

STATE OF MICHIGAN
COURT OF APPEALS

In re SHAW, Minors.

UNPUBLISHED
December 9, 2014

No. 322200
Branch Circuit Court
Family Division
LC No. 11-004685-NA

Before: MARKEY, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

Respondent-mother appeals as of right the May 20, 2014, order terminating her parental rights to the minor children AS and ZS under MCL 712A.19b(3)(c)(ii) (other conditions exist that could have caused the children to come within the court’s jurisdiction and they have not been rectified) and (g) (failure to provide proper care and custody). We affirm.

Respondent argues that the trial court erroneously found statutory grounds to terminate her parental rights to the minor children. “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.*

We find that the trial court properly terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) provides that termination is proper where “[t]he parent, without regard to intent, fails to provide proper care or custody for the child[ren] 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[ren]’s age[s].” This Court has previously held that termination under MCL 712A.19b(3)(g) was appropriate where the record established that the respondent “only minimally complied” with portions of the parent-agency agreement. *In re BZ*, 264 Mich App 286, 300; 690 NW2d 505 (2004).

Here, the proceeding began in November 2011 as a result of allegations that the children had witnessed domestic violence between respondent and the children’s father, but the children were not removed from respondent’s care at that time. The service plan required respondent to submit to a psychological evaluation and a substance abuse assessment, attend counseling, submit to substance screenings, obtain and maintain safe and stable housing, and obtain and maintain stable employment.

In January 2012 respondent acquired an apartment, but she was evicted in March 2012 because she violated the lease by allowing an unapproved overnight guest on the premises. Respondent located another apartment. In April 2012, she permitted the children's father to enter the apartment, and it was reported that he choked AS. In September 2012, respondent was evicted from the second apartment, and the children were removed from respondent's care because she lacked housing. Respondent began living with a new boyfriend, but when the relationship ended she moved in with a family member. In June 2013, respondent and the children's father reported to the agency that they had resumed their relationship, and they moved in together. In November 2013, respondent reported that the children's father was domestically violent toward her between June and November 2013. At the time of the May 2014 termination, respondent had maintained employment for six months. She was purchasing a home and had maintained housing for five months. However, respondent was sharing the expenses of the home with a boyfriend, and it was the fifth relationship that respondent had engaged in during the proceeding.

After the children were removed from respondent's care in September 2012, respondent's compliance with the requisite substance screenings began to decline. Between October 2012 and September 2013, she missed 15 of them. There were also concerns because respondent was being prescribed medication by doctors in emergency rooms instead of being treated by one doctor. At one point, there were concerns that respondent was taking more than her prescribed dose of hydromorphone. When respondent tested positive for benzodiazepines twice, she did not provide a feasible explanation as to why. Respondent failed to provide verification that a doctor had provided morphine to her when she tested positive for it. In December 2013, respondent tested positive for oxycodone, and she did not submit to substance screenings after December 30, 2013. Respondent alleged that she was not permitted to leave work to attend screenings, but she failed to make arrangements to submit a follicle screening when it was offered to her as an alternative. Finally, although the record establishes that respondent completed the psychological evaluation and the substance abuse assessment, she failed to follow their recommendations and complete counseling. Respondent never fully committed to attending counseling until after the termination petition was filed; the record supports that respondent and her therapist were in the beginning stages of therapy at the time of termination. *In re BZ*, 264 Mich App at 300. Respondent was unable to provide proper care and custody at the time of termination. See MCL 712A.19b(3)(g).

Further, the record does not support that respondent would have been "able to provide proper care and custody within a reasonable time considering" the children's ages. See MCL 712A.19b(3)(g). Respondent failed to complete services during the 2-1/2-year proceeding because she lacked commitment. Contrary to respondent's arguments on appeal, there is no indication on the record that she would comply with and benefit from the service plan if given additional time. At the time of termination, AS was over 9-1/2 years old and ZS was over 6-1/2 years old. They had been out of respondent's care for 20 months and required permanency. The trial court's finding that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). Because we have concluded that at least one ground for termination existed, we need not specifically consider the additional ground upon which the trial court based its decision. *Id.* at 461.

Respondent next argues that the trial court clearly erred when making its best-interests determination. “Once a statutory ground for termination has been proven, the trial court must find that termination is in the child[ren]’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review a trial court’s finding that termination is in the children’s best interests for clear error. *In re HRC*, 286 Mich App at 459.

“In deciding whether termination is in the child[ren]’s best interests, the court may consider the child[ren]’s bond to the parent, the parent’s parenting ability, the child[ren]’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted). It is also appropriate to consider whether the children are safe with the respondent, thriving in foster care, and whether the foster care home could provide stability and permanency. *In re VanDalen*, 293 Mich App at 141.

At the time of termination, the case had been open for 2-1/2 years, and the children had been out of respondent’s care for 20 months. The children required permanence and stability, but respondent was not committed to providing it to them. During the proceeding, respondent had seven different addresses, was evicted from two different apartments, did not maintain employment until the last six months of the proceeding, and had been involved in five different romantic relationships. At the time of termination, respondent had not submitted to a substance screening for close to five months and had not addressed her mental health issues. *In re Olive/Metts*, 297 Mich App at 41-42. Respondent resumed a relationship with the children’s father even though he allegedly choked AS; respondent reported that there were incidents of domestic violence between June 2013 and November 2013. See *In re VanDalen*, 293 Mich App at 141. At the time of termination, the children had been placed with their paternal grandmother for 20 months. She was willing to adopt the children, and they were doing “very well” in her care. See *id.* The trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests. *In re HRC*, 286 Mich App at 459.

With respect to respondent’s argument that the trial court improperly failed to consider whether guardianships were a proper alternative to terminating respondent’s parental rights, we find no evidence on the record that respondent pursued a legal guardianship for the children below or that the relative with whom the children were placed would have agreed to such an arrangement. Moreover, the record establishes that the children required permanency that a guardianship could not provide. Because a trial court is not required to establish a guardianship with a relative in lieu of terminating parental rights if it is not in the children’s best interests to do so, *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991), we find that the trial court’s failure to sua sponte consider guardianships under MCL 712A.19a(7) was not improper.

Affirmed.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Donald S. Owens