

STATE OF MICHIGAN
COURT OF APPEALS

In re DIEMOND, Minors.

UNPUBLISHED
December 9, 2014

No. 322343
Cheboygan Circuit Court
Family Division
LC No. 13-008322-NA

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

PER CURIAM.

Respondent appeals by right the trial court’s order terminating his parental rights to his minor son, ZD, and daughter, MD, pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), § 19b(3)(c)(ii) (other conditions exist causing the children to come within the court’s jurisdiction), § 19b(3)(g) (failure to provide proper care and custody), § 19b(3)(h) (parent imprisoned for more than two years with accompanying failure to provide proper care and custody), and § 19b(3)(j) (reasonable likelihood of harm). We affirm.

In early January 2013, a fire broke out in respondent’s apartment. A methamphetamine lab in the apartment caused the fire. The children were placed under the jurisdiction of the circuit court. They were first placed with their maternal grandparents, then with a foster family, then with respondent’s brother, and then finally with non-relative caregivers. On December 6, 2013, respondent was convicted following a jury trial of operating/maintaining a laboratory involving methamphetamine, MCL 333.7401c(2)(f), and was sentenced to 12 to 40 years’ imprisonment.

Respondent argues that the trial court clearly erred in finding that the statutory grounds for termination had been proved by clear and convincing evidence and that termination was in the best interests of the children. “This Court reviews for clear error the trial court’s ruling that a statutory ground for termination has been established and its ruling that termination is in the children’s best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). “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; 690 NW2d 505 (2004).

Parents have a fundamental liberty interest in the “companionship, care, custody, and management of their children.” *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). That interest “does not evaporate simply because they have not been model parents or have lost

temporary custody of their child[ren] to the State.” *In re Trejo*, 462 Mich 341, 373-374; 612 NW2d 407 (2000) (citation omitted). In order to issue an order terminating parental rights, the lower court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. MCL 712A.19b(3). In this case, the trial court found that five grounds for termination had been proven by clear and convincing evidence: MCL 712A.19b(3)(c)(i), (c)(ii), (g), (h), and (j).

The trial court did not clearly err in finding that termination of parental rights was warranted under MCL 712A.19b(3)(c)(i) by clear and convincing evidence. Termination was proper under MCL 712A.19b(3)(c)(i) where “the totality of the evidence amply support[ed] that [respondent] had not accomplished any meaningful change in the conditions” that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Respondent argues that he adequately addressed his substance abuse issues, and the issues no longer existed at the time of the termination hearing. The substance abuse course respondent wanted to attend during his current incarceration was unavailable. Before the initiation of these proceedings, however, respondent took a substance abuse course while he was in prison for conviction of crimes unrelated to these proceedings. The evidence that respondent manufactured and used methamphetamine when he was out on parole showed that respondent had failed to benefit from the substance abuse service he took during his prior incarceration. ZD was six and MD was five years old when they were removed from respondent’s care. Given that respondent had not yet demonstrated that he had successfully taken steps to address his substance abuse problem, considering his past failure to do so, and the subsequent impact of the failure on the children’s environment, there was no reasonable likelihood the conditions would be rectified within a reasonable time. Respondent’s children can no longer wait for respondent to show signs of improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991). The trial court did not clearly err finding that termination was warranted under MCL 712A.19b(3)(c)(i).

Having concluded that the trial court did not clearly err by finding a statutory ground for termination under MCL 712A.19b(3)(c)(i), this Court need not consider the trial court’s additional grounds for termination. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). However, there is record support for the trial court’s findings that petitioner established grounds for termination under MCL 712A.19b(3)(c)(ii), (g), (h), and (j).

Respondent contends that the trial court erred in terminating parental rights under MCL 712A.19b(3)(c)(ii). Respondent’s post-adjudication imprisonment constituted a new condition that prevented him from providing adequate care and supervision of the children. Although respondent took parenting classes, evidence that he was inappropriate in a phone call with his daughter showed that respondent did not benefit from them. Considering the lengthy prison term respondent is serving and his history of reoffending, we find there was no reasonable likelihood that the conditions would be rectified within a reasonable time.

Moreover, the trial court did not clearly err in finding by clear and convincing evidence that MCL 712A.19b(3)(g) was established. Respondent asserts that the trial court erred in focusing solely on his incarceration. However, the evidence presented showed that respondent historically failed to provide proper care and custody for the children because he was largely absent from their lives due to repeated incarcerations. The evidence also demonstrated that respondent failed to provide a stable environment for the children because he made and used

methamphetamine in his apartment, and the fire occurred due to drug production, destroying the children's home. The psychological evaluation of the children showed that the children suffered significant developmental and emotional delays. There is no indication that a reasonable likelihood exists that the conditions would be rectified within a reasonable time.

Likewise, the trial court properly found by clear and convincing evidence that MCL 712A.19b(3)(h) was established. Our Supreme Court has explained that establishing grounds for termination under § 19b(3)(h) requires proof of the following circumstances:

The parent is imprisoned for such a period that [1] the child will be deprived of a normal home for a period exceeding 2 years, and [2] the parent has not provided for the child's proper care and custody, *and* [3] 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.

The combination of the first two criteria—that a parent's imprisonment deprives a child of a normal home for more than two years *and* the parent has not provided for proper care and custody—permits a parent to provide for a child's care and custody *although the parent is in prison*; he need not *personally* care for the child. The third necessary condition is forward-looking; it asks whether a parent "will be able to" provide proper care and custody within a reasonable time. Thus, a parent's past failure to provide care because of his incarceration also is not decisive. [*In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010).]

Here, respondent was sentenced to 12 to 40 years' imprisonment and he failed to provide proper care and custody as discussed already. Thus, the evidence established the first two criteria of this ground for termination as clarified by the *Mason* Court. Regarding the third criterion, respondent argues that respondent had a relative willing to care for the children while he was in prison. But the evidence established that the placement with the relative at issue would not be suitable given the relative's own criminal and substance abuse issues. Considering respondent's lengthy prison sentence, the children's young age, respondent's criminal history, and the unsuitable proposed relative placement, we agree there was no reasonable likelihood that the conditions would be rectified within a reasonable time.

In addition, the trial court did not clearly err in finding that termination of parental rights was warranted under MCL 712A.19b(3)(c)(j) by clear and convincing evidence. Respondent contends that there was no evidence that the children would be harmed if returned to respondent. Under respondent's care and custody, the children suffered significant developmental and speech delays. Respondent had a history of recidivism, and his substance abuse issue had not been properly addressed. And most significantly, respondent placed the children in danger of serious injury, if not death, when he ran a methamphetamine lab out of his apartment. Given this evidence, the trial court did not clearly err in finding that this statutory ground for termination was established by clear and convincing evidence.

"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). In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the 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) (citations omitted). The court may also consider whether the child is progressing in its current placement. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). The court is required to state on the record or in writing its findings of fact and conclusions of law. MCL 712A.19(b)(1); *In re Trejo*, 462 Mich at 355. “Brief, definite, and pertinent findings and conclusions on contested matters are sufficient.” MCR 3.977(I)(1).

The trial court found the children could not have meaningful contact with respondent in prison, they could not form a bond with respondent while he was in prison, and the children needed stability and permanence.

Respondent asserts that termination of his parental rights was not in the best interests of the children because it would be difficult on the children as they grow wondering about where their father is. But the record established that the children today lacked attachment to respondent. The psychological evaluation of ZD showed that he had difficulty discussing his parents and he did not know his father’s name. The psychological evaluation of MD also demonstrated that she would not significantly feel her father’s absence due to her inability to discuss any type of connection with respondent.

Further, nothing in the record supported that respondent was able to provide the children with proper care or protection or that he would be able to do so in the near future. Even if respondent improved his parenting skills, he could not exhibit his parenting abilities or any benefit from the parenting services due to his imprisonment. The record also established that the children were exposed to a chaotic and neglectful environment attributable to respondent’s lack of care and substance abuse. Both children were diagnosed with significant developmental delays, immaturity, and speech problems.

The evidence also showed that the children were doing well and progressing in their current placement. The children’s foster parents indicated that they would like to adopt the children because they loved them, and they could give them a stable and secure environment. And the evidence also established that a relative guardianship would not be appropriate because the relative in question had criminal and substance abuse issues. Therefore, reviewing the record as a whole, the trial court correctly found by a preponderance of the evidence that terminating respondent’s parental rights was in the children’s best interests.

We affirm.

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