

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HOWLAND/DUNAVAN,
Minors.

UNPUBLISHED
March 19, 2013

No. 312596
Kent Circuit Court
Family Division
LC No. 11-050423-NA

In the Matter of J R B HOWLAND, Minor.

No. 312598
Kent Circuit Court
Family Division
LC No. 11-050423-NA

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

In Docket No. 312596, respondent-mother appeals as of right the order terminating her parental rights to the minor children, J. and A., under MCL 712A.19b(3)(c)(i) and (g). In Docket No. 312598, respondent-father appeals as of right the order terminating his parental rights to J. under MCL 712A.19b(3)(c)(i). Because we conclude that in both cases the trial court did not clearly err by finding clear and convincing evidence to prove at least one statutory ground for termination or by determining termination was in the children’s best interests, we affirm.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.* “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We also review the trial court’s decision regarding the child’s best interests for clear error. *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); MCL 712A.19b(5). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In Docket No. 312596, respondent-mother first argues on appeal that there was not clear and convincing evidence that she failed to provide proper care and custody of the minor child

because she substantially complied with the parent agency treatment plan. Respondent-mother also argues that the trial court erred by not considering A.'s placement with relatives in making its best interest determination.

The trial court terminated respondent-mother's rights pursuant to MCL 712A.19b(3)(c)(i) and (g), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial disposition order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The 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.

We conclude that the trial court did not clearly err by finding that petitioner established, by clear and convincing evidence, at least one statutory ground for termination under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist). *In re VanDalen*, 293 Mich App at 139. The conditions that led to adjudication included respondent-mother's mental health. The children's caseworker testified that respondent-mother had not rectified the conditions that led to adjudication, specifically noting that respondent-mother had not made any progress regarding her mental health. The record supported that respondent-mother was diagnosed with bipolar disorder and suffered from anxiety and depression. Respondent-mother failed to consistently attend scheduled counseling sessions, prompting multiple agencies to discontinue services with respondent-mother, or to regularly take her prescribed medication. Accordingly, the trial court's finding that the mother had not rectified the conditions that led to adjudication and there was no reasonable likelihood that she would do so within a reasonable time does not leave us with "a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459. See *In re LE*, 278 Mich App 1, 27; 747 NW2d 883 (2008) (the trial court did not clearly err in finding the conditions that led to the initial adjudication continued to exist where the record indicated that the respondent did not comply with services aimed at addressing the conditions that led to adjudication).

While only one statutory ground need be established, *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999), we also find that the record supported the trial court's finding that MCL 712A.19b(3)(c)(g) constituted an additional ground for termination of respondent-mother's

parental rights. Here, the record evidence demonstrated that respondent-mother's mental health issues affected her ability to properly parent the children, including getting them to school or appointments, and given the length of the proceeding, there was no reasonable expectation that respondent-mother would be able to provide proper care and custody within a reasonable time.

Respondent-mother also argues that the trial court's conclusion that termination was in the children's best interests was clear error. Specifically, she argues that the trial court erred by not considering A.'s placement with relatives.

We conclude that the record supports the trial court's conclusion that respondent-mother suffered from emotional instability and mental health problems, which limited her ability to properly care for J. and A., and that she failed to make progress in this area. The trial court agreed with the caseworker's testimony that the children needed permanence and stability and that it would be harmful for them to "continue in limbo" any longer. The trial court found that J. and A. were each doing well in their respective out-of-home placements. Thus, the trial court did not clearly err by determining that termination of respondent-mother's parental rights was in the children's best interests. *In re HRC*, 286 Mich App at 459. See also *In re Trejo Minors*, 462 Mich at 364 ("[W]e cannot conclude that the court's assessment of the children's best interests was clearly erroneous. . . . The court did not clearly err by refusing to further delay permanency for the children, given the uncertain potential for success and extended duration of respondent's reunification plan.").

Further, in regard to consideration of A.'s placement with relatives, this Court has held that "because 'a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a),' the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012). "[T]he fact that the children are in the care of a relative at the time of the termination hearing is an 'explicit factor to consider in determining whether termination was in the children's best interests[.]'" *Id.*, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). A. was in relative placement with A.'s father and paternal grandmother. Contrary to respondent-mother's claim, the record supports that the trial court considered A.'s placement with relatives when determining the children's best interests. Further, the caseworker testified that termination was in A.'s best interests despite A.'s placement with relatives. Accordingly, we do not find that the trial court failed to consider A.'s relative placement, nor did the trial court clearly err by finding that termination was in A.'s best interests. *In re Olive/Metts Minors*, 297 Mich App at 43.

Respondent-mother also argues that terminating her parental rights was contrary to J.'s best interests because J. would be the only sibling to be severed from respondent-mother and "may consequently feel unnecessarily isolated from her siblings and abandoned." However, the trial court terminated respondent-mother's parental rights to both A. and J. and, thus, severed both girls' relationships with respondent-mother. More importantly, the record supports the trial court's finding that J. and A. needed stability and permanence, which respondent-mother could not provide. Thus, the trial court's best interests finding was not clearly erroneous. *In re Trejo Minors*, 462 Mich at 364.

In Docket No. 312598, respondent-father first argues that he was denied reasonable reunification efforts and, thus, the trial court clearly erred by terminating his parental rights. Specifically, respondent-father contends that termination was improper because petitioner did not obtain sex offender counseling for him.

“Generally, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re HRC*, 286 Mich App at 462. However, MCL 712A.19a(2)(d) provides that reasonable reunification efforts are not required where “[t]he parent is required by court order to register under the sex offenders registration act.” The record supports, and respondent-father acknowledges on appeal, that respondent-father was required to register under the sex offenders registration act and, thus, petitioner was not statutorily required to provide him with reunification efforts. Nonetheless, respondent-father contends that by referring him to sex offender counseling, petitioner created a duty to obtain such counseling for him. Respondent-father does not provide any authority supporting his proposition, and we find that respondent-father was not entitled to reasonable reunification efforts under MCL 712A.19a(2)(d), and he has not established error entitling him to relief.

More importantly, the record supports that petitioner made reasonable reunification efforts and that it was respondent-father’s actions that impeded his access to sex offender counseling. The record indicates that caseworkers met regularly with respondent-father to address his barriers to reunification. Petitioner referred respondent-father to parenting classes and substance abuse services, conducted random drug screens, and provided him with weekly supervised parenting time and employment resources. In June of 2011, petitioner instructed respondent-father to participate in sex offender counseling at the YWCA. Upon learning that petitioner would not fund this sex offender counseling, respondent-father offered to pay for the counseling himself. However, the record supports that for months, respondent-father failed to provide the police reports from his CSC convictions that were necessary for the YWCA to begin sex offender counseling. Respondent-father did not provide a police report until approximately one month before the termination hearing commenced, and he did not begin sex offender counseling until after the termination hearing had begun. Additionally, he misrepresented that he had received such counseling through another provider, who contradicted respondent-father’s claim at the termination hearing. Although petitioner generally “has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). On the record before us, we do not find that petitioner failed to make reasonable reunification efforts.

Moreover, we conclude that the trial court did not clearly err by finding that petitioner established by clear and convincing evidence a statutory ground for termination under MCL 712A.19b(3)(c)(i). *In re VanDalen*, 293 Mich App at 139. The conditions that led to adjudication included respondent-father’s previous convictions of criminal sexual conduct (CSC) and his substance abuse. The caseworker testified that respondent-father had not rectified the conditions that led to adjudication. The record supports that despite being referred to sex offender treatment in June of 2011, respondent-father did not begin sex offender treatment until June of 2012, after the termination hearing had commenced. The record also supports that respondent-father tested positive for drugs on three separate occasions during the case, yet he

denied that he used drugs or had a problem with substance abuse. Therefore, on the record before us, the trial court's finding that MCL 712A.19b(3)(c)(i) formed a statutory ground for termination does not leave us with "a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459; see also *In re LE*, 278 Mich App at 27.

Further, the trial court did not clearly err by finding that termination of respondent-father's parental rights was in J.'s best interests. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). The caseworker testified that termination of respondent-father's parental rights was in J.'s best interests, specifically citing respondent-father's unresolved sex offender issue. The trial court found that J. needed permanence and stability, and that she was doing well in her foster home. Thus, the trial court's best interest finding does not leave us with "a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459; see also *In re Trejo Minors*, 462 Mich at 364.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Joel P. Hoekstra

/s/ Amy Ronayne Krause