

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J. J. JOHNSTON, Minor.

UNPUBLISHED
May 15, 2014

No. 319441
Van Buren Circuit Court
Family Division
LC No. 13-017665-NA

Before: MURPHY, C.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Respondent-mother appeals by right the order terminating her parental rights to the minor child under MCL 712A.19b(3)(g) (failure to provide proper care and custody), (j) (reasonable likelihood of harm if child is returned to parent), and (l) (parental rights to another child previously terminated under the juvenile code). We affirm.

Before terminating a parent's rights, the circuit court must find by clear and convincing evidence that one or more statutory ground for termination exists. MCL 712A.19b(3); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review the circuit court's determination for clear error. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "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) (internal quotation omitted). If we conclude that the circuit court correctly found at least one statutory ground for termination, we need not consider other grounds on appeal. *Id.* at 461.

In this case, we conclude that the circuit court correctly found at least one statutory ground for termination by clear and convincing evidence. Termination was proper under MCL 712A.19b(3)(j) because "[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." *Id.* The record establishes that respondent had a history of substance abuse. In addition, in 2004 respondent had been convicted of accosting a minor for immoral purposes; the minor victim was respondent's 13-year-old sister. In 2010, respondent was convicted of possession of methamphetamines. Further, respondent used heroin during the first two months of her pregnancy with the child at issue in this case, and the child tested positive at birth for methadone and opiates. Although respondent testified at the termination hearing that she had not consumed methadone for 2-1/2 months, the record establishes that she had been in jail for much

of that 2-1/2 month time period. Thus, there is no indication in the record that respondent is able to avoid substance abuse when she is not in jail.

We reject respondent's argument that the circuit court improperly relied on her criminal history and current incarceration when determining that termination was proper under 712A.19b(3)(j). We acknowledge that a circuit court may not terminate a parent's rights solely on the ground that the parent is incarcerated or has a criminal history. *In re Mason*, 486 Mich 142, 160, 165; 782 NW2d 747 (2010). In this case, however, the record establishes that the circuit court did not solely rely on respondent's criminal history or current incarceration when terminating her parental rights. Rather, the circuit court also considered respondent's history of substance abuse and her inability to maintain a stable home environment. We find no clear error in the circuit court's determination that clear and convincing evidence supported termination under MCL 712A.19b(3)(j). Because we have concluded that at least one 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.

Respondent also makes a cursory argument that she was not provided with adequate procedural due process. Respondent has not provided support for this argument, and we thus deem the argument abandoned. *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). Moreover, we find nothing in the record to support respondent's argument.

Respondent next argues that termination of her parental rights was not in the child's best interests. Once a circuit court has found a statutory ground for termination of a parent's rights under MCL 712A.19b(3), 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 advantages of a foster home over the parent's home. *Olive/Metts Minors*, 297 Mich App at 41-42. We review for clear error the circuit court's determination regarding the child's best interests. MCR 3.977(K). This Court has previously held that termination was in the best interests of a child who was less than five months old where the child was removed from the mother's custody "shortly after birth" and the mother had not established a relationship with the child. *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009).

In this case, the child was taken into care when he was 13 days old. At the time the child was taken into care, he had never been in respondent's sole care. Respondent saw the child only three times between May 20th and June 11, 2013. The child was nearly five months old at the time of the termination hearing, and respondent had not seen the child for several weeks. Although respondent argues on appeal that she was unable to see the child because she was not provided a parenting time schedule, the record establishes that respondent was granted parenting time three times each week, and that she failed to remain in contact with the service providers. As a result, the providers stopped scheduling parenting time. The record establishes that the child had no bond with respondent because of her lack of contact with him during his young life. *Id.*

At the time of termination, the child was placed in a non-relative foster home. Importantly, it was the only home that he had ever known. The child's sibling also lived in the home. Further, the home was stable, the foster parents were employed, and there was no criminal activity or drug use taking place in the home. Thus, the record establishes that the foster home provided the child with the stability that he required. The fact that the child had been placed in a stable home where he could progress supports the circuit court's decision that termination was in his best interests. See *In re VanDalen*, 293 Mich App at 141-142. On this record, we affirm the circuit court's ruling that terminating respondent's parental rights was in the child's best interest. *In re HRC*, 286 Mich App at 459.

Lastly, we reject respondent's argument that the caseworker was biased against respondent. Respondent argues that petitioner failed to acknowledge that she had signed a power of attorney allegedly giving her grandmother authority to care for the child. Respondent further argues that petitioner failed to consider placing the child with respondent's grandmother. However, the record establishes that respondent signed the power of attorney before the child was taken into care. Thus, the record does not support respondent's argument that her caseworker was biased against her.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly