

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
July 14, 2011

In the Matter of IGNELZI/ESTES, Minors.

No. 302338  
Van Buren Circuit Court  
Family Division  
LC No. 07-015994-NA

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Before: SAWYER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent A. Mason appeals as of right from the trial court's order terminating her parental rights to the minor children, X. Ignelzi and P. Estes, pursuant to MCL 712A.19b(3)(b)(i),<sup>1</sup> (g),<sup>2</sup> and (j).<sup>3</sup> The trial court also terminated the parental rights of the fathers of the children, but they have not appealed the order and are not parties to this appeal. We affirm.

I. FACTS

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<sup>1</sup> MCL 712A.19b(3)(b)(i) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that the parent physically injured or physically or sexually abused the child, and the trial court "finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.").

<sup>2</sup> MCL 712A.19b(3)(g) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that "[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.").

<sup>3</sup> MCL 712A.19b(3)(j) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that "[t]here 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 Department of Human Services (DHS) petitioned for temporary jurisdiction over the minor children in October 2007. DHS alleged that Mason hit Ignelzi in the eye with a belt, in addition to other incidents of physical abuse. In an amended petition, DHS also alleged that Mason had a history of mental illness and was presently too emotionally and mentally unstable to properly care for the children. The trial court asserted jurisdiction over the children.

Mason's primary problem throughout these proceedings was mental illness. Mason had recurring episodes of losing control of herself and becoming disruptive, aggressive, and physically violent. DHS referred Mason to two psychiatrists, Dr. Kaufman (through Community Mental Health [CMH]) and Dr. Marilyn Mittenthal. Dr. Kaufman discontinued Mason's treatment in 2008 because of Mason's volatile behavior and refusal to comply with the treatment regimen. In March 2009, Dr. Mittenthal conducted a psychiatric evaluation and diagnosed Mason with psychotic disorder with anger intermittent disorder.

At a permanency planning hearing in September 2008, the caseworker, Rachel Poole, testified that she did not recommend returning the children to any of their parents. Poole stated that Mason was not benefitting from services. Poole believed that the children would be at substantial risk of harm from physical abuse and mental abuse if they were returned to Mason's care. According to Poole, the children's emotional stability had improved since the visitation was terminated. Ignelzi had more control over his temper. Poole recommended termination of Mason's parental rights.

DHS then filed a petition to terminate Mason's parental rights. At a hearing on the petition, Hugh Edwards, the CMH family liaison, testified that Mason had received services, but her mental illness and her failure to take her treatment seriously prevented her from achieving reunification. Edwards explained that Mason's mental illness affected her progress because she could not control her emotions. She was volatile and aggressive in her interactions with Edwards and other service providers. Indeed, in late July or early August 2008, Edwards, Poole, and Mason's therapist met to discuss her treatment options. Mason became aggressive and threatening and Edwards had to call the police. Edwards testified that Mason was not employed, but received supplemental security income benefits. Edwards supervised several of Mason's visits with her children. The visits were favorable, and she and the children were clearly bonded with each other. Despite Mason's improved behavior in visitation, Edwards recommended against reunification because he did not believe that she could make sufficient progress at stabilizing her mental health in the next three months. He would not recommend reunification unless Mason stabilized her mental health and accepted responsibility for her behavior.

At a second hearing, Poole testified that Mason was irrational and paranoid during a foster home visit in November 2008. Poole stated that Mason interacted well with her children when the visits were held in the "contained environment" of the DHS office, where times and boundaries were specified, but she was unable to control her behavior in the community. Poole acknowledged that the children had a strong bond with Mason, but Mason's emotional instability would place the children at risk of harm if they were returned to her care.

Crystal Davis, the children's foster mother, testified that the children were bonded with Mason. However, the children also appeared to be afraid that Mason's behavior might escalate

at any time. The children were in need of behavioral and educational intervention to perform well at school. Their school performance had improved with the foster parents' help.

The trial court found that Mason suffers from a serious mental illness that can only be treated by medication. Although Mason had been provided psychiatric treatment, including the prescription medication she needed, she "feign[ed] misunderstanding of how or whether to take the medication and eventually refuses the only thing that can help her." The trial court found that Mason presented a danger to her children because she failed to understand the need to treat her mental illness with medication. Nevertheless, the trial court found that although DHS presented clear and convincing evidence to terminate Mason's parental rights, termination was not in the children's best interests at that time.

The trial court held another permanency planning hearing in December 2009. Poole stated that Mason participated in services required by her case-service plan, but she was not benefitting from them. Dr. Mittenthal stated that she appeared to have been taking her medication; she requested refills of the prescriptions. However, she was involved in two police incidents in April 2009 for disruptive behavior in public. Police officers removed Mason from the courthouse in South Haven when she caused a disruption while trying to see her probation officer. In a later incident, she threw rocks at a vehicle and then told Poole that she believed that the people in the vehicle were drug dealers who had been selling drugs in her yard. Mason's accusations were groundless. In another incident that summer, Mason was escorted out of the DHS office for disruptive behavior. Further, Mason had been having weekly visits supervised at the DHS offices since the children were placed in foster care. However, in 2008, Mason's visitations were temporarily suspended following an incident in which she barricaded herself and her children in the room.

Poole testified that Mason demonstrated some improvement in her emotional stability, but not enough to be safely reunified with her children. She had a lengthy history of inconsistency with using her medication. She had a pattern of many years of taking the medication and stopping it. She had a history of incidents in which her behavior escalated. Her incidents in the community often resulted in altercations with the police. Poole believed that there would be a substantial risk of harm to the children's physical and mental well-being if they were returned to Mason. In view of Mason's history of recurring episodes, and her failure to sustain progress in her treatment, Poole did not believe that Mason could be successfully reunified with her children in three months.

The trial court noted that the caseworker testified that Mason was currently complying with her medication regimen. And the trial court commented that Mason appeared to be stable at the hearing. The trial court found, however, that "[t]he likelihood that she can stabilize enough to care for the children is not good." The trial court ordered DHS to file a petition to terminate Mason's parental rights. The trial court ordered Mason to continue therapy with Gillespie and psychiatric care with Dr. Mittenthal, and to follow their recommendations, including medication. The court allowed supervised parenting time as approved by Poole.

Pursuant to the trial court's order, DHS filed another petition, requesting termination of Mason's parental rights. At the termination hearing, Robin Zollar testified that CPS referred the children to her for a counseling in 2007. During counseling, the children told Zollar that they

loved their mother. Zollar observed “a very definite bond” and a “mutual bond” between Mason and the children. Mason and the children loved each other very much, but Mason’s tragedy was that her instability put the children at risk. The children were frightened of Mason. Mason’s angry spells were unpredictable. Sometimes Mason would hit them with a belt for a minor incident. Mason’s unpredictable explosions made the children feel constant anxiety. Zollar observed that Mason was often supportive of the children, but the children never knew when she would break out in explosive anger. Mason appeared to be unable to understand that it was wrong to hit the children. Zollar stated that Mason’s lack of understanding regarding inappropriate discipline was an emotional problem, not a cognitive problem.

Zollar stated that Estes and Ignelzi felt secure in their foster placement. Their school work and their sense of self worth were improving. Ignelzi’s school performance improved, and he was less prone to become angry and get into trouble.

Poole testified that there was a reasonable likelihood that the children would be physically abused if they were returned to Mason’s care. Poole believed that Mason would not intentionally decide to spank the children, but Mason was prone to lose control of her actions when she had emotional escalations. Poole opined that termination of Mason’s parental rights was in the children’s best interests because the children were stressed by the protracted proceedings. The children needed permanence because they were stressed from living with uncertainty for so long. Poole did not believe that Mason would be able to provide a safe and proper home for the children in six months’ time. Mason would not acknowledge that she had a mental and emotional deficiency requiring professional help.

The trial court had “no doubt that Amy Mason loves her children and that they also love her.” However, the trial court found clear and convincing evidence that Mason lacked appropriate judgment and that she was subject to paranoid thought and irrational behavior that placed her children at substantial risk. The trial court found that Mason failed to comply with her medication regiment, leaving her serious mental illness untreated, which posed a threat of danger to the children. The trial court found that Mason failed to change her behavior significantly since the previous termination hearing. The evidence showed that Mason was not benefitting from their services. Indeed, Mason was eventually discharged from Community Mental Health Services for her threatening and assaultive behavior and her failure to comply with recommendations. The trial court further found that termination of Mason’s parental rights was in the children’s best interests. The trial court found it significant that the children had made good progress with their foster family, they were bonded with the foster family, and continuation of this placement was in their best interests. Accordingly, the trial court ordered termination of Mason’s parental rights.

## II. TERMINATION OF PARENTAL RIGHTS

### A. STANDARD OF REVIEW

Mason asserts that the trial court erred in finding that the statutory grounds for termination were established by the requisite clear and convincing evidence. To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.<sup>4</sup> We review for clear error a trial court's decision terminating parental rights.<sup>5</sup> A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.<sup>6</sup> We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.<sup>7</sup>

## B. ANALYSIS

Although Mason asserts that the trial court erred in finding that the statutory grounds for termination were established by the requisite clear and convincing evidence, she does not present any substantive arguments addressing the evidence or the statutory grounds. Instead, she argues that her right to due process was violated. However, apart from reciting the requisite factors under *Mathews v Eldridge*,<sup>8</sup> Mason fails to present any argument pertaining to the adequacy of the procedures in this case. Therefore, Mason has not established any basis for concluding that her right to due process was violated.

To the extent that Mason argues that the trial court's decision was not supported by clear and convincing evidence, we find no error. DHS presented clear evidence that Mason had physically abused her children in the past and that she suffers from mental illness that left her prone to uncontrollable and unpredictable episodes of angry, aggressive, and violent behavior. DHS presented evidence that Mason's anger could be triggered by minor irritations. For example, in the episode that gave rise to the initial petition, Mason beat Ignelzi with a belt because he did not take out the garbage. Although Mason participated in therapy and was prescribed medication to address her mental health issues, she did not significantly benefit from counseling, and she was resistant to taking her medication. Her therapist remained concerned that her mental illness and lack of self-control would continue to expose the children to a risk of harm, particularly outside a structured and supervised setting.

We therefore conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Mason's parental rights under MCL 712A.19b(3)(b)(i), (g), and (j).

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<sup>4</sup> MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

<sup>5</sup> MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

<sup>6</sup> *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

<sup>7</sup> MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

<sup>8</sup> See *Mathews v Eldridge*, 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976).

### III. BEST INTERESTS

#### A. STANDARD OF REVIEW

Mason argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.<sup>9</sup> There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.<sup>10</sup> We review the trial court's decision regarding the child's best interests for clear error.<sup>11</sup>

#### B. ANALYSIS

DHS conceded that Mason and the children loved each other and were bonded with each other. However, the evidence established that the children were frightened of Mason because of her unpredictable outbursts and that they would be subject to a risk of harm if placed in Mason's custody. The children were afraid of what she would do when she became upset. In contrast, Estes and Ignelzi felt secure in their foster placement. And the children had made good progress in the stable environment of their foster home. Accordingly, we conclude that the trial court did not clearly err in finding that termination of Mason's parental rights was in the child's best interests.

We affirm.

/s/ David H. Sawyer  
/s/ William C. Whitbeck  
/s/ Donald S. Owens

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<sup>9</sup> MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

<sup>10</sup> *In re Trejo Minors*, 462 Mich at 353.

<sup>11</sup> *Id.* at 356-357.