

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* EVERETTE/HALE, Minors.

UNPUBLISHED  
December 15, 2015

No. 328074  
Ottawa Circuit Court  
Family Division  
LC No. 13-076009-NA

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Before: RONAYNE KRAUSE, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court’s order terminating her parental rights to the four minor children under MCL 712A.19b(3)(g). Because we conclude that the trial court did not clearly err when it found that the Department of Health and Human Services<sup>1</sup> established this ground for termination by clear and convincing evidence and that termination was in the children’s best interests, we affirm.

The Department removed the children from respondent’s custody in September 2013 because of her drug use and failure to properly care for them. The Department referred her for numerous services addressing her drug use, housing, and parenting skills. However, respondent’s participation in services was inconsistent. She routinely tested positive for drugs until September 2014 and missed many drug tests. She moved numerous times and had trouble staying employed. Although respondent’s compliance with services improved beginning in September 2014, her parenting decisions nevertheless continued to reflect that she had not benefited from the services. There was evidence that in March 2015 she took the children to a party where drugs and alcohol were present, and failed to properly feed them and care for them.

“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). Termination of parental rights is proper under MCL 712A.19b(3)(g) where “[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 trial court found that the Department had established this ground for termination by

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<sup>1</sup> At the time, the Department was still called the Department of Human Services.

clear and convincing evidence. Specifically, the trial court found that respondent was an addict and it was unlikely that she would abstain from drug use because she was not fully participating in therapy. She also continued to violate the parent-agency agreement by allowing the children to have contact with their father during visits, and failed to properly feed and care for the children.

The trial court did not clearly err when it found that respondent failed to provide proper care and custody and that there was no reasonable expectation that she would be able to do so within a reasonable time. The youngest child, ZH, tested positive for cocaine when he was born in February 2013. Shortly thereafter, respondent was hospitalized for pneumonia caused by drug use. The Department referred her to services addressing her addiction. It closed its first case involving respondent in August 2013, but opened this case a month later after respondent overdosed on multiple drugs.

There was also strong evidence that respondent had not benefited from the services intended to help her rectify her problem with drugs. She frequently tested positive for drugs, and many of the negative results of her drugs tests showed signs of tampering. Respondent admitted at a June 2015 termination hearing that she was addicted to cocaine and prescription medication. There was also record evidence that respondent did not have insight into her addiction and how it affected her ability to parent and care for the children and did not have a viable plan for maintaining sobriety. Although she started to have negative screens in October 2014, respondent still failed to attend more than half of the therapy sessions designed to address her addiction. She also took the children to a house in March 2015 where, the children reported, there was drinking and drug use. Respondent's own parents have long histories of drug use and her mother was an active drug user at the time of the case. Yet, respondent chose to live with her parents at various times during the case and relied on them for support. Given respondent's history of drug abuse, her admitted addiction to drugs, her failure to fully participate in drug treatment, and her continued association with drug users, we cannot conclude that the trial court clearly erred when it found that respondent's addiction would continue to interfere with her ability to provide proper care and custody. *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 637; 853 NW2d 459 (2014).

The evidence of respondent's inability or unwillingness to comply with the parent-agency agreement similarly supported the trial court's finding that respondent would be unable to provide proper care and custody within a reasonable time considering the children's ages. There was evidence that respondent violated the parent-agency agreement by allowing the children to have contact with their father during visits. The children told the Department's staff that their father was present during a visit in March 2013. Two of the children told their foster mother that they also encountered father during a visit in the middle of May 2015. And, there is evidence that he was hiding in respondent's basement during a visit in January or February 2015, that he babysat the children, and that he rode with them in an automobile. Despite respondent's claim that she ended her relationship with the children's father by February 2014, evidence showed that she restarted and ended the relationship multiple times since then. She lived in his mother's house, but she told the Department's staff that she was living with her cousin.

Respondent also violated the parent-agency agreement in other ways. She tested positive for drugs numerous times, missed many drug tests, was evicted from two ministries, was terminated from a treatment center, and failed to fully comply with various other services, including drug treatment services, which were in place up to the time of termination.

There was further evidence that respondent continued to neglect the children's needs, even after the provision of services. In early 2015, a worker from the Department arrived for a scheduled home visit and had to take respondent grocery shopping because she had no food for the children. In March 2015, there is evidence that respondent slept late on two successive mornings, and left the children unfed until after noon. Moreover, testimony indicated that, during this time, she failed to provide the youngest child, ZE, with medical treatments addressing his breathing ailment, and did not change his diaper. The oldest child, AE, reported several times that she had the responsibility to care for the other children during their visits with respondent.

The evidence demonstrated that respondent has a serious addiction and is unlikely to remain sober. There was also evidence that she was unable to properly care for the children late in the case and had otherwise not benefited from the services provided to her. Consequently, the trial court did not clearly err when it found that the Department established the ground for termination by clear and convincing evidence. *In re VanDalen*, 293 Mich App at 139.

Although respondent argues that there was no concrete evidence that she drove the children while she was intoxicated (as reported by AE), the trial court did not rely on that evidence to support this ground for termination. Additionally, respondent's unpreserved claim that the Department failed to make reasonable efforts at reunification because it did not provide her with services to help improve her relationship with AE is without merit. The Department referred respondent to parenting classes and services addressing her drug addiction throughout the case. And, evidence shows that it was respondent's drug addiction and consequent failure to parent that caused her poor relationship with AE. She has not shown how these efforts were unreasonable and has not shown that, had her relationship been better with AE, she would somehow have been able to rectify the other problems that prevented her from being able to provide proper care and custody. Therefore, there was no plain error. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). When considering best interests, the focus is on the child rather than the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). The trial court should consider all available evidence to determine the child's best interests, *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000), and may consider such factors as "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 at 41-42 (citations omitted). Other factors for consideration include how long the child lived in foster care or with relatives, the likelihood that "the child could be returned to [the] parent's home within the foreseeable future, if at all[.]" and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The trial court found that termination was in the children's best interests because their bonds with respondent were weak and she had not demonstrated a commitment to being a good parent. The trial court also found that AE and ZH's foster parents were willing to adopt all of the children and that the children had a bond with each other. There is ample evidence supporting the finding that the children's bonds with respondent were weak; indeed, three of the children specifically stated that they did not want to return to respondent's care and the youngest had lived most of his life outside of respondent's custody. Additionally, respondent's failure to comply with services, her permitting the children to have contact with their father, and her failure to properly feed and care for them supported that she was not committed to being a good parent. Evidence further supported that the foster parents' homes had advantages. EE and IE behaved poorly after visiting respondent, but were relaxed in their foster home. Respondent's drug use and failure to provide proper care placed ZH at particular risk considering his young age and ill health. AE stated that she frequently missed school while in respondent's care, whereas her attendance at school and extracurricular activities was consistent when in foster care. And, AE and ZH's foster parents were willing to adopt all four children. *In re Olive/Metts*, 297 Mich App at 41-42. Respondent's frequent moves, evictions, job losses, and drugs use—despite over two years of services—show that she could not provide the children with the “permanency, stability, and finality” that they so clearly need. *Id.*

The trial court did not clearly err when it found that termination was in the children's best interests. *In re Moss*, 301 Mich App at 80.

Affirmed.

/s/ Amy Ronayne Krause  
/s/ Jane E. Markey  
/s/ Michael J. Kelly