

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
July 24, 2012

In the Matter of ROBINSON/SHELTON/RHEA,  
Minors.

No. 306728  
Genesee Circuit Court  
Family Division  
LC No. 09-125927-NA

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Before: DONOFRIO, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Respondent, J. Shelton, appeals as of right the trial court's order terminating her parental rights to the minor children, T. Robinson, B. Shelton, M. Rhea, and Z. Rhea, pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). The trial court also terminated the parental rights of the children's fathers, but they are not parties to this appeal. This appeal has, unfortunately, been decided without the benefit of petitioner's brief; nevertheless, we affirm.

The allegations in the petition as to respondent involved excessive physical discipline inflicted on the children by respondent's live-in boyfriend, J. Rhea. Rhea is not the legal father of any of the children at issue. Respondent and Rhea also left the children alone and unsupervised while they went to the store. Petitioner had already asked Rhea to leave the home; Rhea did so for a few days but then returned, and neither he nor respondent were willing to comply with petitioner's request to have Rhea stay out of the home while services were implemented to protect the children. Subsequent to the filing of the petition, the trial court issued a standing no-contact order, ordering respondent to refrain from having any contact with Rhea; she was also ordered to participate in parenting classes and domestic violence counseling. After Rhea moved out, respondent lost her home; she found and lost several subsequent residences and was homeless for a time. There was some indication that respondent nevertheless continued to associate with Rhea.

In July 2011, respondent was shot. According to her, it was after an argument with Rhea after Rhea entered her trailer uninvited and the shot was actually fired by a friend of Rhea's; some witnesses confirmed that, but others indicated that Rhea was the shooter. A subsequent investigation of the trailer suggested that Rhea may have been living there. However, respondent began living with her mother after she got out of the hospital and had no contact with Rhea since then. Witnesses indicated that respondent seemingly had turned her life around. Meanwhile, the children were doing well in their foster homes, despite an initial period of adjustment. Respondent was described as good with the children, and there is no dispute that there is a bond

between them. However, the investigators and experts all recommended termination because respondent continued not to have her own appropriate housing, because respondent had not gotten “her act together” for two years, and because of her history of continuing to associate with Rhea and lying about doing so.

The trial court found clear and convincing evidence that the conditions that led to the adjudication continued to exist and would not likely be rectified within a reasonable time, MCL 712A.19b(3)(c)(i), other conditions in the form of inadequate housing existed and would not likely be rectified within a reasonable time, MCL 712A.19b(3)(c)(ii), respondent failed to provide proper care or custody and would not likely be able to do so within a reasonable time, MCL 712A.19b(3)(g), and there was a reasonable likelihood that the children would be harmed if returned to respondent’s home, MCL 712A.19b(3)(j). Respondent contends that the trial court erred in finding clear and convincing evidence existed to terminate her parental rights and that termination was in children’s best interest.

We review for clear error a trial court’s finding that a statutory ground for termination has been established. *In re Hudson/Sword*, 294 Mich App 261, 264; \_\_ NW2d \_\_ (2011). We also review for clear error the trial court’s determination whether termination is in the children’s best interests. *Id.* To find clear error, we must be definitely and firmly convinced that the trial court made a mistake. *Id.* If any statutory basis for termination is properly established, and if the trial court finds termination in the children’s best interests, the trial court must terminate the respondent’s parental rights. *In re Ellis*, 294 Mich App 30, 32-33; \_\_ NW2d \_\_ (2011). Because only one statutory ground is necessary, erroneous termination on one ground is harmless if another ground was also properly established. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). We find that the trial court properly found that statutory grounds for termination of respondent’s parental rights existed under MCL 712A.19b(3)(c)(i).

Respondent argues that the condition that led to the adjudication was Rhea’s presence, and there was significant testimony that she had not had contact with him in several months. Furthermore, she argued that the concern with her housing had been rectified because she was now living with her mother. The trial court agreed that Rhea no longer lived with respondent and that the children had not been inappropriately disciplined since they had been placed in care. However, the conditions that led to adjudication were not just Rhea’s presence per se, but also respondent’s poor decision-making and her unwillingness to participate in keeping the children safe from Rhea and Rhea away from the children. The trial court was concerned that respondent was not truly through with Rhea because respondent continued to be concerned about him getting his mail even after the shooting. The trial court was also concerned about the stability of respondent’s family as a support system, based on the trial court’s observations of the family members in the courtroom. The trial court noted that the case had been pending for a long time and that, sadly, they and respondent really loved each other, but respondent simply had too long “a history of making very, very poor choices.” The trial court was not convinced that there was a reasonable likelihood that the conditions will be rectified.

Initially, the trial court apparently concluded that the excessive physical discipline that was one of the conditions that led to adjudication no longer existed. This finding was not clearly erroneous because there was testimony that the children had not been abused since they were in care. See *In re Hudson/Sword*, 294 Mich App at 264. However, it is not clear that the physical

discipline can be isolated from the other major basis for adjudication, Rhea's presence. The trial court first found that Rhea was no longer in the house. However, the trial court found that respondent's inability to keep the children safe and poor decision-making continued to exist. The trial court also expressed a belief that respondent might not be done with Rhea. The trial court then found no reasonable likelihood that the conditions would be rectified.

There was evidence that respondent had contact with Rhea at least until July 24, 2011, when she was shot in an altercation with—and possibly by—Rhea. Respondent testified that she had not had contact with Rhea or his family since sending his sister his mail after she got out of the hospital. Nonetheless, there was evidence that respondent went back to Rhea during the two years the children were in care when she needed help and that she lied about her contact with Rhea. Further, the evidence established that even at the time of the trial, respondent was not fully independent or supporting herself, and the trial court was skeptical that respondent's support system was stable. There was evidence that respondent had not maintained contact with her mother or her half-brother at times in the past.

Given this instability and her history, we are unable to find clear error in the trial court's conclusion that there remained an unacceptable likelihood that respondent would return to Rhea again. This Court must "give deference to the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). Given that respondent had not stayed away from Rhea during the majority of the case and that her recent turnaround seemed to be an aberration, there was no reasonable likelihood that the condition would be rectified in a reasonable time given the children's age. See MCL 712A.19b(3)(c)(i). Therefore, the trial court's finding that MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence was not clearly erroneous. See *In re Hudson/Sword*, 294 Mich App at 264.

"Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision." *In re HRC*, 286 Mich App at 461. However, we note that the trial court properly found that statutory grounds for termination of respondent's rights also existed under MCL 712A.19b(3)(c)(ii), (g), and (j).

Respondent argues that the additional ground under MCL 712A.19b(3)(c)(ii) was concern that respondent did not have adequate housing and that this condition was rectified. Respondent argues that the failure to possess one's own home should not constitute grounds to terminate parental rights. Respondent also argues that petitioner failed to make reasonable efforts to assist respondent obtain housing, as it lost her paperwork, took over nine months to pay her Consumer's Energy bill, and failed to notify respondent of her Work First meeting until the day of the meeting. It does appear that at least some of respondent's housing problems were genuinely not her own fault. However, the trial court did not clearly err in expressing concern that respondent was not self-sufficient and was reliant on a support system of dubious stability. When considered in light of the trial court's view that respondent was not through with people like Rhea and the fact that the matter had been pending for two years already, the trial court's finding that respondent continued to lack adequate housing and that she would not rectify that condition within a reasonable time was not clearly erroneous.

The original order acquiring jurisdiction over the children also required respondent to submit to psychological evaluation, maintain and obtain suitable housing, have no contact with Rhea, and participate in parenting classes and domestic violence counseling.<sup>1</sup> The case supervisor testified that the goals set forth in the Parent Agency Agreement were that respondent “obtain housing, mental health well-being counseling services, emotional stability, parenting skills, domestic violence counseling, and employment.” Respondent was given recommendations to rectify these conditions because the Parent Agency Agreement states each goal, each objective, and the steps to reach each goal. See *In re JK*, 468 Mich 202, 211; 661 NW2d 216 (2003). Respondent was also given a reasonable opportunity to rectify the conditions as the order was entered and the Parent Agency Agreement was signed in December 2009. See *id.*

With regard to housing, respondent argues that petitioner failed to make reasonable efforts to assist her obtain housing. There was evidence that respondent received the letter regarding the Work First meeting the day of the meeting and could not attend, which resulted in her losing assistance. Petitioner also failed to pay her Consumer’s Energy Bill for approximately a year, which made her unable to get on housing lists. Finally, after she filled out paperwork to receive housing assistance, the paperwork was lost. However, respondent failed to resubmit the paperwork. Respondent also received assistance with finding housing during the case. Therefore, respondent was given recommendations to rectify this conditions and a reasonable opportunity to do so. See *In re JK*, 468 Mich at 211.

In February 2011, respondent went to Rhea for assistance with housing. After the shooting, respondent began living with her mother. Although respondent disputes the importance of possessing her own home, there was testimony that relying on someone else for housing was not suitable because the person could leave at any time and respondent and the children would be back in the same situation. Because respondent is still not providing housing for herself and the children, she failed to rectify this condition. Respondent’s mother testified that she was going to obtain a home for respondent and her children. Because respondent would still not be providing the housing herself, the trial court did not clearly err in finding that there was no reasonable likelihood that she would obtain suitable housing within a reasonable time given her history and the age of the children. See MCL 712A.19b(3)(c)(ii); *In re JK*, 468 Mich at 211; *In re Hudson/Sword*, 294 Mich App at 264.

Respondent also received assistance finding employment. However, she failed to obtain any employment or legal source of income, other than DHS assistance, during the case. At the

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<sup>1</sup> Because these were concerns from the outset, they arguably could have been considered conditions that led to the adjudication and analyzed under MCL 712A.19b(3)(c)(i). See *In re Trejo*, 462 Mich 341, 358 n 13; 612 NW2d 407 (2000) (considering the requirements in the trial court’s original order of disposition under MCL 712A.19b(3)(c)(i)). However, because they were not mentioned in the petition itself, and the trial court recognized that, for example, the domestic violence toward respondent rather than the children was an independent matter, we consider them under MCL 712A.19b(3)(c)(ii).

time of the trial, there was testimony that respondent was going to be hired at the Bridge Street Café and she was going to start attending school. However, there was no evidence that she had actually begun her employment or had an income to support her and her children. Therefore, the trial court did not clearly err in finding that she had failed to rectify this condition and there was no reasonable likelihood that she would do so within a reasonable time given the age of the children. See MCL 712A.19b(3)(c)(ii); *In re JK*, 468 Mich at 211; *In re Hudson/Sword*, 294 Mich App at 264.

Finally, respondent did attend domestic violence counseling. However, there was testimony that she did not benefit from the counseling, because she returned to Rhea. A parent must benefit from the services in the case services plan. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute on other grounds in MCL 712A.19b(5). Thus, this condition continued to exist and, given her history, there was no reasonable likelihood that it would be rectified within a reasonable time. See MCL 712A.19b(3)(c)(ii); *In re JK*, 468 Mich at 211. Therefore, the trial court's finding that MCL 712A.19b(3)(c)(ii) was proven by clear and convincing evidence was not clearly erroneous. See *In re Hudson/Sword*, 294 Mich App at 264. We note, however, that while compliance with the trial court's order is significant, and the context of the violence inflicted on the children is also significant, merely being a victim of domestic violence herself would not be a proper basis for terminating a respondent's parental rights. *In re Plump*, 294 Mich App 270, 273; \_\_\_ NW2d \_\_\_ (2011).

The trial court also properly found that statutory grounds for termination of respondent's rights existed under MCL 712A.19b(3)(g). Respondent argues that the trial court failed to identify specific facts supporting this ground and concluded without explanation that she could not care for her children. Respondent argues there was no evidence that she could not provide proper care or custody for the children. The trial court found that respondent failed to provide proper care and custody of the children because she did not protect them from Rhea. The trial court found that she engaged in poor decision-making, including allowing Rhea to hit the children<sup>2</sup> and leaving the children home alone. The trial court did not believe anything had changed. Respondent's family was not aware of everything and the trial court believed respondent was not being truthful with herself or her family. The trial court found that respondent was still not "standing on her own two feet" and no reasonable expectation that she would be able to provide proper care and custody within a reasonable time given the age of the children.

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<sup>2</sup> We note, of course, that if respondent herself was a victim of domestic violence, she may not have had a meaningful ability to prevent Rhea from harming the children. However, it appears that the trial court found that she was not only unable to protect the children from Rhea, but also unwilling and uninclined to do so. The trial court's emphasis on respondent's long history of poor decision-making abilities and doubt that her recent apparent improvement reflected a permanent change shows a proper concern with respondent's own abilities and motivations rather than effectively punishing her doubly for being a victim.

The trial court's finding that respondent could not provide proper care or custody for the children was not clearly erroneous. See *In re Hudson/Sword*, 294 Mich App at 264. Respondent was not fully supporting herself even at the time of the trial, as she did not have employment or her own home. Therefore, she could not provide proper care or custody of her children and there was also no reasonable expectation that she would be able to do so within a reasonable time given the age of the children. See MCL 712A.19b(3)(g).

In addition, this Court has found that "the evidence of respondent's inability to obtain and maintain suitable housing supports the court's conclusion that respondent, without regard to her intent, had failed to provide proper care or custody of her children as alleged under subsection 19b(3)(g)." *In re Trejo*, 462 Mich at 362-363. As discussed above, respondent has failed to obtain and maintain suitable housing. Thus, this supports the conclusion that she has failed to provide proper care or custody of the children. See *id.* Therefore, the trial court's finding that MCL 712A.19b(3)(g) was proven by clear and convincing evidence was not clearly erroneous. See *In re Hudson/Sword*, 294 Mich App at 264.

Finally, the trial court properly found that statutory grounds for termination of respondent's rights also existed under MCL 712A.19b(3)(j). Respondent argues that the trial court failed to identify specific facts supporting this ground and concluded without explanation that she could not protect her children. Respondent argues there was no evidence that the children would be harmed if returned to her home. The trial court found that even if Rhea never returned, it was concerned with respondent's instability and ability to provide for the children. The trial court did not believe respondent could protect the children. Although the children had not been harmed since they were in care, as recently as July 2011, respondent was harmed during a confrontation with Rhea. She also repeatedly returned to Rhea and lied about it. At the time of trial, she was still not supporting herself. Given her continued failure to support herself and her recent failure to protect herself, there was a reasonable likelihood that she would return to Rhea and the children would be in danger. Therefore, the trial court's finding that MCL 712A.19b(3)(j) was proven by clear and convincing evidence was not clearly erroneous. See *In re Hudson/Sword*, 294 Mich App at 264.

Respondent argues that, even if statutory grounds existed, termination of her parental rights was not in the children's best interest because there was a close bond between respondent and the children. Because the children were in stable foster homes, respondent should have been given additional time to complete services for her fifth child and have all five children returned to her. The trial court recognized the bond that existed between respondent and children, but did not believe that it was fair to ask the children to wait another six months after respondent had already been given two years. The trial court found that even if respondent's fifth child were returned, the other children will be with foster families who love them. The trial court believed the children deserved stability, consistency, and knowing that a parent will protect them.

In considering the best interest of the children, the trial court is permitted to consider the whole record. *In re Trejo*, 462 Mich at 356. Although there was evidence that the children loved respondent and that a bond existed between respondent and the children, respondent is not able to care for them and they would be at risk of harm if returned to her care, as discussed above. Respondent has continued to return to Rhea, has not obtained housing or employment, and did not benefit from the domestic violence counseling. Several witnesses testified that they

believed it was in the children's best interest for respondent's parental rights to be terminated. There was also specific testimony about one child in particular's need for stability. Although respondent made several improvements since the shooting, the trial court did not clearly err in finding that termination was in the children's best interest. See *In re Hudson/Sword*, 294 Mich App at 264; see also *In re Trejo*, 462 Mich at 364.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Amy Ronayne Krause  
/s/ Mark T. Boonstra