

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C JOHNSTON, Minor.

UNPUBLISHED

October 8, 2013

No. 314614

Dickinson Circuit Court

Family Division

LC No. 12-000505-NA

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Respondent mother appeals by right the trial court's order terminating her parental rights to her son CJ pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

First, respondent argues that the lower court erred in finding a statutory basis for termination of her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

Once the lower court moves to the dispositional phase of proceedings, it may terminate a respondent's parental rights if it finds clear and convincing evidence that at least one statutory ground for termination exists under MCL 712A.19b(3). *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). A trial court's findings regarding the statutory grounds for termination and a child's best interests are reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Jenks*, 281 Mich App 514, 517; 760 NW2d 297 (2008).

Under MCL 712A.19b(3)(c)(i), the lower court may terminate a parent's parental rights if the parent is a respondent in child protective proceedings, "182 or more days have elapsed since the issuance of an initial dispositional order," "[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."

Here, the lower court took jurisdiction over CJ in March 2012 because respondent was addicted to drugs and subjected the child to physical abuse at the hand of her boyfriend. The following October and December, respondent continued to struggle with substance abuse, testing positive for THC, Amphetamine, Methamphetamine, Hydrocodone, Hydromorphone, Oxazepam, and Lorazepam. In addition, respondent violated a lower court order in May 2012 by remaining in contact with her boyfriend. Although respondent claims that she is now serious about sobriety, the lower court found her testimony incredible. Respondent visited a drug

counselor only three times over the course of nine months, and similarly, she failed to comply with, or benefit from, social services. Finally, her newly achieved sobriety came only after she became incarcerated for shoplifting and smuggling drugs into the county jail. The evidence supported the trial court's finding that respondent failed to demonstrate that she will ever become sober, much less within a reasonable time considering CJ's young age.

Under MCL 712A.19b(3)(g), the lower court may terminate a parent's parental 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."

Here, respondent failed to provide proper care and custody for CJ. First, she allowed him to be physically abused. Second, she abused marijuana, prescription opiates, and morphine in her home. Third, she kept dangerous drug paraphernalia in her home, including cooking spoons and syringes. Throughout these proceedings, respondent continued to contact her boyfriend and abuse drugs. Just two months before the termination trial, she tested positive for Nordiazepam, Oxazepam, THC, Amphetamine, and Methamphetamine. In addition, she failed to benefit from social services or participate in drug counseling. As such, the lower court properly found that respondent is unlikely to provide proper care and custody within a reasonable time.

Under MCL 712A.19b(3)(j), the lower court may terminate a parent's 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." As noted above, respondent posed a substantial risk to CJ due to her issues with drug abuse. Considering that respondent failed to make any progress toward achieving sobriety, there is a reasonable probability that her substance abuse will continue to endanger CJ if he is ever returned to her care. The trial court did not err in finding this statutory basis existed to terminate respondent's parental rights.

Next, respondent argues that termination of her parental rights was not in CJ's best interests. When the lower court finds a statutory basis for termination, it must terminate a respondent's parental rights if it finds that termination is not in the child's best interests. MCL 712A.19b(5). In making that determination, the lower court must consider the record as a whole. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). The court may consider respondent's parenting ability, as well as "the child's need for permanency, stability, and finality." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Here, the lower court correctly found that termination of respondent's parental rights was in CJ's best interests. As noted above, respondent remained heavily addicted to drugs just two months prior to the termination trial, testing positive for Nordiazepam, Oxazepam, THC, Amphetamine, and Methamphetamine. Respondent's drug use created an unsafe environment for CJ. Respondent failed to maintain employment, and she is currently incarcerated for smuggling drugs into the county jail. The lower court properly found that it was in CJ's best interests to have a permanent home with a supportive, responsible, and sober parent.

Affirmed.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello