STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CONOR ASHTON SERWATOWSKI, DUNCAN SAWYER SERWATOWSKI, LOGAN KINCAID SERWATOWSKI, and QUENTIN DEVIN SERWATOWSKI, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANDREW SERWATOWSKI,

Respondent-Appellant,

and

DEBBIE SERWATOWSKI,

Respondent.

UNPUBLISHED
May 8, 2007

No. 274394
Oakland Circuit Court
Family Division
LC No. 01-654430-NA

In the Matter of CONOR ASHTON SERWATOWSKI, DUNCAN SAWYER SERWATOWSKI, LOGAN KINCAID SERWATOWSKI, and QUENTIN DEVIN SERWATOWSKI, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DEBBIE SERWATOWSKI,

Respondent-Appellant,

and

No. 274395
Oakland Circuit Court
Family Division
LC No. 01-654430-NA

ANDREW SERWATOWSKI,

Respondent.

Before: Smolenski, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Although the presenting problem in this case was the family's homelessness due to insufficient income, the adjudicating conditions also included respondents' history of referrals with Children's Protective Services for a host of problems, including unsuitable living conditions, environmental neglect, serious behavioral problems of the children, domestic violence, and respondent father's alcoholism. Respondents' parent-agency agreements ("PAAs") were designed to address these many problems, but respondents did not substantially comply with any of their goals, with the possible exception of employment. When reports surfaced during the proceeding about the children's severe fear of respondent father allegedly caused by physical abuse, updated psychological evaluations and therapeutic visitations were ordered, and respondent father was also ordered to attend a HAVEN domestic violence program in lieu of individual counseling. Respondents did not consistently attend visitations, except in the three months before the filing of the supplemental petition for permanent wardship when respondent mother made it to all visitations and also expressed an intention to divorce respondent father. However, the children were skeptical of this claim and, at the termination trial, respondent mother testified that she had reunited with respondent father, who she claimed had stopped drinking.

Respondent mother first contests the sufficiency of evidence to terminate her rights. The burden of proof is on the petitioner to prove a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a trial court's findings of fact in a parental rights termination case under the clearly erroneous standard. MCR 3.977(J). Respondent mother's lack of participation in services resulted in her making no progress with understanding the children's severe fear of respondent father's alleged abuse. Without counseling, it was most likely she would continue to deny, minimize, and rationalize respondent father's behavior. None of the children (who were 12, 11, 10, and 9 years old when the supplemental petition was filed) trusted respondent mother to protect them. In addition, respondent mother's decision to remain married to respondent father would mean the family would reside in the same house if the children were returned to respondent mother's care, which would be an untenable living arrangement for all the children, especially the oldest two. Based on this evidence, the trial court did not clearly err in basing termination upon MCL 712A.19b(3)(c)(i), (g), and (j).

Both respondents argue that the trial court clearly erred when it found it was in the children's best interests to terminate respondents' parental rights.[1] A review of the whole record shows that the children were severely afraid of respondent father and did not trust respondent mother to protect them. Evidence was also presented that none of the children were strongly bonded to respondents. Furthermore, termination provided the benefit of permanency, which was something the boys needed after each residing in at least three different foster homes over the course of two protective proceedings. Respondent father blames his noncompliance with the PAA upon transportation issues caused by the family having a single automobile and living an hour's drive from visits and therapy. While it is undeniably difficult to financially provide for a large family, the children were in care for over a year before the supplemental petition for permanent wardship was filed and respondent father had still not found a solution for his chronic car troubles. This inability to resolve such a crucial aspect of daily life, especially for a person who lived in an area not served by public transportation, did not bode well for respondent father's future ability to parent the children.

Lastly, respondent mother's argument that she was provided ineffective assistance of counsel fails. The original petition listed the prior CPS referrals for domestic violence, and respondents had both been required by their PAAs to attend domestic violence counseling. The children's reports of physical abuse were merely more evidence of the violence that existed within the home and did not create a new or separate allegation. Therefore, hearsay statements about the alleged physical abuse were admissible in both review hearings[2] and the termination trial,[3] and respondent mother's trial counsel committed no error by failing to object to them.

Affirmed.

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

[1] Such a finding goes beyond the statutory best interests inquiry since MCL 712A.19b(5) does not require that the court affirmatively find that termination is in the child's best interests. *In re Trejo, supra* at 357. However, this finding "is permissible if the evidence justifies it." *In re Gazella*, 264 Mich App 668, 677-678; 692 NW2d 708 (2005).

[2] MCR 3.975(E); MCR 3.973(E)(1); *In re CR*, 250 Mich App 185, 201; 646 NW2d 506 (2002).

[3] MCR 3.977(G)(2).