazella, supra* at 676. Respondent's inappropriate conduct with the children demonstrated that they would be at risk of harm if returned to respondent's care. Her physical abuse of her son and favoritism of her daughter was emotionally and physically harmful to both children. She had instructed her daughter about how to run away from her foster home, attempted to get her daughter to sign a "secret" paper requesting unification, gave her a cell phone with instructions on how to run away from the

foster home, and hid her daughter in a nonfunctioning, but closed freezer. Such conduct demonstrated a serious risk of harm to her daughter. Thus, there was a reasonable likelihood, based on respondent's conduct and capacity, that the children would be harmed if returned to her home.

Next, respondent contends that the trial court clearly erred in determining that termination of her parental rights was in the best interests of the children. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interest. MCL 712A.19b(5); *In re Trejo, supra* at 352-354. The trial court's decision regarding the children's best interests is reviewed for clear error. *Id.* at 356-357. Although the evidence showed that respondent's daughter wished to return to her mother, there was no other evidence to support a finding that termination of respondent's parental rights would not be in the children's best interests. At age 12, her daughter was not in a position to determine her own best interests, especially considering the evidence that respondent continually tried to manipulate the girl into doing things against her own best interests and that actually put her at risk. The record supports a finding of clear and convincing evidence that termination would be in the best interests of both children. MCL 712A.19b(5).

Finally, respondent contends that the trial court abused its discretion in denying her motion for adjournment of the permanent custody trial because she was not present. Adjournments of trials or hearings in child protective proceedings should be granted only for good cause, after taking into consideration the best interests of the children. MCR 3.923(G)(1) and (2); MCL 712A.17(1). "The court may proceed in the absence of parties provided that proper notice has been given." MCR 3.973(D)(3).

Here, we find that no good cause was shown for an adjournment. The record showed that respondent received personal notice of her trial. Her attorney and the guardian ad litem could not contact her. Respondent did not respond to her attorney's request for a list of witnesses. The worker had not seen her for months, despite numerous attempts to contact her. We find that the trial court did not abuse its discretion in denying respondent's motion for an adjournment.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Kirsten Frank Kelly