

STATE OF MICHIGAN
COURT OF APPEALS

In re MORRISON, Minors.

UNPUBLISHED
January 21, 2016

No. 328685
Berrien Circuit Court
Family Division
LC No. 2013-000049-NA

Before: BECKERING, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

The circuit court terminated respondent-mother’s parental rights to her two young sons pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (children will be harmed if returned to parent).¹ Respondent challenges the statutory grounds, as well as the circuit court’s determination that termination of her rights was in children’s best interests. As the record evidence supports the lower court’s decision, we affirm.

I. BACKGROUND

Child Protective Services (CPS) took respondent’s two young sons into care on an emergency basis after the parents became homeless and could not locate even temporary shelter for the family. The Department of Health and Human Services (DHHS) filed a petition for the court to take jurisdiction over the children and noted the parents’ lack of resources to provide for the children’s basic needs. The parents entered pleas of admission to the grounds stated in the petition at the adjudication trial.

Respondent participated in services throughout the proceedings. She submitted to a psychological evaluation and was diagnosed with a mood disorder and Borderline Personality Disorder. The psychologist noted that respondent abused amphetamine to “self-medicate her emotional issues or to feel more comfortable in social situations.” He found respondent “extremely emotionally unstable, immature, and moody” and “easily overwhelmed by her parenting responsibilities.” Respondent participated in individual counseling and was eventually discharged because of the progress she had made. Respondent thereafter reported to the

¹ The court also terminated the father’s parental rights but he has not filed an appeal.

caseworker that she felt overwhelmed and wanted to restart counseling. Respondent participated in a new intake meeting but never followed through with additional counseling sessions.

Respondent also participated in random drug screens based on the psychologist's opinion that she abused unprescribed amphetamines. Respondent admitted that she took Xanax and Adderall to control her mood and improve her energy levels and that she procured these medications "on the street." During the proceedings, she had positive results for amphetamine and marijuana. On the eve of the termination hearing, she refused to participate in six screens and reported that she had used unprescribed Vicodin and Xanax.

The DHHS provided assistance to respondent in locating and securing employment. Respondent held several positions during the two-year proceedings, but could not maintain any job for long. Respondent was terminated repeatedly for absenteeism and tardiness. By the termination hearing, respondent had finally stated her belief that she was unable to maintain employment because of her mental and emotional instability and therefore desired to apply for Social Security disability benefits. Respondent had taken no action in that regard, however.

The department also provided assistance in locating affordable housing for respondent. Throughout the proceedings, respondent bounced back and forth between the homes of friends and family members. She sometimes slept in her vehicle. The day before the termination hearing, respondent signed a lease. Given the short notice, the caseworker was unable to investigate and determine if the home was appropriate for the children.

Respondent participated in parenting classes and eventually earned unsupervised parenting time if conducted in an approved location. However, the caseworker and foster parents noted that the children's behavior regressed significantly after such visitation and unsupervised visits were eventually revoked.

Based on respondent's failure to secure employment and housing, lack of follow through with counseling, and continued abuse of substances, the circuit court found termination supported under three separate factors. In addition, the court relied upon the lack of a strong parent-child bond, respondent's inability to manage the youngest child's special needs, and the progress the children had made in their foster home in determining that termination was in the children's best interests. This appeal followed.

II. STATUTORY GROUNDS FOR TERMINATION

Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "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 Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that

strikes us as more than just maybe or probably wrong.” *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The circuit court terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) 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 either of the following:

(i) The 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.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child 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’s age.

* * *

(j) There 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.

All three cited grounds were supported by clear and convincing evidence. First, the DHHS established that respondent had not remedied the grounds that led to adjudication and was unlikely to remedy them within a reasonable time. The court took jurisdiction based on respondent’s lack of housing and resources to provide for the children. For more than two years, respondent bounced from job to job and couch to couch, never keeping employment or a residence for any extended period. Just before the termination hearing, respondent expressed her intent to secure disability benefits for herself and the youngest child and to live off those benefits and food stamps alone. The caseworker indicated that this was not a financially feasible plan. The day before the hearing, respondent also signed a lease. Even if that home were deemed appropriate, respondent had no plan to meet her financial obligations and therefore likely would not in be residence long. Accordingly, the circuit court did not clearly err in determining that respondent could not remedy the conditions that led to adjudication within a reasonable time.

These same grounds supported the circuit court's conclusion that respondent had not provided proper care and custody for her children and would be unable to do so in the foreseeable future.

Following adjudication, it became clear that respondent was severely emotionally unstable, overwhelmed by the stress of caring for her children, and self-medicated with unprescribed substances. It was these grounds that would place the children at risk of harm if returned to respondent's care. As these grounds were not raised in the initial petition, the DHHS was required to present legally admissible evidence in support. MCR 3.977(F)(1)(b); see also *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008). The petitioner met that burden.

The only witness at the termination hearing was the caseworker in charge of the case. She testified that respondent completed counseling services, but subsequently reported that she felt the need to restart counseling because she was "emotionally overwhelmed." The caseworker secured a referral for a counseling intake appointment, but respondent failed to follow through with sessions thereafter. The caseworker indicated that she personally advised respondent that if she missed drug screens, those tests would be deemed positive. Even so respondent refused to appear for six tests as the termination hearing approached, admitting that she would test positive for "[p]rescription meds that are not prescribed to her." Respondent also told the caseworker that "due to her mental instability, she cannot handle a job at this time" as recently as one month before the termination hearing. By respondent's own admissions, she had not resolved her substance abuse or mental instability issues. As two years of services had been provided to work through these issues without success, it was not reasonably likely that respondent would overcome the barriers to providing a safe haven for her children in the near future. "[I]t is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). Respondent had not benefited from the services provided and her children would likely face harm if returned to her care. Accordingly, the circuit court did not err in determining that termination of respondent's parental rights was supported by factor (j).

III. BEST INTERESTS

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The lower court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357. Relevant factors in this consideration include "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." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

Here, the youngest child was diagnosed with moderate to severe autism. He attended a special preschool and had made significant progress in the care of the children's foster parents. Perhaps because of his special needs, the child had "very little, if any, bond" with his mother and

actually regressed during visits. The child had a strong bond with his foster parents, however. While the older child shared a bond with respondent, the court noted that respondent had a “chaotic” life and could not provide consistency and stability for either child. The court also relied on evidence respondent could not guide or control the children’s behavior during visits. The children fought, a behavior not observed when the children were supervised by the foster parents, and respondent became overwhelmed rather than controlling the situation.

Given evidence that the youngest child lacked a parent-child bond, respondent had not improved her parenting skills to an extent that she was able to care for the children, and respondent had not maintained employment or a residence in order to provide consistently for her children, the court did not err in finding that termination was in the children’s best interests.

We affirm.

/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly