

Court of Appeals, State of Michigan

ORDER

In the Matter of COOTE, Minors

Docket No. 310579

LC No. 11-011438-NA

Kurtis T. Wilder
Presiding Judge

Elizabeth L. Gleicher

Mark T. Boonstra
Judges

On the Court's own motion, we VACATE the opinion issued in this case on November 8, 2012. Pursuant to the amended opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, we remand the case to the trial court to consider the effect of the child's placement with relatives as it relates to the best-interest analysis. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

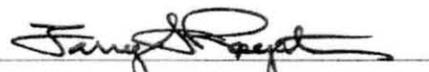
The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

DEC 18 2012

Date


Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 18, 2012

In the Matter of COOTE, Minors.

No. 310579
Lapeer Circuit Court
Family Division
LC No. 11-011438-NA

Before: WILDER, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to her two minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm the trial court's finding of statutory grounds for termination, but remand for the trial court to consider the effect of the children's placement with maternal relatives in making its best interest determination.

Termination of parental rights requires a finding that at least one of the statutory grounds set forth in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). If the trial court makes such a finding, it must order termination of parental rights if it finds that termination is in the children's best interest. MCL 712A.19b(5). An appellate court "review[s] for clear error both the [trial] court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the [trial] court's decision regarding the child[ren]'s best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court's termination decision "is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The first ground on which respondent's parental rights were terminated was MCL 712A.19b(3)(c)(i), which provides as follows:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(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 either of the following:

(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.

The principal conditions that led to adjudication were respondent's alcoholism and mental instability. These conditions were not rectified at the time of the termination proceeding, which was more than 182 days after the initial dispositional order. In fact, respondent does not dispute that the conditions that led to adjudication continue to exist. Rather respondent argues that she can rectify these issues within a reasonable period of time. We disagree.

Even before the Department of Human Services filed a protective proceedings petition, respondent had a history of becoming intoxicated and threatening suicide, sometimes in the presence of her children. Child Protective Services first became involved with respondent in September 2010, six months before the protective proceedings petition was filed. Respondent was offered services for over a year, but she made inconsistent progress. Respondent went through periods where she maintained sobriety and participated in services. But respondent would inevitably become stressed and return to abusing alcohol. For respondent, the children were a significant source of stress. Indeed, respondent testified that she would likely relapse if the children were returned to her care because of the stress involved in caring for them.

Respondent was offered services for over a year, and despite participating in Alcoholics Anonymous (AA), counseling, and several rehab programs, respondent remained unable to appropriately handle the stress of parenting her children. Though respondent demonstrated a desire to maintain sobriety, she did not demonstrate an ability to do so. Thus, the trial court's findings with respect to MCL 712A.19b(3)(c)(i) are not clearly erroneous. Moreover, a respondent's persistent struggles with alcohol abuse also are grounds for termination under § 19b(3)(g).¹ *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996).

Respondent also argues that the likelihood that the children would be harmed if they were returned to her care decreased as her progress with addressing her problems increased. However, as noted above, the record demonstrates that respondent's progress was mixed. Progress was often followed by relapse, particularly when the stress of caring for the children increased. Again, respondent admitted that she would likely relapse if the children were returned to her care because they were a form of stress, and the evidence of record shows a disquieting pattern of behavior in this regard. Respondent's inability to maintain sobriety, especially when caring for children, demonstrates a reasonable likelihood that the children will be harmed if they are

¹ Section 19b(3)(g) is satisfied if petitioner produces clear and convincing evidence that "[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."

returned to her care. Thus, the trial court did not clearly err in finding grounds for termination under § 19b(3)(j).²

The record also contains evidence that supports the trial court's finding that termination of respondent's parental rights was in the children's best interest. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 356-357. MCL 712A.19b(5) provides as follows:

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.

Respondent argues that the trial court erred because it failed to consider the children's significant bond with her. Respondent further notes that during the termination hearing, a mental health therapist who began treating the children in September 2011 acknowledged that it would be very difficult for the children to be permanently separated from respondent. The therapist also indicated that reunification with respondent was in the best interest of the children if she could remain sober, could parent with authority, and did not get frustrated with the children.

There is little doubt that the children love respondent. However, as noted above, respondent has a significant history of alcohol abuse and mental instability. Despite her involvement in AA, counseling, and numerous other services, respondent continued to struggle with her sobriety and mental health. Respondent showed a history of relapsing when confronted with stress, and she admitted that she would likely relapse if the children were returned to her care because they were a form a stress. Witnesses testified that respondent has trouble parenting with authority and that she often gets frustrated with the children. Respondent's frustrations lead her to drink, oftentimes in front of the children. And as noted above, the evidence of record shows a disquieting pattern of behavior, as well as resentment and fear on the part of the children directed at respondent when she is abusing alcohol.

However, in *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), our Supreme Court stated that minor children's placement with relatives is an "explicit factor to consider in determining whether termination was in the children's best interests" when considering a termination of parental rights under MCL 712A.19b(3)(c)(i), and (g). A trial court's failure to consider the children's placement with relatives in making its termination decision renders the factual record "inadequate" for appellate review. *In re Mays*, 490 Mich 993, 994; 807 NW2d 307 (2012). And this Court has recently stated that a trial court must also consider "the fact that the children are in the care of a relative at the time of the termination hearing" when making a best interest determination following the establishment of statutory grounds under MCL 712A.19b(3)(j). *In re Olive/Metts*, ___ Mich App ___; ___ NW2d ___; (2012), slip op at 4.

² Section 19b(3)(j) is satisfied if petitioner produces clear and convincing evidence that "[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 record reflects that the children had been placed with their maternal aunt since at least April 1, 2011, prior to the termination hearing. However, the trial court did not state that it considered the children's placement when making its best interest determination. The record is thus "inadequate" for this Court to review that determination. *Mays*, 490 Mich at 994.

In light of clear precedent, we hold that the trial court committed clear error by failing to explicitly consider the children's placement with relatives in making its best interest determination. We therefore vacate the termination order and remand for further consideration of the best interest factors.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra