

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* SANDERS/TOTH/BROWN, Minors.

UNPUBLISHED  
February 9, 2016

No. 327948  
Shiawassee Circuit Court  
Family Division  
LC No. 13-013425-NA

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Before: O'CONNELL, P.J., and OWENS and BECKERING, JJ.

PER CURIAM.

Respondent-mother, K. Stephenson, appeals as of right the trial court's order terminating her parental rights to her four minor children under MCL 712A.19B(3)(c)(i) (conditions leading to adjudication continued to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

I. FACTUAL BACKGROUND

In July 2013, the Department of Health and Human Services (DHHS) took the children into protective custody after neighbors reported constant yelling and screaming from Stephenson's apartment and Stephenson's son was found with bruises. During a forensic interview, the son disclosed that he was subject to various forms of physical abuse from Stephenson's live-in partner. One of Stephenson's daughters tested positive for opiates. The petition alleged that Stephenson abused substances and failed to protect her children from abuse, and Stephenson pleaded no contest.

In October 2013, Stephenson was incarcerated on extensive felony charges, to which she eventually pleaded guilty or no contest. In December 2014, DHHS petitioned to terminate Stephenson's parental rights. The trial court changed the children's reunification goal to termination, stating that "few, if any, of the components of the parent agency treatment plan have been met."

The trial court held a termination hearing in March 2015. At the hearing, Jennifer Kalis, the children's foster care worker, testified that she met with Stephenson in 2013 and 2014 to discuss Stephenson's treatment plan and the services offered in jail. According to Kalis, Stephenson abused heroin, marijuana, and opiates, and had tested positive on five drug screens before going to jail. The children's foster mother testified that before incarceration, Stephenson's visits with the children did not go well because Stephenson arrived late and did not follow visitation rules.

Stephenson testified that she loves and misses the children, who she communicated with regularly. After her incarceration, she participated in substance abuse treatment, parenting classes, domestic violence classes, and grief and loss classes. Stephenson admitted that she was abused by “several children’s fathers,” but stated that she has learned skills to help her better nurture and bond with her children and avoid domestically violent situations in the future. Stephenson testified that her earliest release date was February 2016.

The trial court found that the conditions that led to adjudication continued to exist and there was no reasonable likelihood that Stephenson would rectify them within a reasonable time. It considered both Stephenson’s conduct before incarceration and her unavailability since then, finding that Stephenson had “a tenuous future.” It found that respondent had failed, before and during her incarceration, to provide proper care and custody for the children, and there was no reasonable expectation that she would be able to do so. It also found that there was a reasonable likelihood that the children would be harmed if returned to Stephenson’s care. Finally, the trial court found that terminating Stephenson’s parental rights was in the children’s best interests.

## II. ANALYSIS

Stephenson contends that the trial court clearly erred when it found that statutory grounds existed to terminate her parental rights. We disagree.

This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court has clearly erred if we are definitely and firmly convinced that it made a mistake. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The Department has the burden to prove the existence of a statutory ground by clear and convincing evidence. MCL 712A.19b(3); *Mason*, 486 Mich at 166. Clear and convincing evidence is “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 Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (quotation marks and citation omitted, alteration in original). The trial court may not terminate a parent’s parental rights solely on the basis of parental incarceration. *In re Mason*, 486 Mich at 152.

The trial court’s decision in this case concerned three statutory grounds. MCL 712A.19b(3)(c)(i) provides that the trial court may terminate a parent’s rights if

[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)(g) provides that the trial court may terminate a parent’s rights if

[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.

And MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[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 trial court may consider a parent's tendency to engage in relationships that may pose a danger to the children when determining whether statutory grounds exist to terminate a parent's parental rights. See *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011).

In this case, the children were placed in foster care because Stephenson used substances and failed to protect them from abusive partners. Before Stephenson was incarcerated, she continued to abuse substances and engage in criminal activity. The children's foster mother testified that visits did not go well because Stephenson was frequently late and did not follow visitation rules. Even though the children were in care from July 2013, Stephenson did not begin participating in services until after December 2014. And while Stephenson testified that she participated in substance abuse and domestic violence classes in prison, she was unable to provide any certification to show that she had successfully completed the programs.

Additionally, Stephenson's plans to care for the children after her release were far from definite, and Stephenson would not be released until February 2016 at the earliest—over two and a half years after the children came into foster care. The trial court found Stephenson's plans to provide the children with care and custody "tenuous," and we agree. We are not definitely and firmly convinced that the trial court made a mistake when it found that statutory grounds supported terminating Stephenson's parental rights.

We affirm.

/s/ Peter D. O'Connell

/s/ Donald S. Owens

/s/ Jane M. Beckering