

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ERIC SCOTT,

Respondent-Appellant,

and

VANESSA ELIZABETH STONE,

Respondent.

UNPUBLISHED
September 11, 2008

No. 283115
Kent Circuit Court
Family Division
LC No. 06-052145-NA

In the Matter of TS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

VANESSA ELIZABETH STONE,

Respondent-Appellant,

and

ERIC SCOTT,

Respondent.

No. 283116
LC No. 06-052145-NA

Before: Davis, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (child would be harmed if returned to parent). We affirm.

The primary conditions of adjudication were domestic violence between respondents, and respondent mother's inability to protect the minor child from sexual abuse.

The trial court did not clearly err by finding that statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence suggests that neither party resolved the issue of domestic violence. Although respondent mother disclosed ongoing domestic violence to her therapist in January 2007, she did not consistently recognize the existence of this issue, nor work to address it. Respondent mother's therapist, Ms. Menhart, testified that respondents could not resolve this issue if they continued to vacillate with regard to its existence, and that it was not resolved when therapy ceased in June 2007. Respondent father apparently avoided full engagement in the treatment plan for some time. When he did engage in addressing the ongoing domestic violence issue, he made progress but still had a "ways to go" at the time of the termination trial. Given this record, the trial court did not clearly err in finding that this condition of adjudication was not resolved and continued to exist. MCL 712A.19b(3)(c)(i).

The trial court also did not clearly err by finding that there was no reasonable likelihood that the issue of domestic violence would be rectified within a reasonable time considering the age of the child. Respondent mother engaged in therapy for approximately 15 months without resolving her issues of domestic violence, instead minimizing and denying the existence of the issue. At the time of the termination hearing, some 16 months after the initial dispositional hearing, respondent father had yet to complete the required domestic violence programs. Under these circumstances, we are not left with the firm conviction that the trial court made a mistake by finding no reasonable likelihood that this condition of adjudication would be rectified within a reasonable time, considering the age of the child. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Respondent mother's inability to protect TS from sexual abuse, also a condition of adjudication, likewise continued to exist at the time of the termination trial. A significant issue for therapy was respondent mother's own history of severe sexual abuse as a child, which would tend to require long-term treatment. However, respondent mother did not want to deal with this issue in therapy, and at the time of the termination trial, Ms. Menhart testified that the issue of respondent mother's past victimization was not resolved. Dr. Baird, who evaluated respondent mother in August 2006, also indicated that she needed clinical help with issues of her own sexual abuse, so that it would not affect how she parented her children. Given the testimony of these witnesses, suggesting that respondent mother's unresolved sexual abuse issues posed a significant barrier to her ability to protect TS from sexual abuse, and given the length of time that passed without successful resolution of these issues, the trial court did not clearly err in finding there is no reasonable likelihood of resolution within a reasonable time.

Respondents next contend that they were not offered reasonable services directed toward reunification. See *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991). In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), (4). Respondent father cites *In re Martin*, 167 Mich App 715; 423 NW2d 327 (1988), where this Court stated that adamantly requiring parents to admit responsibility for abuse, where there was significant evidence that injuries resulted from a medical condition, amounted to rigidity, which "has no place in our child welfare system." *Id.* at 732.

Some four months after his removal from respondents, the minor child disclosed sexual abuse by both respondents. Following the disclosures, Ms. Menhart initiated a new treatment plan requiring respondent mother to admit the allegations. The same requirement would presumably apply to respondent father, although he was not in therapy with Ms. Menhart at that time. Both respondents argue that the parent-agency agreement was disingenuous, because respondents were denied the ability to continue counseling after TS's allegation of sexual abuse, unless they admitted the allegations. Although this is a close question as to respondent father, we conclude that there are not grounds for reversal on this issue. While it is a concern that continued treatment with Ms. Menhart was made contingent on the respondents' admission to sexual abuse of TS, under the particular circumstances of this case, this requirement imposed by Ms. Menhart did not affect respondent father, who had yet to complete his treatment with MCAV at the time of the termination trial, and was not to resume treatment with Ms. Menhart until after his treatment at MCAV had been completed. Regarding respondent mother, because 15 months of unsuccessful therapy had already taken place, it does appear that reasonable efforts towards reunification were made.

The trial court also did not clearly err by terminating the parental rights of respondents pursuant to MCL 712A.19b(3)(g) and (j). Both respondents failed to provide proper care and custody for the child, by engaging in domestic violence in his presence. The same evidence establishing that respondents failed to rectify the conditions of adjudication, and that there was no reasonable likelihood that they would do so within a reasonable time, considering the age of the child, MCL 712A.19b(3)(c)(i), equally establishes that there is no reasonable likelihood that they will be able to provide proper care and custody for the child, within a reasonable time, considering his age, MCL 712A.19b(3)(g), and that there is a reasonable likelihood that the child would be harmed if returned to respondents, MCL 712A.19b(3)(j).

Finally, the trial court did not clearly err by finding that the termination of respondents' parental rights was not contrary to the best interests of the child. MCL 712A.19b(5). The child was removed from the parents' home on or about January 18, 2007, and had been out of respondents' care for 11 months at the time of termination order. Although there was a loving relationship between respondents and TS, both respondents, and especially respondent mother, failed to successfully resolve the barriers to their ability to provide him proper care and safety. In addition, during the course of these proceedings the minor child disclosed that he had been

sexually abused by both respondents.¹ Respondent mother also continued to have positive drug screens both during and after her substance abuse treatment, and respondent father had two positive drug tests during the proceedings. Taking into account the allegations of sexual abuse, the continued marijuana use by both respondents, and the failure of both respondents, especially respondent mother, to resolve the barriers to reunification with the child, specifically domestic violence and the inability to protect him from sexual abuse, we find no clear error in the trial court's best interests determination.

Affirmed.

/s/ Alton T. Davis

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello

¹ The trial court ruled that the evidence concerning the alleged sexual abuse of TS was not admissible to support the grounds for termination, but would be admitted relating to his best interests.