

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 14, 2013

In the Matter of RUEPPEL/RENFRO, Minors.

No. 311866
Branch Circuit Court
Family Division
LC No. 98-001100-NA

Before: BECKERING, P.J., and STEPHENS and BOONSTRA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to her three minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

"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). "We review the trial court's determination for clear error." *Id.* "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "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." *In re VanDalen*, 293 Mich App at 139, quoting MCL 712A.19b(5). The best-interest "determination is to be made on the basis of the evidence on the whole record and is reviewed for clear error." *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008).

The trial court in this case terminated respondent's parental rights under the following statutory grounds:

(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.

* * *

(g) The 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.

* * *

(j) There 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. [MCL 712A.19b(3)(c)(i), (g), (j).]

We conclude that the trial court did not clearly err by finding that petitioner established the ground for termination set forth in MCL 712A.19b(3)(c)(i) by clear and convincing evidence. See *In re VanDalen*, 293 Mich App at 139. More than 182 days elapsed since the issuance of the initial dispositional order. The conditions that led to adjudication included respondent's substance abuse and mental health issues. In 2009, the police discovered a methamphetamine laboratory in respondent's residence where she was living with the minor children. When the children were removed from respondent in March of 2010, the two younger children each tested positive for methamphetamine. Respondent was diagnosed with severe depression and anxiety, personality, and bipolar disorders. Respondent did not adequately comply with the trial court's orders to take and pass random drug screens and to attend therapy. Respondent did not take random drug tests for the first year of the case, she tested positive for drugs on numerous occasions, including as recently as April of 2012, and she had multiple tests that were invalid because of possible dilution. Respondent consistently denied that she had a drug problem and claimed that many of her positive drug screens were false positives. Furthermore, respondent did not consistently attend therapy, prompting her therapist to close her case. The DHS caseworker, Elaine Smith, testified that respondent had not improved her conditions throughout the case, and Smith did not believe that respondent was likely to improve in the future.

Accordingly, the trial court did not clearly err by finding that 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." MCL 712A.19b(3)(c)(i); see also *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009); *In re LE*, 278 Mich App at 28. Having found that the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), we need not consider the additional grounds upon which the trial court based its decision. See *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000); see also *In re HRC*, 286 Mich App at 461. Nevertheless, the foregoing evidence also supports that the trial court did not clearly err by terminating respondent's parental rights under MCL 712A.19b(3)(g) and (j).

On appeal, respondent presents a cursory and convoluted best-interest argument, devoid of any citation to supporting authority. Accordingly, we need not consider respondent's best-interest argument. See *In re Lang*, 236 Mich App 129, 138; 600 NW2d 646 (1999); *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). Nevertheless, clear and convincing evidence supported the trial court's finding that termination of respondent's parental rights was in the minor children's best interests. See MCL 712A.19b(5); *In re Trejo*, 462 Mich at 354. At the

time the trial court terminated respondent's parental rights, the three children had been living with their maternal grandparents for approximately 2-1/2 years. The record supports that the children were thriving with their grandparents, who intend to adopt all three children. Both of the children who were able to articulate their preference indicated that they wanted to be adopted by their grandparents. The record illustrates that respondent continued to use drugs throughout the case and did not adequately address her mental health issues. Smith testified that the children were "ready to move on," and she believed that termination of respondent's parental rights was in each child's best interests given respondent's noncompliance with services and her lingering substance abuse and mental health issues. On the record before us, the trial court did not clearly err by finding that termination was in the children's best interests. See *In re Trejo*, 462 Mich at 364 ("[W]e cannot conclude that the court's assessment of the children's best interests was clearly erroneous. . . . The court did not clearly err by refusing to further delay permanency for the children, given the uncertain potential for success and extended duration of respondent's reunification plan."); *In re VanDalen*, 293 Mich App at 141 (holding that "[t]he evidence clearly supported the trial court's finding that termination was in the children's best interests" where "[t]he children had been placed in a stable home where they were thriving and progressing and that could provide them continued stability and permanency given the foster parents' desire to adopt them").

Respondent argues that the trial court erred by ruling that the Michigan Rules of Evidence applied to the termination hearing. We agree that the trial court erred but conclude that the error does not warrant reversal. Child protective proceedings consist of two distinct phases: the adjudicative phase and the dispositional phase. *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). Unlike the adjudicative phase, "the rules of evidence do not apply at the dispositional phase of the proceeding. Instead, '[a]ll relevant and material evidence . . . may be received and may be relied on to the extent of its probative value, even though such evidence may not be admissible at trial.'" *In re Gilliam*, 241 Mich App 133, 136-137; 613 NW2d 748 (2000) (citations omitted).

Here, the termination hearing was part of the dispositional phase; thus, the Michigan Rules of Evidence did not apply, and all relevant and material evidence was admissible. See *id.* At the termination hearing, respondent's counsel cross-examined Smith and asked a question intended to elicit testimony from Smith regarding the maternal grandmother's possible attempts to impede respondent's reunification with the children. Petitioner objected to counsel's question on the basis that it called for speculation. The trial court sustained the objection and ruled that the rules of evidence applied to the termination hearing. Smith had testified earlier at the termination hearing that she did not believe that the maternal grandmother impeded respondent's reunification efforts. Respondent's oldest child also testified that the maternal grandmother did not talk to the children about respondent. During closing arguments, the trial court acknowledged that the rules of evidence did not apply to the termination hearing. The trial court asked respondent's counsel what counsel would have done differently absent the court's erroneous ruling. Respondent's counsel declined to provide any indication of how the trial court's erroneous ruling affected counsel's representation of respondent.

On appeal, respondent asserts that "[i]t is difficult to know how" the trial court's erroneous "ruling might have hampered the trial attorney's strategy with regard to framing questions or posing objections." Respondent does not suggest any specific evidence or

testimony that the trial court's ruling may have prevented respondent's counsel from presenting. Moreover, as discussed above, clear and convincing evidence supported the trial court's decision to terminate respondent's parental rights. We find that the trial court's erroneous ruling was harmless and does not warrant reversal. See *In re Utrera*, 281 Mich App at 14, 25-26 ("We agree that hearsay was improperly admitted, but we conclude that there was sufficient clear and convincing, legally admissible evidence to support the trial court's decision to terminate respondent's parental rights."); MCR 2.613(A) ("An error in the admission or the exclusion of evidence . . . is not ground for . . . for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice."); MCR 3.902(A) (providing that "[l]imitations on corrections of error are governed by MCR 2.613" in proceedings involving juveniles).

Affirmed.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Mark T. Boonstra