

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BOCK/HILLARD, Minors.

UNPUBLISHED
July 24, 2014

No. 320062
Wayne Circuit Court
Family Division
LC No. 09-487457-NA

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Respondent T. Detvay appeals by right the circuit court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (c)(ii), (g), (j), and (m). We affirm.

I. STANDARD OF REVIEW

The trial court terminated respondent's parental rights at the initial dispositional hearing. A court may terminate parental rights at the initial dispositional hearing if the court finds on the basis of clear and convincing, legally admissible evidence (1) that one or more facts alleged in the petition are true and establish grounds for termination under MCL 712A.19b(3), and (2) that termination of parental rights is in the child's best interests. *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). Only one statutory ground for termination need be established. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). The trial court's findings regarding the existence of a statutory ground for termination and its decision regarding a child's best interests are both reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

II. STATUTORY GROUNDS FOR TERMINATION

It is unclear whether respondent is challenging the trial court's determination that grounds for termination were established under §§ 19b(3)(a)(ii), (c)(ii), (g), (j), and (m). Respondent does not reference any of the statutory grounds in her brief. However, she does assert that she would have been able to provide proper care and custody within a reasonable time and that the children would not be harmed if returned to her home, which are considerations relevant to §§ 19b(3)(g) and (j), respectively. Nonetheless, we conclude that respondent is not

entitled to any relief to the extent that she is challenging the existence of a statutory ground for termination.

The trial court found that evidence presented at the November 8, 2013, hearing established grounds for termination under §§ 19b(3)(a)(ii), (c)(ii), (g), (j), and (m). A transcript of that hearing has not been provided. The court reporter has filed a certificate indicating that there is no record to transcribe. “The appellant is responsible for securing the filing of the transcript” for the appeal. MCR 7.210(B)(1)(a). Production of the transcript may be excused under certain circumstances. MCR 7.210(B)(1)(c)-(e). If a transcript cannot be obtained and has not been excused, MCR 7.210(B)(2) sets forth procedures an appellant must take to settle the record and cause the filing of a settled statement of facts to serve as a substitute for the transcript. *Nye v Gable, Nelson & Murphy*, 169 Mich App 411, 413-414; 425 NW2d 797 (1988). Respondent did not comply with these procedures and has not been excused from producing the transcript. Because the absence of a transcript or settled statement of facts precludes this Court from reviewing the trial court’s decision regarding the existence of a statutory ground for termination, any claim of error relating to the existence of a statutory ground for termination has been abandoned. See *People v Johnson*, 173 Mich App 706, 707; 434 NW2d 218 (1988); see also *Nye*, 169 Mich App at 413-417.

Furthermore, nothing in respondent’s brief can be construed as presenting a challenge to the trial court’s decision to terminate her parental rights under §§ 19b(3)(a)(ii) and (m). Where a respondent does not challenge the trial court’s determination with respect to one or more of several statutory grounds, this Court may assume that the trial court did not clearly err in finding that the unchallenged grounds were proven by clear and convincing evidence. *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1999), overruled in part on other grounds by *In re Trejo*, 462 Mich at 353. Because respondent has not presented any challenge to the trial court’s determination that sufficient grounds for termination were established under §§ 19b(3)(a)(ii) and (m), she is not entitled to relief with respect to this issue.¹

III. BEST INTERESTS

“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.” MCL 712A.19b(5). Whether termination is in a child’s best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

¹ We note that it is readily apparent that termination was improper under § 19b(3)(c)(ii). That subsection applies, by its terms, only when 182 or more days have elapsed since issuance of an initial dispositional order. Here, respondent’s parental rights were terminated at the initial dispositional hearing. Because no prior dispositional order was issued, § 19b(3)(c)(ii) was inapplicable to respondent. However, because only one statutory ground for termination is necessary, the trial court found that four other statutory grounds for termination had been established, and respondent has not demonstrated any basis for relief with respect to that decision, the error is harmless. *In re Powers*, 244 Mich App at 118.

The trial court duly considered the interests of each child and took into consideration the fact that the children had been placed with relatives, albeit not with respondent's relatives. See *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), and *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). It nonetheless found that termination of respondent's parental rights was in the children's best interests, principally because respondent had not been successful in overcoming her long-term substance abuse problem and was unwilling to give up her drug use in order to be a parent to her children. The evidence indicated that respondent had not served as a parent to her children for many years. Given the evidence that respondent had struggled with drug abuse for several years despite repeated attempts at treatment, that she had used cocaine during several pregnancies, that she had used cocaine in the midst of these proceedings just days after having assured the court that she was committed to sobriety, and that her substance abuse had prevented her from being a parent to her children for many years, the trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio