STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LATRELL RICKEY EILAND, NENE SHYRELL BERGREN, TAMARA SHYRELL BERGREN, and ESTHER NICOLE DAVIS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LACOLE BERGREN,

Respondent-Appellant,

and

CHARLES MICHAEL BERGREN,

Respondent.

UNPUBLISHED
December 29, 2009

No. 290769
Muskegon Circuit Court
Family Division
LC No. 05-033805-NA

In the Matter of NENE SHYRELL BERGREN, TAMARA SHYRELL BERGREN, and ESTHER NICOLE DAVIS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHARLES MICHAEL BERGREN,

Respondent-Appellant,

and

LACOLE BERGREN,

No. 290770
Muskegon Circuit Court
Family Division
LC No. 05-033805-NA

Respondent.

Before: Servitto, P.J., and Bandstra and Markey, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right from the trial court's orders terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).[1] We affirm.

Each respondent challenges the trial court's determination that the statutory grounds for termination were established by clear and convincing evidence. We review the trial court's findings of fact for clear error, giving deference to the trial court's special opportunity to judge the weight of the evidence and the credibility of the witnesses who appeared before it. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly specify the "conditions" on which it relied to find that §§ 19b(3)(c)(i) and (c)(ii) were each established. Nonetheless, only one statutory ground for termination is required, *In re JK*, *supra*, at 210; *In re Powers*, 244 Mich App 111; 118; 624 NW2d 472 (2000), and the trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were established by clear and convincing evidence with respect to each respondent.

We note as a threshold matter that respondent-mother Lacole Bergren did not preserve her claim based on the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, by presenting it to the trial court. Therefore, we decline to consider the ADA. *In re AMB*, 248 Mich App 144, 194-195; 640 NW2d 262 (2001); *In re Terry*, 240 Mich App 14, 26 n 5; 610 NW2d 563 (2000). Although the reasonableness of the services offered to respondent-mother may nonetheless affect the sufficiency of the evidence in support of the statutory grounds for termination, *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005), respondent-mother has not shown any deficiency in services that provides a basis for disturbing the trial court's findings that §§ 19b(3)(g) and (j) were both established.

As to evidence supporting termination, a psychologist concluded that respondent-mother was mildly mentally retarded (functioning at an approximately 10-year-old age level), and would have a very difficult time understanding and acquiring the skills necessary to effectively parent a child. That diagnosis was not, however, the sole basis for the trial court's determination that the statutory grounds for termination were proven.

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[1] Only respondent Lacole Bergren's parental rights were terminated with respect to Latrell Rickey Eiland, whose legal father was undetermined.

The foster care case manager testified that although services were provided for respondent-mother, she was unable to benefit from them. The case manager testified that respondent-mother loves her children, would like to care for them, and tries very hard, but that she simply lacks the skills to provide care. The parenting mentor who worked with respondent-mother for approximately a year and a half testified that throughout their time together respondent-mother left small objects in the toy box and on the floor that the two-year-old would put in her mouth, despite several conversations about this safety issue. Respondent also left medications, cigarettes, and lighters within the children's reach, and would leave unscreened windows open in her second story apartment, again, despite repeated warnings. The mentor testified that she tried to teach respondent-mother discipline methods such as time-outs, but that the same lessons were gone over repeatedly because respondent-mother had a hard time grasping the concept. For example, respondent-mother would put a child in time out for asking for more food, but would do nothing if the children hit or bit someone (which they often did). The mentor also testified that respondent-mother had a difficult time interacting and communicating with the children, and understanding their different developmental levels. According to the mentor, these issues did not improve throughout the time they worked together. Though respondent-mother provided contrary testimony, it is apparent from the trial court's decision that it found the testimony of the parent mentor and the case manager credible in determining that respondent-mother had not benefited from services, and had not learned appropriate parenting skills to independently care for the children.

"[A] parent must 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*, 264 Mich App 668, 676; 692 NW2d 708 (2005), *superseded by statute on other grounds*, *In re Hansen*, 285 Mich App 158; 774 NW2d 698 (2009). Unlike the circumstances in *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), overruled in part on other grounds in *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000), and in *In re Hulbert*, 186 Mich App 600, 602; 465 NW2d 36 (1990), the evidence here in support of the statutory grounds for termination was not speculative. Giving appropriate deference to the trial court's findings, it did not clearly err in finding that §§ 19b(3)(g) and (j) were both established.

We reach this same conclusion with respect to respondent-father, Charles Michael Bergren. The psychologist opined that respondent-father was also mildly mentally retarded. A parent mentor who worked with respondent-father for approximately one year testified that respondent-father did well in using the tools the mentor provided him with in regards to the children, and that there were never any safety issues with the children. However, a foster care aide, who began supervising respondent-father's visitation in April 2008, testified that respondent-father did not always respond appropriately to the children's needs and did not discipline effectively. For example, respondent-father threatened a child with a time-out for not sitting on the couch properly, and when a child whined for a tissue. The foster care aide also testified that respondent-father was unemotional with the children, and spoke and acted in a robotic manner, not comforting the children when appropriate. There was also evidence indicating respondent-father had an anger management problem, which manifested itself in physical violence against respondent-mother. This evidence further supports the trial court's determination that §§ 19b(3)(g) and (j) were both established. We disagree with respondent-father's claim that his separation from respondent-mother rendered any anger management issue irrelevant, or that his attendance at anger management classes was enough to address the issue.

The trial court appropriately considered the evidence regarding respondent-father's failure to engage in counseling, and his denial of any domestic violence or anger problem in assessing his emotional fitness to parent the children.

Respondent-father's reliance on *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991), is misplaced because the evidence in this case does not establish that respondent-father was deprived of a reasonable opportunity to show that he could parent his children, notwithstanding the diagnosis of mild mental retardation. While the trial court found both the favorable testimony provided by respondent-father's parent mentor and the unfavorable testimony provided by the case aide regarding respondent-father's parenting abilities credible, we find no error in the manner in which it reconciled the testimony to conclude that the statutory grounds were established. Regardless of the existence of any "observer" phenomenon, the trial court reasonably inferred, in light of its assessment of witness credibility, that the different roles undertaken by these service-providers affected what occurred and what was observed. The court reasonably inferred that the parent mentor's presence over a long period of time had a calming effect on NeNe and Tamara, and their interaction with respondent-father.

Considering the evidence of respondent-father's cognitive impairment and the emotional issues related to anger, his inability to properly parent his children without the parent mentor's direct supervision, and his failure to even acknowledge an anger management problem, the trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were both established by clear and convincing evidence. *In re JK*, *supra* at 209.

Finally, the trial court gave appropriate consideration to the children's need for a stable environment in assessing their best interests. The trial court did not clearly err in finding that it was in the children's best interests to terminate respondents' parental rights. MCL 712A.19b(5); MCR 3.977(J); *In re JK*, *supra* at 209.

Accordingly, we affirm the trial court's decision to terminate respondents' parental rights.

Affirmed.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Jane E. Markey