

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* Z. C. CHISOLM, Minor.

UNPUBLISHED  
February 9, 2016

No. 327607  
Wayne Circuit Court  
Family Division  
LC No. 11-500618-NA

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Before: SERVITTO, P.J., and SAAD and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated her parental rights to her child, ZC, under MCL 712A.19b(3)(c)(i) (the conditions that lead 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) and (g) (without regard to intent, the parent fails to provide proper care and custody and that there is no reasonable likelihood that the parent will be able to do so within a reasonable time considering the child's age). For the reasons provided below, we affirm.

I. BACKGROUND

Respondent is the mother of MB, TM, XM, and ZC. The children have three different fathers, who were each also named as respondents in this case. The children came under the jurisdiction of the court following a shooting outside of respondent's home while the children were being cared for by the man who was fatally shot. Respondent's home was found in "deplorable" condition, and she admitted to using marijuana two or three times a week and stated that she had been diagnosed with manic depression. The children were placed in relative care in May 2011.<sup>1</sup> According to Toni Day, a foster-care specialist for petitioner, the most critical part of respondent's case-treatment plan was mental health services, and the totality of Day's concerns expressed throughout this case indicate that Day sought to ensure that respondent's depression and substance abuse was treated so that respondent could maintain suitable housing and employment for her children and effectively manage a household.

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<sup>1</sup> MB was placed with her paternal aunt; TM and XM were placed with their paternal grandfather; and ZC was placed with his paternal grandparents.

By respondent's admissions, she was slow to begin the offered services and find a place to live, and Day testified in early 2012 that respondent was terminated from her substance abuse and counseling services due to a lack of participation. However, by September 2012, respondent had made enough progress to obtain unsupervised visitation with her children. Her participation in counseling and drug screening waned again by the end of 2012, which led to the first petition for termination being filed. In turn, respondent became compliant with all services offered by May 2013, and the petition was dismissed. At this point, Day recommended additional individual counseling and medication reviews to ensure that respondent was receiving appropriate medications to address her depression and mental health in order for her progress to be maintained. Day continued to wait for respondent to verify her income and residence situation.

While respondent began counseling services at Team Mental Health with Dorothy Robinson in February 2014, there had been a break in counseling services.<sup>2</sup> That break combined with respondent's continued failure to verify her income, missed drug screens, and frequently evolving housing situation led to a family team meeting where Day concluded that termination would be sought. Day testified that respondent thereafter provided her with an April 29, 2014, letter detailing some of respondent's treatment at Team Mental Health, a letter from an employment agency, and a lease to a new home. Nevertheless, petitioner ultimately sought termination in June 2014.

Due to various delays, the termination hearing was held over the course of months between November 2014 and March 2015. Abundant testimony was provided by Day concerning respondent's history and progress throughout. Respondent, Robinson, Kristine Kampf (the foster-care worker for TM and XM), and Emily Koch (the foster-care worker for ZC) also testified. The trial court found that clear and convincing evidence supported terminating respondent's parental rights to the children under MCL 712A.19b(3)(c)(i) and (g).<sup>3</sup> The trial court delayed its decision concerning the best interests of ZC even though ZC had been removed from relative care in 2013. Ultimately, ZC was returned to the care of his paternal grandparents, who had become licensed foster-care providers. Thereafter, the trial court concluded that it was in ZC's best interests to terminate respondent's parental rights. However, the trial court found that it was in the best interests of MB, TM, and XM to plan for relative guardianships in lieu of terminating respondent's parental rights to those children. On appeal,

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<sup>2</sup> The record indicates that the delay may be attributable to respondent's counselor leaving employment with the provider to which petitioner referred respondent, and respondent transitioning to a counselor she felt more comfortable with.

<sup>3</sup> As to respondent, the trial court concluded that there was not sufficient evidence to support termination under MCL 712A.19b(3)(j) (reasonable likelihood based on the conduct or capacity of the parent that the child will be harmed if returned to the parent's home).

respondent argues that there was not sufficient evidence to terminate respondent's parental rights to ZC under MCL 712A.19b(3)(c)(i) or (g) and that termination was not in ZC's best interests.<sup>4</sup>

## II. ANALYSIS

“ We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest' under MCL 712A.19b(5).” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), quoting *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed.” *In re Campbell*, 170 Mich App 243, 253-254; 428 NW2d 347 (1988). If the trial court determines that clear and convincing evidence supports a statutory basis for the termination of parental rights, “it shall order termination of parental rights if it finds ‘that termination of parental rights is in the child's best interests.’ ” *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009), quoting MCL 712A.19b(5). A finding that termination of parental rights is in the child's best interests must be supported by a preponderance of the evidence on the whole record. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

Under MCL 712A.19b(3)(c)(i), termination is appropriate where “182 or more days have elapsed since the issuance of an initial dispositional order . . . [and] [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). “This statutory ground exists when the conditions that brought the children into foster care continue to exist despite ‘time to make changes and the opportunity to take advantage of a variety of services . . . .’ ” *In re White*, 303 Mich App at 710, quoting *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000). MCL 712A.19b(3)(g) provides that termination may be ordered 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.” MCL 712A.19b(3)(g); see also *In re JK*, 468 Mich 202, 213-214; 661 NW2d 216 (2003). Termination under § 19b(3)(g) is based on a finding of neglect, but “culpable neglect” is not required. *In re Jacobs*, 433 Mich 24, 37; 444 NW2d 789 (1989).

Considering the circumstances as they existed toward the end of the trial, it does appear that respondent had made progress regarding her mental health counseling. However, Day testified that there remained concerns regarding respondent's substance abuse and she had yet to consistently participate in relevant counseling. Respondent asserts on appeal that there is no evidence of her ongoing use of marijuana. But, she admitted to regular use of the drug in 2011, and while the majority of her drug screens were negative, she missed numerous screenings throughout the duration of this case. Regarding the extent of respondent's substance abuse counseling, Robinson did testify that respondent began NA/AA meetings in July or August 2014

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<sup>4</sup> The respondent fathers have not filed an appeal in this Court challenging any aspect of the trial court's ruling.

and attended several sessions with a substance abuse counselor in relapse-prevention group therapy. Conversely, Day testified that Robinson told her that she was not attending group substance abuse sessions. Nevertheless, Day's knowledge of respondent's substance abuse treatment is limited because, aside from an April 29, 2014, letter indicating that services had been commenced at the new location under Robinson's supervision, respondent had not kept Day informed. Additionally, although Robinson testified that respondent was generally benefiting from counseling, respondent's positive drug test for marijuana during the pendency of the termination proceedings demonstrates that respondent has not substantially and meaningfully addressed her substance abuse issues. See *In re White*, 303 Mich App at 710 ("A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody").<sup>5</sup>

Respondent raises arguments regarding her income and housing status in asserting that poverty is not a legitimate basis to terminate her parental rights. The only income stream that respondent was able to document in any manner in the four years this case has proceeded was pay stubs ranging from October 2014 to January 2015 from an employment service through which respondent was working in a factory. Respondent did not display an accurate understanding of her income in this regard, which would be necessary to sustain the housing she had at the time of the trial, particularly in light of Day's testimony that respondent's current rent was higher than she was accustomed to. Further, Day testified that this employment was temporary because the location was scheduled to close. Thus, respondent has not established that her income would provide her children basic needs. See *In re Laster*, 303 Mich App 485, 493-494; 845 NW2d 540 (2013) (relying in part on a respondent's inability "to provide legal documentation of her income, despite two requests made by the agency").<sup>6</sup>

Regarding her housing stability, respondent argues that her need to relocate is not a valid basis to find that she neglected her children. Respondent relies on *In re Moore*, 134 Mich App 586; 351 NW2d 615 (1984), which is largely distinguishable because in that case, the respondent mother voluntarily sought temporary foster care for her children after her rent money was stolen and she was threatened with eviction. *Id.* at 590. *In re Moore* stands for the principle that "[a] parent's failure to fully comply with a Department of Social Services treatment plan does not alone establish neglect, at least in the absence of clear and convincing evidence that the treatment plan was necessary to improve the parent's alleged neglectful behavior." *In re Mason*, 140 Mich App 734, 737; 364 NW2d 301 (1985), citing *In re Moore*, 134 Mich App at 598. Consistent with that principle, the services offered to respondent, which were primarily directed toward stabilizing her mental health and related substance abuse so that she could provide clean and reliable housing for her children, were necessary.

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<sup>5</sup> Respondent also provided three positive drug tests for opiates, marijuana, and alcohol during the proceedings.

<sup>6</sup> Respondent asserted throughout the case that she earned income as a hairdresser and caregiver, but she has never provided documentation in any form in support.

In finding sufficient evidence to terminate under MCL 712A.19b(3)(g), the trial court also relied on Robinson's testimony that, despite the four years that respondent had received services, she is still not in a position to resume care of her children. Also, Day opined that the children could not be returned to respondent's care for at least a couple of months despite her progress in securing a new residential lease and participation in some counseling services. Although witnesses who observed respondent with her children agreed that respondent was appropriate during visitations, respondent was unable to move beyond the visitation schedule. Regarding MCL 712A.19b(3)(c)(i), respondent's admitted frequent use of marijuana and the potential effect that using the drug had on respondent's ability to provide clean, safe housing was a condition that led to the court's jurisdiction, yet she tested positive for marijuana during the last days of the termination hearing. Even though Robinson testified that respondent was benefiting from general mental health counseling, Day testified that respondent's monthly counseling sessions with Robinson were not enough to address her depression and other mental-health issues, and respondent had not even attended every monthly appointment.

Further, respondent's pattern of regressing in her treatment goals poses a serious question whether she can maintain any progress she appears to have made. On this record, we are not left with a definite and firm conviction that the trial court erred in concluding that there was clear and convincing grounds to terminate under §§ 19b(3)(c)(i) and (g) because respondent has already received a lengthy period of time and substantial services to demonstrate that she would be able to properly care for the children.

In considering ZC's best interests, the trial court considered relevant principles regarding termination proceedings involving multiple children who had been under the temporary care of relatives during the case. We held in *In re Olive/Metts* that typically it will be the best interests of the siblings to keep them together, but the trial court must consider the individual best interests of each child. *In re Olive/Metts*, 297 Mich App at 42.

Respondent argues that the trial court erred in concluding that ZC did not share the same bond to respondent as the other children and that termination is not in ZC's best interests because he would be singled out from the rest of his siblings regarding his ability to have a relationship with them or with respondent. The bonds that existed in this case were an important factor the trial court considered in deciding whether termination of respondent's parental rights to ZC was in his best interests. See *In re White*, 303 Mich App at 713. The fact that ZC and respondent shared a bond does not necessarily mean that ZC's bond was the same or equal to the bond that his siblings may have had with respondent. The trial court recognized differences in ZC's relationship with respondent that were supported by caseworkers' testimony. Day testified that ZC asked if he could go to his grandparents' home for visits. Koch likewise testified that ZC talked about living with his grandparents and called them "mama" and "papa." This testimony stands in stark contrast to the testimony regarding the bonds that respondent shared with the two oldest children, MB and TM, who both expressed a desire to live with respondent. XM also expressed some desire to maintain a relationship with respondent.

Further, the age of the child is a factor appropriately considered in a best-interests analysis. See *In re Jones*, 286 Mich App at 131. ZC was just about two months shy of turning three years old when the children were removed from respondent's care, and, importantly, he has had the most instability of any of the children throughout the four years of this case. While the

children appear to have adjusted well over the years considering the circumstances, the record suggests that ZC has had the most difficulty. Accordingly, ZC's need for permanency and stability is greater than the other children's, and these considerations are other factors relevant to a best-interests determination. See *In re White*, 303 Mich App at 713.

In determining that termination was in ZC's best interests, the trial court recognized appreciable differences in ZC's situation in comparison to the rest of the children that are supported by a preponderance of the evidence in the record. On our review of the record, we conclude that the trial court did not clearly err in its finding.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Henry William Saad  
/s/ Colleen A. O'Brien