

Court of Appeals, State of Michigan

ORDER

In re Hernandez/Melara Minors

Docket No. 325100

LC No. 11-008947-NA

Kathleen Jansen
Presiding Judge

David H. Sawyer

Karen M. Fort Hood
Judges

The Court orders that the opinion issued in this case is hereby AMENDED to correct a clerical error. The opinion is corrected to read June 16, 2015 as the date of the opinion.

In all other respects, the opinion remains unchanged.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 29 2015

Date

Jerome W. Zimmer Jr.
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

In re HERNANDEZ/MELARA, Minors.

UNPUBLISHED

June 16, 2016

No. 325100

Oceana Circuit Court

Family Division

LC No. 11-008947-NA

Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Respondent-mother appeals as of right the December 2, 2014 order terminating her parental rights to the minor children CH and HM under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication), (c)(ii) (other conditions exist that could have caused the children to come within the court's jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), and (j) (children will be harmed if returned to parent). We affirm.

Respondent first argues that the trial court erroneously found statutory grounds to terminate her parental rights. The trial court must find that at least one of the statutory grounds in MCL 712A.19b(3) has been met by clear and convincing evidence in order to terminate parental rights. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's decision for clear error. *Id.* A finding is clearly erroneous if it leaves us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

Here, the trial court properly terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g), which provides that termination is proper when "[t]he 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."

The record evidence established respondent could not provide proper care and custody for the children. Before the trial court assumed jurisdiction over the children due to respondent's substance abuse, respondent fled to Mexico with the children to live with their putative father. Respondent and the children lived there for 1-1/2 years; during that time, their whereabouts were unknown to the trial court. While in Mexico, respondent exposed her children to her abusive relationship with the putative father. The children were eventually located by border patrol and brought back to Michigan. After a few months, respondent also returned to Michigan; however,

upon her return, she was incarcerated on outstanding warrants. After respondent was released from jail, respondent continued to fail to address many of her mental health and substance abuse issues. Respondent continued to drink alcohol, despite knowing that her substance abuse was detrimental to reunification with her children. Furthermore, respondent failed to establish a stable home environment. Although she obtained an apartment a few months before the termination hearing, she failed to obtain stable employment and only afforded her rent through financial assistance from her elderly mother. Thus, the evidence supported the trial court's finding that respondent was unable to provide proper care and custody for the minor children.

Further, there is no evidence that respondent would have been "able to provide care and custody within a reasonable time considering" the minor children's ages. See MCL 712A.19b(3)(g). At the time of the termination hearing, the minor children were ages 6 and 5, and they had been in foster care for more than a year, since they were returned to Michigan. Given the length of the proceeding and respondent's lack of progress, the trial court properly found that she would not be able to provide proper care and custody for the children within a reasonable time. A change in respondent's ability to provide for the minor children was only a "mere possibility." See *In re Williams*, 286 Mich App 253, 273; 779 NW2d 286 (2009). Accordingly, the trial court did not commit clear error in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(g). Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *HRC*, 286 Mich App at 461.

Next, respondent argues that the trial court clearly erred by finding it was in the best interests of the children to terminate her parental rights. The trial court must find by a preponderance of the evidence that termination is in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review the trial court's decision for clear error. *HRC*, 286 Mich App at 459. Factors to be considered include "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*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Because respondent failed to provide any basis as to how the trial court erred in its best-interest determination, respondent abandoned her argument on appeal. See *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003).¹ Nevertheless, we have reviewed this issue and find that the trial court properly found that it was in the best interests of the children to terminate the mother's parental rights. The children required permanence and stability; yet, respondent failed to demonstrate any ability to provide it to them within the

¹ Respondent also provided an erroneous statement of law with respect to this issue by indicating that the trial court must find "by clear and convincing evidence" that termination is in the children's best interests. Rather, the proper standard is preponderance of the evidence. *Moss*, 301 Mich App at 90. Respondent conceded in her brief that, "at most," petitioner proved its case by a preponderance of the evidence.

foreseeable future. See *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Moreover, the minor children were benefitting from and bonded to their foster parents. Therefore, the trial court did not clearly err in finding that it was in the best interests of the children to terminate respondent's parental rights.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Karen M. Fort Hood