

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WYATT JAMES LEITCH,
ALEXANDER KEITH LEITCH, and
KATELYNE MARIE LEITCH, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMES ARNOLD LEITCH,

Respondent-Appellant

and

KELLY N. LEITCH,

Respondent.

UNPUBLISHED

March 14, 2006

No. 264036

St. Joseph Circuit Court

Family Division

LC No. 04-000063-NA

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor children, Wyatt James (d/o/b 6/8/99), Allexander Keith (d/o/b 8/12/00), and Katelyne Marie (d/o/b 3/26/02) under MCL 712A.19b(3)(g) and (j).¹ We affirm.

Termination of parental rights is appropriate where the petitioner proves by clear and convincing evidence at least one ground for termination. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Once this has occurred, the court shall terminate parental rights unless it finds that the termination is clearly not in the best interest of the children. *Id.* We review for clear error both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the court's decision regarding the children's best interest. *In re*

¹ The parental rights of respondent-mother Kelly N. Leitch were also terminated; however, she has not appealed the trial court's determination.

Trejo Minors, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(J). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been made, giving due regard to the trial court's special opportunity to observe the witnesses. *BZ*, *supra* at 296-297.

We initially note that the trial court's written opinion and order indicates that it employed an incorrect standard of review, placing the burden on respondent to prove that termination was clearly not in the children's best interest after petitioner demonstrated that grounds for termination had been proven by clear and convincing evidence. While respondent did not raise this issue below and does not raise it on appeal, we "may go beyond issues that, in this Court's opinion, justice requires be considered and resolved." *Frericks v Highland Twp*, 228 Mich App 575, 586; 579 NW2d 441 (1998). Our Supreme Court has specifically held that MCL 712A.19b(5) "does not specify that it is the parent who carries the burden of producing best interest evidence opposing termination," and that while "the party opposing the established grounds for termination will almost always be a parent . . . the court may consider evidence introduced by any party when determining whether termination is clearly not in a child's best interest." *Trejo*, *supra* at 353. "Further, even where no best interest evidence is offered after a ground for termination has been established . . . [MCL 712A.]19b(5) permits the court to find from evidence *on the whole record* that termination is clearly not in [the] child[ren]'s best interests." *Id* (emphasis added). However, we may uphold a trial court's ruling on appeal where it reached the right result for the wrong reason. *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005).

Here, a review of the record of the termination hearing supports the trial court's determination that termination of respondent's parental rights was appropriate under MCL 712A.19b(3)(g) ("[t]he parent, without regard to intent, fails to provide proper care or custody for the child[ren] 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[ren]'s age") and (j) ("[t]here is a reasonable likelihood, based on the conduct or capacity of the child[ren]'s parent, that the child[ren] will be harmed if [they are] returned to the home of the parent"). Further, the evidence did not establish that termination was clearly not in the children's best interests. See *Trejo*, *supra* at 357; MCL 712A.19b(5); MCR 3.977(E)(3)(b). Indeed, the trial court went beyond the statutory best interest inquiry by affirmatively concluding that termination was in the best interests of the children.

In January 2004, an abuse and neglect petition was filed requesting that the children be removed from the home and alleging, among other things, respondent's domestic violence against the mother, for which he had been arrested on three occasions in the past year and for which he was in county jail at the time.² The mother had a personal protection order (PPO) against respondent from October 2003, which stated that respondent should not be around the children.³ The children were released to the custody of the mother, upon condition that she not

² Respondent admitted to the allegations set out in the petition.

³ In March 2004, the trial court entered an order revoking the PPO at the request of the children's mother.

allow respondent to live in the home, and that she not allow respondent to have access to the children without prior approval from the Family Independence Agency (FIA). However, a petition for emergency removal was filed a few days later when a Child Protective Services (CPS) worker went to the home and discovered that, in contravention of the custody release order, the mother's boyfriend, a drug-user, was at the home. The children were taken into protective custody and have been placed with respondent's sister, the children's paternal aunt, since June 2004 with a spring 2006 projected adoption date.

Throughout the pendency of the proceedings, the various parent-agency agreements (PAA) ordered respondent to refrain from use and/or possession of illegal drugs or alcohol and to submit to random drug and alcohol testing; to obtain and maintain adequate housing, employment, and transportation; to complete a substance abuse assessment and follow recommendations; to continue to attend, cooperate with, and complete domestic violence counseling; to cooperate with any in-home services or parenting education as arranged by the FIA; to not allow other adults to live in the home without FIA approval; and to abstain from engaging in illegal activities.

In February 2004, respondent underwent a psychological evaluation, and admitted to suffering from an alcohol dependence disorder. However, despite his insight, recognition, and awareness of his problem, he admitted to continued consumption of alcohol when the children's mother wanted or pressured him to do so. In essence, respondent projected blame onto the children's mother for his consumption of alcohol. Respondent appeared to suffer from dependency-related anxiety and depression that could become emotionally or psychologically problematic due to obsessive thinking when his object of dependency is threatened.

Respondent showed a moderate to significant number of cognitive impairments in his parenting knowledge, and his greatest area of weakness was his inability to be empathetic. Respondent was self-focused and had restricted abstract reasoning ability leading to difficulty in recognizing the long-range benefits that result from short-term sacrifice. Respondent held a paradoxical view of the children's mother in that he loved her but viewed her as not being a very nice person. His ability to function as a non-abusive/non-neglectful primary caregiver was suspect and he was characterized as immature and lacking insight. His primary motivation in seeking custody of the children appeared to be to use them as leverage to re-establish his marital relationship with the children's mother.

In March 2004, an FIA Initial Service Plan (ISP) indicated that respondent's major issues were substance abuse and domestic violence and that the offered services were vital to making progress toward the stability necessary to have the children returned. Respondent averred that he was not resuming a relationship with the children's mother, even though they both continued to have strong feelings toward one another. They both admitted that they do not get along when they are together, and stated that they were going to concentrate on themselves as individuals.

In May 2004, respondent and the children's mother stated that they wanted to reconcile. However, an FIA worker reported that they had contradictory and varying feelings about each other, which changed on a daily basis. This was due in part to the children's mother giving birth to another baby, fathered by her boyfriend. In June 2004, it appeared that respondent was making progress: he was in substance abuse counseling and appeared for almost all of his drug screens, which were negative. He regularly attended a domestic violence group and was

scheduled to start attending a parenting class. He had worked for a roofing company since March 2004, and had rented his own apartment. Respondent averred that he and the children's mother were not in a relationship and did not drink together, he felt different and better about his life, and he no longer wanted to reconcile with her. He stated that he did not have the urge to drink and stated his belief that although he loved the children's mother, staying away from her was the best thing for him. However, the FIA worker noted a suspicion that should the children's mother stop seeing her boyfriend, respondent would want to reunite.

By September 2004, respondent regressed. Although he completed his substance abuse treatment, his attitude was poor: he did not want to attend Alcoholics Anonymous (AA) meetings, repeatedly requested exceptions regarding breathalyzer tests, and purportedly forgot to appear for them. He admitted to drinking when he committed a home invasion, for which he was jailed for ten days. After his release, he failed to appear for numerous drug and alcohol screens.

Respondent completed the domestic violence group and parenting class, but was reportedly in denial of many of his issues, and did not feel that his alcohol abuse or domestic violence adversely affected his children. Respondent reported that he felt his relationship with the children's mother was becoming stagnant and monotonous, but a relationship addiction quiz revealed that he could not bear being alone and would do anything to keep a relationship from falling apart. Respondent had started dating a teenager, quit the roofing job, was fired from a different job because he "couldn't get up in the mornings," and moved back in with his mother to avoid eviction for non-payment of rent.

An infant mental health specialist reported that respondent exhibited difficulty in setting appropriate limits for the children and frequently raised his voice when he was frustrated if the children did something wrong. Respondent did not have age-appropriate expectations of his children's behavior, which caused power struggles. Respondent's prognosis was guarded to poor due to a lack of insight into his behavior, relapse, and continued anti-social behavior.

Respondent and the children's mother were divorced in December 2004. In January 2005, it was reported that progress had not been made toward the children's return home and that returning the children home would cause a substantial risk of harm to their life, physical health, or mental well-being. Respondent was not financially stable and vacillated between staying at the children's mother's apartment and his mother's house. Respondent was sentenced to five months in jail and two years' probation for the home invasion conviction. He was spending weekends in jail, but his probation was revoked and he was sentenced to 18 days in jail. It was recommended that the FIA initiate proceedings to terminate the parental rights to the children.

In February 2005, a termination petition was filed alleging that respondent had not made sufficient progress to regain custody of the children. Specifically, the petition alleged that respondent continued in a volatile relationship with the children's mother, admitted to drinking alcohol, had unstable housing throughout the proceedings and had not yet obtained his own housing, and appeared unable to maintain suitable employment.

The termination hearing was held in April and May 2005. A Department of Human Services (DHS) worker testified that respondent's primary issues were domestic violence, his relationship with the children's mother, substance abuse, housing, and financial stability. Services were provided, including psychological and substance abuse evaluations, parenting

classes, a domestic violence group, and drug screens. The DHS worker felt that services were not beneficial in improving relations between the parents, and that there was much chaos and dysfunction, the parents made poor decisions, and the children were caught in the middle. In June 2004, respondent averred that the best thing for him was to remain apart from the children's mother, but later vacillated between her and his teenage girlfriend. The DHS worker felt that respondent was dependent on the children's mother and could not be without her, but that they could not cooperate as parents. Although the DHS worker acknowledged respondent's progress, it was also apparent that he frequently relapsed into drinking and instability. Further, respondent failed to maintain suitable housing, vacillating between his mother's house, an apartment, and the children's mother's apartment.

The DHS worker saw no reasonable expectation that respondent could provide proper care and custody, and that based on his conduct and capacity, there was a reasonable likelihood that the children would be harmed if returned to him because of lack of safety, financial stability, and appropriate housing, as well as his poor decision-making and continued confrontations with the children's mother.

A parenting instructor testified that respondent attended all class sessions, but that he attempted to cheat on a test and frequently fell asleep. An infant mental health specialist met with respondent and the children on seven occasions from July 2004 to February 2005. Respondent frequently yelled at the children and his parenting style caused power struggles with the children. He had difficulty setting appropriate boundaries to provide structure and safety, and the children needed security and a primary attachment figure to become healthy adults. Respondent's AA sponsor testified that he attended three to five meetings a week and had developed the motivation to remain sober since late 2004.

Respondent's sister, with whom the children had been living since June 2004, testified that the children's mother would go with other men but always returned to respondent, who would always take her back. She felt that respondent and the children's mother were not a good match because they constantly fought in front of the children. She felt that respondent could be a good father if he and the children's mother could stay apart from one another. Respondent's aunt testified that respondent and the children's mother should not have a relationship and that they brought out the worst in each other.

Respondent testified that he was an alcoholic and that his drinking had a negative effect on the children, but that he was only violent when he drank. He testified that after the children were removed, he completed parenting classes, provided negative drug and alcohol screens, and regularly attended AA and a domestic violence group. Respondent knew that being with the children's mother could cause problems, and stated that he would stay away from her if he could have the children back, but then stated that he thought they could cooperate for the sake of the children.

The foster care review board recognized that respondent had made some progress, but felt that he had not demonstrated a period of stability that would sufficiently ensure the children's stability and well-being. The foster care review board supported the permanency plan of termination. The guardian ad litem (GAL) for the children noted that the primary concern was that respondent had not obtained his own housing, but felt that respondent "did all the things he was supposed to do," and that "it could go either way," taking no position on termination of

respondent's parental rights. Petitioner stated that respondent had done most of what was asked of him, but noted that respondent still associated with the children's mother and did not think respondent had made sufficient progress to regain custody, and that there was a reasonable likelihood that the children would be emotionally harmed if returned to his custody.

The trial court found that clear and convincing evidence existed to terminate respondent's parental rights under MCL 712A.19b(3)(g) and (j). The trial court found that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time, MCL 712A.19b(3)(g), and that there was a reasonable likelihood of harm to the children if they were returned to respondent based on his conduct or capacity. MCL 712A.19b(3)(j).

The trial court did not clearly err in its determination that petitioner proved by clear and convincing evidence that respondent, without regard to intent, failed to provide proper care or custody for the children and that there was no reasonable likelihood that he would be able to provide proper care and custody within a reasonable time considering the children's age, MCL 712A.19b(3)(g), and that there was a reasonable likelihood of harm to the children if they were returned to respondent based on his conduct or capacity. MCL 712A.19b(3)(j). While the guardian ad litem and petitioner both conceded that respondent complied with some of the terms of the parent-agency agreement, it remained clear that based on respondent's tumultuous and volatile relationship with the children's mother, along with his alcohol abuse, failure to find suitable housing, failure to maintain consistent employment, and inability to refrain from criminal activity, there was no reasonable likelihood that he would be able to provide proper care and custody for the children within a reasonable time and that there was a reasonable likelihood of harm to the children if they were returned to respondent based on his capacity and conduct. Respondent had more than a year to correct his behavior and yet, at the time of the hearing, had failed to do so.

Respondent argues on appeal that termination was unwarranted where he did everything the Family Independence Agency and court required of him. Respondent attempts to analogize this case to *In re Boursaw*, 239 Mich App 161, 173; 607 NW2d 408 (1999), in which this Court reversed the termination of parental rights upon finding that termination was premature where the "respondent had made significant strides in meeting each criterion set down by the court at th[e review] hearing." However, while respondent fulfilled some of the requirements set out in the various parent-agency agreements, he failed to comply with numerous others.

Respondent was required to refrain from use and/or possession of illegal drugs or alcohol and to submit to random drug and alcohol testing; however, he admittedly used alcohol and tested positive or failed to appear for the screens on numerous occasions. Respondent was also required to obtain and maintain employment; however, although he had obtained a new job at the time of the termination hearing, he had not demonstrated that he could maintain steady employment for longer than a few months. Respondent was also required to abstain from engaging in illegal activities, yet he was convicted of and sentenced to jail time for home invasion.

Respondent was also required to obtain and maintain adequate housing; however, he was unable to find his own housing and went between living with his mother and living with the children's mother. Respondent argues on appeal that whether he had his own housing is

immaterial because there was no evidence that living with his mother would not be sufficient for the children. However, respondent goes on to argue that if he could be “freed from some of the financial burdens [of housing],” “he would have enough money for his own place where he could raise his children,” thus undermining his argument that living with his mother was adequate. “It is not sufficient for a party ‘simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.’” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Respondent also argues that petitioner failed to prove that he would have continued his volatile relationship with the children’s mother in the future and that his past pattern of behavior showed that he could be a proper custodian in a reasonable time. However, the record is replete with evidence that respondent was unable to stay away from the children’s mother, despite his acknowledgement that things were better for himself and the children when he did not have contact with their mother. While respondent correctly notes our Supreme Court’s statement that a “parent’s compliance with the parent-agency agreement is evidence of [his] ability to provide proper care and custody,” he ignores the Court’s additional comment that in some cases, “it can be conceived that satisfaction by the parent of the parent-agency agreement does not render the parent ‘fit’.” *In re JK*, 468 Mich 202, 214 n 20; 661 NW2d 216 (2003). We note respondent’s efforts and progress towards leading a sober, crime-free life and concede that his partial compliance with the terms of the parent-agency agreement constitutes some evidence of his ability to adequately parent the children. However, mere satisfaction of some of the terms of the parent-agency agreement did not render respondent fit to provide proper care and custody for the children or demonstrate that it was unlikely the children would be harmed if returned to respondent. The trial court’s determination that the grounds for termination under MCL 712A.19b(3)(g) and (j) were proven by clear and convincing evidence was not clearly erroneous. Moreover, the trial court did not err in its affirmative determination that, based on the whole record, termination of respondent’s parental rights was in the best interests of the children. MCL 712A.19b(5).

We affirm.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Karen M. Fort Hood