

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A. K. and J. K., Minors.

UNPUBLISHED
March 27, 2014

Nos. 318099; 318100
Montcalm Circuit Court
Family Division
LC No. 2012-000558-NA

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

In these consolidated appeals, respondents (mother and father) appeal as of right the order terminating their parental rights to five-year-old A. K. and four-year-old J. K. The circuit court found that statutory grounds for termination existed under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions exist that cause the child to come under jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood child will be harmed if returned to parent). The court also found that termination was in the children's best interests under MCL 712A.19b(5). Mother challenges the circuit court's findings on the statutory grounds for termination and on the children's best interests. Father challenges only the best-interests finding.

We affirm the circuit court's finding that there was clear and convincing evidence of one or more statutory grounds for termination. However, the record is insufficient to determine whether the circuit court, in making the best-interest analysis, properly considered whether the children were placed with a relative. Accordingly, we vacate the court's best-interest determination and remand for further proceedings.

I. MOTHER'S APPEAL, DOCKET NO. 318100
STATUTORY GROUNDS FOR TERMINATION

"In order to terminate parental rights, the circuit 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 circuit 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).

Mother argues that the circuit court erred in finding that petitioner established, by clear and convincing evidence, a statutory ground for termination of her parental rights. We disagree. The record provides ample evidence that termination of mother's parental rights was proper pursuant to MCL 712A.19b(3)(c)(i). Termination is appropriate under MCL 712A.19b(3)(c)(i) when 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 . . . [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."

In this case, the record confirms that more than 182 days had passed since the initial dispositional order, and that the conditions that led to adjudication continued to exist. Those conditions included mother's emotional instability, poor parenting skills, poor resource management, poor communication and interpersonal skills, and lack of suitable housing. The record indicates that mother had mental health issues and was uncooperative and argumentative with service providers. The case services plan required mother to attend counseling, acquire case management services, to report to a psychiatrist for medication reviews, and to maintain safe and suitable housing.

Mother was unable to comply with the requirements of the case services plan. She delayed the counseling and the medication reviews for more than a year. She also delayed accessing case management services. Mother similarly failed to complete parenting classes, and she did not appear to benefit from the classes she attended. In addition, her visitation with the children was sporadic. Of the 59 parenting sessions offered to her, she missed 17 sessions. Testimony indicated that mother did not establish boundaries or structure during her parenting sessions, and that as a result the sessions were "chaotic" and distressing for the children. In addition, the evidence established that mother was unable to maintain a safe home. Nearly a year after the initial disposition, a caseworker found mother's home to be filthy and unsafe for young children.

The record contains no indication that mother would rectify the conditions that led to adjudication within a reasonable time considering the ages of the children. See MCL 712A.19b(3)(c)(i). Mother was provided with extensive in-home services to address the condition of the home, her parenting skills, and her emotional stability before the children were taken into care. At the time of termination, mother's mental health had not improved and she remained unable or unwilling to effectively and safely parent the children. In sum, the record supports the circuit court's finding that termination was proper pursuant to MCL 712A.19b(3)(c)(i). Because we have concluded that at least one statutory ground for termination existed, we need not consider the additional grounds upon which the circuit court based its decision. *In re HRC*, 286 Mich App at 461.

II. BOTH RESPONDENTS' APPEALS, BEST-INTEREST ANALYSIS

Once the circuit court has found clear and convincing evidence of a statutory ground for termination, the court must order termination of a parent's rights if the court finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013); see also MCR

3.972(C)(1). The circuit court may consider a variety of factors in making the best interest determination, including the parent-child bond, the child's need for permanency and stability, and the relative advantages of a foster home over the parent's home. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Father argues that the circuit court failed to consider the best interests of each child individually, as required by *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). We disagree. “[T]his Court’s decision in *In re Olive-Metts* stands for the proposition that, if the best interests of the individual children *significantly* differ, the circuit court should address those differences when making its determination of the children’s best interests.” *In re White*, ___ Mich App ___; ___ NW2d ___ (Docket No. 316749, issued January 16, 2014), slip op at 7. Therefore, a circuit court does not clearly err if it “fails to explicitly make individual and—in many cases—redundant factual findings concerning each child’s best interests.” *Id.* Here, there is no indication in the record that there were significant differences between the two children with regard to their best interests. As a result, the circuit court did not clearly err by failing to make individual factual findings concerning each child’s best interests. See *id.*

Father also argues that it was not in the children’s best interests to terminate his parental rights because the record established that he was showing improvement and that he would have been able to parent the children if given additional time to complete services. Contrary to father’s arguments on appeal, however, the record establishes that he completely failed to make progress during the 16-month proceeding. At the time of termination, father was unable or unwilling to effectively and safely parent the children, and there is no indication on the record that he would be able to do so within a reasonable time. Accordingly, father’s argument is unsupported by the record.

Both parents contend that the circuit court clearly erred in its best-interest determination because it failed to consider whether the children had been placed with a relative. A circuit court making a best-interest analysis must “explicitly address each child’s placement with relatives at the time of the termination hearing if applicable.” *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Petitioner acknowledges that the circuit court in this case did not address relative placement and requests that this Court remand for a best-interest finding regarding relative placement. We agree that a remand is required. Therefore, we vacate the circuit court’s best-interest analysis and remand this case to the circuit court to analyze the children’s best interests with respect to a relative placement, if any.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Joel P. Hoekstra

/s/ Peter D. O’Connell