

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EDWARDS, Minors.

UNPUBLISHED
August 21, 2014

No. 320313
Ingham Circuit Court
Family Division
LC No. 12-001627-NA

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

Respondent-appellant (hereinafter respondent) appeals as of right from an order of the Ingham Circuit Court Family Division, terminating her parental rights to three of her four minor children. For the reasons set forth in this opinion, we affirm.

Respondent is the mother of CB, ME, GE, and SE. The parental rights of the two fathers involved were terminated and neither has appealed. The court terminated respondent's parental rights to ME, GE, and SE under MCL 712A.19b(3)(c)(i) (failure to rectify conditions which led to initial adjudication), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed). The court found that statutory grounds for terminating respondent's parental rights to CB existed, but held that termination was not in the child's best interests.

Respondent argues that the court erred in finding that the statutory grounds for termination had been established. Respondent argues that if she had more time, she would be in full compliance. Based on the record evidence presented in this case, we disagree.

To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established. We review a trial court's findings for clear error. A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. [*In re Laster*, 303 Mich App 485, 491; 845 NW2d 540 (2013) (citations and internal quotation marks omitted).]

I. MCL 712A.19B(3)(C)(I).

MCL 712A.19b(3)(c)(i) provides as follows:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence . . .

* * *

(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 . . .

(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.

Clear and convincing evidence is evidence which

produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. [*In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009) (internal quotation marks and citations omitted; alteration in original).]

The clear and convincing standard is the most demanding standard used in civil cases, *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), and is required in termination cases as a matter of due process under the United States Constitution, *Santosky v Kramer*, 455 US 745, 768-770; 102 S Ct 1388; 71 L Ed 599 (1982).

The trial court stated that it found "clear and convincing evidence exists to terminate [respondent's] parental rights pursuant to this statutory ground." The trial court stated that respondent had "not complied with the case service plan" for the first eight months of the case, during which time she was using drugs, was not participating in parenting time, and did not have adequate housing or employment. The trial court stated:

Over the last few months, [respondent] has experienced a period of sobriety, and has been attending some substance abuse treatment. She has also found full-time employment and has been substantially exercising her parenting time. However, adequate housing was still an issue up until a week before this hearing and it is questionable as to whether it is even adequate now. She has difficulty managing the children all at once, and has not shown that she can adequately parent on a full-time basis. Review of [respondent's] psychological evaluation performed in August, 2013 indicates that [respondent] has avoidant and dependant traits. The report states that people with these traits typically have a poor self concept, poor self esteem, and are very vulnerable to external environmental cues. Individuals with these traits struggle with parenting because their own needs supersede their children's needs. Given that, it is apparent to this

Court that [respondent's] disposition and capacity to parent could shift at any point in time.

Respondent placed an "admission of plea" on the record that statutory grounds existed for the trial court to exercise jurisdiction over the children due to "an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, non-parent adult, or other custodian."

Under MCL 712A.19b(3)(c)(i) the petitioner must prove, by clear and convincing evidence, that the conditions leading to the adjudication have not been rectified. If the conditions have been rectified, grounds for termination do not exist. *Id.* The burden of proof is not on the respondent to prove that he or she will not have problems in the future. Here, the trial court recognized that respondent "has experienced a period of sobriety, and has been attending some substance abuse treatment." The court further recognized that respondent had maintained sobriety for five-and-a-half months. Respondent's substance abuse counselor, Darby Monks, indicated that this was a significant amount of time given respondent's substance abuse history. Julie Arcaute, petitioner's caseworker assigned to the case up until August 2013, and Sarah Pfund, the caseworker assigned thereafter, agreed that respondent had finally begun to comply with her substance abuse treatment.

However, the evidence also indicated that respondent had recently moved into a three-bedroom apartment, though it had no beds for the minor children. Petitioner had concerns about respondent sharing the apartment with a male friend with whom she had previously used drugs. The friend's testimony did nothing to rebut those concerns. His testimony relative to why respondent was in possession of marijuana and he was in possession of a pill cutter during the pendency of this case was unconvincing. He testified that in lieu of disposing of the marijuana by flushing it down the toilet, the motel they were currently at had "toilet issues," so instead, when stopped by police, he told them they were on their way to Goodwill to dispose of the marijuana and pill cutter. Such evidence indicated to the trial court that respondent continued to associate with individuals engaged with illegal narcotics. Furthermore, this testimony cast doubt on respondent's ability to remain sober and have her children subjected to drug users.

Relative to respondent's interactions with the minor children, the trial court's findings were also supported by the record. Respondent failed to visit the children on a regular basis, and over the course of these proceedings missed many visits. We note that prior to her last scheduled visit with the minor children respondent told petitioner that she had to go to counseling, and told her counselor she had to be in court. Respondent did not appear at either place. When respondent did visit with the children, more often than not, the visits did not go well and respondent was unable to control the children, or paid little or no attention to some of the children. Respondent testified that the problem with interaction was not hers, but rather attributed these problems to the places chosen to conduct the visits. This testimony was unpersuasive. Given the special needs of some of the minor children, and the lack of respondent's ability to demonstrate proper parenting procedures, coupled with her history of drug abuse and her on-going relationships with persons with whom she had previously abused drugs, we cannot conclude that the trial court clearly erred in finding that respondent failed to rectify the conditions that led to initial adjudication. Given that the minor children had a need for stability and permanence and were bonding with their foster families, we reject respondent's

argument that insufficient evidence existed to terminate her parental rights under MCL 712A.19b(3)(c)(i).

Respondent also argues that a portion of the trial court's ruling engaged in speculation and conjecture relative to how people with certain personality traits will act in the future. However, the trial court's opinion accurately reflects the psychological evaluation's description of the challenges and vulnerabilities people with dependant and avoidant traits face regarding parenting. To the extent the trial court engaged in speculation when it stated: "it is apparent to this Court that [respondent's] disposition and capacity to parent could shift at any point in time," See *In re Boursaw*, 239 Mich App 161, 169; 607 NW2d 408 (1999), rev'd in part on other grounds *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), we do not consider that portion of the trial court's ruling in reaching our conclusion. Rather, relying on the entire record, we cannot find that the court clearly erred in finding that "[t]he 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." MCL 712A.19b(3)(c)(i). As only one basis for termination is necessary, we need not consider the other arguments advanced by respondent. *In re Laster*, 303 Mich App at 491.

II. BEST INTERESTS.

As previously noted, the trial court found a statutory basis for terminating respondent's parental rights to all of her minor children, but found that it was not in the best interests of CB to have respondent's parental rights terminated. On appeal, respondent argues that the trial court clearly erred in finding that termination would be in the best interest of the minor children and that the trial court used an improper legal basis for its best interests finding.

"We review for clear error . . . the court's decision regarding the child's best interest." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144, lv den 492 Mich 859 (2012). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5).

All parties agree that the trial court erred in not following the holding of this Court in *In Re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013) regarding the proper standard of proof in the best-interest phase of the decision to terminate parental rights. We bring this error to light so that in future cases, the trial court applies the proper case law. However, we concur with petitioner that this error is harmless because the trial court applied a higher standard than was required under *Moss*. The court found that termination was in the best interests of ME, GE and SE but not in the best interests of CB.

Regarding the merits of this issue, and applying the proper preponderance-of-the-evidence standard, it was not clear error to find that termination was in the best interests of the children. "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." *Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted).

As discussed above, there was some evidence that respondent made some strides to be able to provide a permanent and stable home for her children. On the other hand, her housing situation (sharing a three-bedroom apartment with a male roommate) is not ideal and she has not demonstrated that she can provide permanence. Although respondent demonstrated a period of sobriety, she has not demonstrated long-term stability.

Ms. Pfund testified that respondent does not have a bond with the children. Furthermore, the children are young and GE has special needs. Given that it is unclear when respondent will be able to provide permanence and stability, as previously indicated, these facts weigh in favor of termination because the children have bonded with the foster families and have a need for permanence and stability.

Despite the trial court using an improper legal standard to base its decision relative to best interests, our review of the evidence does not leave this Court with a firm conviction that a mistake has been made. *In re Laster*, 303 Mich App at 491. Accordingly, we affirm.

Affirmed.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Stephen L. Borrello