

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of KLOPF, Minors.

UNPUBLISHED  
June 24, 2014

Nos. 319768 & 319770  
Saginaw Circuit Court  
Family Division  
LC No. 12-033494-NA

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Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Respondents appeal by right from the circuit court order terminating their parental rights to their three minor children. For the reasons outlined below, we affirm.

I. BACKGROUND

On June 28, 2012, a petition was filed alleging that respondent-father was currently incarcerated for domestic violence perpetrated against respondent-mother, and that despite services being offered by petitioner Department of Human Services, respondent-mother was unable to provide a suitable environment for the children, and the family home had been condemned. Supplemental petitions were filed on July 3 and August 13, 2012, alleging that respondent-mother had no income, had been under the influence of an unknown substance in front of her children, and had been incarcerated for assaulting her mother, father, and sister. Both petitions were subsequently authorized by the trial court.

A permanency planning hearing was held on August 14, 2013. The trial court found that “absolutely no progress” had been made by respondents, and that a relative guardianship may not be appropriate, even if funds to subsidize the guardianship could be authorized. Accordingly, the trial court directed the filing of a petition seeking the termination of respondents’ parental rights. That petition was filed on September 27, 2013, and contained additional allegations that respondents had failed to participate in, or adequately benefit from, the services offered to them, that respondent-mother had recently tested positive for methamphetamines, and that termination of respondents’ parental rights was in the best interests of the children.

After a two day hearing, the trial court found termination of both respondents’ parental rights appropriate under statutory bases MCL 712A.19b(3)(c)(i), (g), and (j). The trial court further found termination to be in the children’s best interests.

## II. STANDARD OF REVIEW

An appellate court “review[s] for clear error . . . the court’s decision that a ground for termination has been proven by clear and convincing evidence.” *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The court’s determination that termination is in a child’s best interests is also reviewed for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to assess the credibility of witnesses. *Id.*

## III. DOCKET NO. 319769

Respondent-mother argues that the trial court erred by finding that one or more statutory basis for termination was established and that termination was in the best interests of her children.

Parents have a fundamental liberty interest in the “companionship, care, custody, and management of their children.” *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). That interest “does not evaporate simply because they have not been model parents or have lost temporary custody of their child[ren] to the state.” *In re Trejo*, 462 Mich at 373-374, quoting with alteration *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). In order to issue an order terminating parental rights, the lower court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. MCL 712A.19b(3). In the instant case, the trial court found that three grounds for termination had been proven by clear and convincing evidence: MCL 712A.19b(3)(c)(i), (g), and (j). Each will be examined in turn.

MCL 712A.19b(3)(c)(i) reads as follows, in relevant part:

(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 dispositional 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.

Here, the petition alleged that respondent-mother had no income, no stable housing for herself or her children, and substance abuse issues. There was evidence of income, but it was not sufficient to provide proper care and custody for three children, especially given the monies due on unpaid utility bills and property taxes. Indeed, a foster care caseworker testified that respondent-mother did not have money to buy the children lunch at the most recent parenting time. However, poverty alone does not justify termination. At trial the evidence showed that over 182 days had passed since the filing of the petition, and that respondent-mother still did not have a stable and suitable home for herself and her children. She also had failed drug screens in

July and September 2013, testing positive for methamphetamines. The caseworker also testified that respondent-mother would start services but would not follow through with them, and that she had not participated in any counseling, and had failed to document attendance at AA/NA meetings. Given this evidence, it was not clearly erroneous for the trial court to find that over 182 days had passed since the filing of the petition in this case, and that the conditions leading adjudication continued to be present.

The next statutory basis, MCL 712A.19b(3)(g), reads as follows:

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.

Much of the evidence in this regard also revolved around the respondent's lack of income. Respondent-mother's evidence that she had a suitable home for her children that was ready for inspection was rejected largely because nearly \$7,000 in back taxes and utility payments were still owed on the home, and respondent-mother does not have sufficient income with which to settle the debt. However, while poverty does not justify termination, failure to make reasonable efforts to provide for a suitable environment for minors does. The respondent-mother's failure to complete some services or benefit from others supports a finding that she is not likely to be able to provide for her children's proper care and custody, and that she would be unable to provide proper care and custody within a reasonable period of time.

The last statutory basis, MCL 712A.19b(3)(j), provides that termination is warranted where "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." The court made no specific finding as to subsection (j), and only mentioned it in passing from subsection (g) to its best interests determination: "That brings me – finding that J does also apply – to the best interests aspect of this case." While an argument can be made that this statutory basis does apply based on the evidence summarized by the trial court directly before it found support for termination under (c)(i) and (g), this Court need not find subsection (j) proven by clear and convincing evidence when only one statutory basis is required to be proven under MCL 712A.19b(3) to terminate parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

Respondent-mother also argues that the trial court erred in finding that termination was in the best interests of her children. Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss Minors*, 301 Mich App 76, 83; 836 NW2d 182 (2013). In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The presumption that the children's interests are best served when in the custody of their natural parents is "of the strongest order and it must be seriously considered and

heavily weighted in favor of the parent.” *Heltzel v Heltzel*, 248 Mich App 1, 25; 638 NW2d 123 (2001), quoting *Deel v Deel*, 113 Mich App 556, 561; 317 NW2d 685 (1982).

Although the testimony presented a bond between respondent-mother and the children, there was also evidence establishing the children’s need for stability and respondent-mother’s inability to provide proper care and custody for the children within a reasonable period of time. Further, while the children were placed with a relative at the time of trial, the evidence showed that a relative guardianship would not be appropriate, as the relative in question refused to allow respondent-mother in her home and had stated that she did not want to work with respondent-father. The children’s compelling need for security and stability could only be established through the termination of respondent-mother’s parental rights thus, the trial court did not err by finding that termination was in the best interests of the children.

#### IV. DOCKET NO. 319770

Respondent-father also challenges the trial court’s finding that one or more statutory basis for termination was established and that termination was in the best interests of his children. The court found clear and convincing evidence to terminate respondent-father’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

Regarding § 19b(3)(c)(i), the petition alleged that respondent-father lacked adequate income and housing and had issues with anger management and domestic violence. The evidence showed that more than 182 days had passed since the filing of the petition, and that respondent-father’s income came from some part-time work and refereeing youth football games on the weekends. Further, the record shows that respondent-father continued to have disputes with respondent-mother, and that one of those disputes led to respondent-father removing necessary fixtures from the family home. Thus, his active conduct impeded the ability to provide suitable housing. Given this evidence, it was not clearly erroneous for the trial court to find that over 182 days had passed since the filing of the petition in this case, and that the conditions leading to adjudication continued to exist.

As for §19b(3)(g), given respondent-father had not been able to secure sufficient income or housing in the preceding 18 months, it was not clearly erroneous for the trial court to find that respondent-father had failed to provide proper care and custody for the children and would not be able to do so within a reasonable period of time.

As with respondent-mother, we conclude that the trial court made no factual finding as to §19b(3)(j), but that termination was nonetheless warranted under the other two statutory grounds. See *In re Frey*, 297 Mich App at 244.

Respondent-father also argues that the trial court erred by finding that the termination of his parental rights was in the best interests of his children. As with respondent-mother, there was evidence establishing the children’s pressing need for stability and respondent-father’s inability

to provide such within a reasonable period of time. And again, placement with a relative was not feasible.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Donald S. Owens

/s/ Cynthia Diane Stephens