

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C. D. MORRISON-RATHBUN,
Minor.

UNPUBLISHED
May 20, 2014

No. 318384
Delta Circuit Court
Family Division
LC No. 12-000717-NA

Before: MURPHY, C.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Respondent mother appeals the trial court's order terminating her parental rights to one of her minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), MCL 712A.19b(3)(c)(ii) (other conditions exist causing the child to come within the court's jurisdiction), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm if child returned to parent). Respondent claims that the trial court clearly erred in finding clear and convincing evidence of the statutory grounds for termination and in finding that termination of her parental rights was in the child's best interests. We affirm.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proven by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "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 first note that at the termination hearing, respondent entered a no-contest plea to the supplemental petition to terminate her parental rights. Indeed, respondent expressly indicated that it would be in her child's best interests to terminate respondent's parental rights. Respondent does not contest the soundness of the no-contest plea on appeal. In *Hudson*, 294 Mich App at 264, the respondent maintained that the trial court erred in ruling that the statutory bases for termination had been established by clear and convincing evidence, but she had also

pled no-contest to an amended petition to terminate her parental rights and did not challenge the plea on appeal. This Court indicated that the respondent's appellate arguments were "directly contrary to her plea of no contest." *Id.* The *Hudson* panel then stated that the "[r]espondent may not assign as error on appeal something that she deemed proper in the lower court because allowing her to do so would permit respondent to harbor error as an appellate parachute." *Id.* The same can be said in the case at bar. However, the Court in *Hudson* nevertheless proceeded to address the respondent's substantive arguments. *Id.* ("In any event, we find that clear and convincing evidence supported the trial court's termination decision."). We shall likewise rule on the substance of respondent's appellate arguments.

We hold that the trial court did not clearly err with respect to its findings that the statutory grounds for termination were proven by clear and convincing evidence and that there was a preponderance of evidence establishing that termination of respondent's parental rights was in the child's best interests. To establish the factual basis for the plea, the trial court relied on reports and other documentation contained in the record, along with information gleaned from earlier proceedings. There was evidence that respondent's home, initially and at the time of termination, was not fit for human habitation and posed a significant health hazard, that she did not comply with the case service plan to any extent, that she either did not take advantage of or benefit from the services made available to her by DHS, that her attendance record at scheduled visitations was abysmal, absent legitimate excuses for visitation failures and leading to a contempt ruling, and that when respondent actually visited the child, it was problematic and unmeaningful. Furthermore, there was evidence that respondent had a continuing problem with controlled substances, that she regularly failed to comply with mandatory drug testing and had positive drug screens, that she had driven a vehicle while under the influence with the child as a passenger, that she had not adequately addressed her mental health issues, that she generally failed to cooperate with DHS, and that the child had developed a strong bond with the father, who was now caring for the child. Contrary to respondent's argument on appeal, nothing in the record suggested that respondent's many shortcomings could be rectified within a reasonable time given the child's age.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly