

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JUSTIN MICHAEL TEEMS and
MEGAN MARIE TEEMS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JANE FELDPAUSCH,

Respondent-Appellant,

and

ROGER TEEMS,

Respondent.

In the Matter of JUSTIN MICHAEL TEEMS and
MEGAN MARIE TEEMS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROGER TEEMS,

Respondent-Appellant,

and

JANE FELDPAUSCH,

Respondent.

UNPUBLISHED
December 9, 2008

No. 286484
Clinton Circuit Court
Family Division
LC No. 06-019305-NA

No. 286695
Clinton Circuit Court
Family Division
LC No. 06-019305-NA

Before: Saad, C.J., and Fitzgerald and Beckering, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother Jane Feldpausch and respondent father Roger Teems appeal as of right from the order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Both respondents argue that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence.¹ We disagree. A petitioner is only required to establish a single statutory ground for termination by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). We review the trial court's findings for clear error. MCR 3.977(J); *In re JK, supra* at 209. Deference is given to the trial court's special opportunity to judge the weight of the evidence and the credibility of the witnesses who appeared before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent mother's plea of admission established the conditions that led to the adjudication for purposes of § 19b(3)(c)(i). Contrary to respondent mother's assertion, the family assessment conducted by Dr. Andrew Barclay, in which he indicated that respondent mother had the mental age of a ten-year-old, was not a new or different condition that could not be considered for purposes of § 19b(3)(c)(i). A trial court is permitted to apprise itself of all relevant circumstances. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Further, the plea was based on several additional conditions. Evidence that respondent mother failed to adequately address the issue of domestic violence, thereby enabling the trial court to find that the children would be at risk of harm in her home, alone supports the court's finding that the conditions that led to the adjudication had not been rectified. Although respondent mother obtained a divorce while the children were in foster care, and also obtained a new apartment, she continued to intermittently live with respondent father. This evidence demonstrates that the safety concerns present at the beginning of the case still existed.

Further, while the reasonableness of the services provided to a respondent has a bearing on whether the evidence sufficiently establishes a statutory ground for termination, *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005), essential to any treatment plan is that the parent benefit from services provided sufficient to provide a home in which the children will not be at risk of harm. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005). Even a disabled parent must be able to demonstrate an ability to meet a child's needs before the child can be returned to her care. *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). We find nothing about the services offered to respondent mother, or her failure to timely engage in the referral

¹ Although the trial court referred generally to subsection (c), petitioner did not request termination under § 19b(3)(c)(ii), and there is no indication in the trial court's decision that it intended to rely on an unpleaded ground as a statutory basis for termination. Accordingly, there being no indication that parental rights were terminated under § 19b(3)(c)(ii), it is unnecessary to consider respondent mother's argument regarding that statutory ground.

made to the Families in Transition (FIT) program, that would preclude the trial court from finding that there was no reasonable likelihood that the conditions that led to the adjudication would not be rectified within a reasonable time considering the children's ages. Considering all the circumstances, the trial court did not clearly err in finding § 19b(3)(c)(i) proven by clear and convincing evidence.

The same evidence that supports the trial court's finding that § 19b(3)(c)(i) was proven also supports the trial court's finding that §§ 19b(3)(g) and (j) were proven by clear and convincing evidence. At the time of the trial court's decision, the mother's progress had not even reached a point where the court could find that the mother would be able to protect the children from domestic violence. The mother failed to benefit from domestic violence counseling, as is evident from her testimony that she continued to intermittently live with the father, even after obtaining a divorce. She also demonstrated cognitive and other deficiencies that affected her ability to parent children with special needs.

Further, we reject respondent mother's challenge to the trial court's findings regarding the children's best interests under MCL 712A.19b(5). The evidence did not clearly show that termination of her parental rights was not in the children's best interests. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Therefore, we affirm the trial court's decision terminating respondent mother's parental rights.

With respect to respondent father, we find no basis for disturbing the trial court's findings that he engaged in domestic violence. *In re Miller, supra* at 337. Respondent mother's testimony regarding domestic abuse was not so far impeached that it could not be believed by a fact-finder or deprived of all probative value. See *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998).

Further, we find no clear error in the trial court's findings that §§ 19b(3)(g) and (j) were each proven by clear and convincing evidence with respect to respondent Teems. We disagree with respondent father's argument that termination was premature because adequate services were not provided. As indicated previously, the reasonableness of services relates to the sufficiency of the evidence for a particular statutory ground for termination. *In re Fried, supra* at 541. This case is distinguishable from *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991), in which there was evidence that the respondents were refused hands-on instructions to rectify the physical conditions of their home before their parental rights were terminated on the basis of the home conditions. In this case, the record does not reflect that respondent father was denied services, although it was not until after Dr. Barclay completed the family evaluation that some quantification of his mental age was made available to petitioner.

It is clear from the evidence that respondent father had an opportunity to participate in in-home services before the children were placed in foster care, but declined to participate in those services. The evidence also reflects that he had an opportunity to participate in counseling and other services after the children were placed in foster care, and that he was a party to the same parent-agency agreement executed by respondent mother. Although caseworker Kerri Graham later did not include respondent father in the FIT referral, Graham explained that the referral was not made at that time because respondent mother was already receiving individualized counseling. She stated that the FIT program begins with individualized counseling and moves

toward more intensive services involving the children. She further testified that transitioning the children into respondent father's home was not an option because he did have his own housing.

Considering the evidence as a whole, including the services made available to respondent father, the trial court did not clearly err in finding that there was a reasonable likelihood, based on his conduct or capacity, that the children would be harmed if returned to his home. MCL 712A.19b(3)(j). As noted in *In re Trejo, supra* at 346 n 3, children may be subject to a risk of harm in different ways, including harm to their physical health and mental well being. The evidence here supported an inference that both risks would have been present if the children were placed with respondent father, given his failure to benefit from domestic violence counseling and his lack of suitable housing for the children.

Also, the trial court did not clearly err in finding, without regard to intent, that respondent father failed to provide proper care or custody for the children and that there was no reasonable expectation that he could do so within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). In addition to the unresolved domestic violence issue and the lack of suitable housing, respondent father offered no plan for the children's care independent of respondent mother.

Because we conclude that §§ 19b(3)(g) and (j) were both established by clear and convincing evidence, it is unnecessary to address whether § 19b(3)(c)(i) may serve as an additional ground for termination with respect to respondent father. For these reasons, we affirm the trial court's decision terminating respondent father's parental rights.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering