

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* COUTURIER, Minors.

UNPUBLISHED  
April 26, 2016

No. 329550  
Antrim Circuit Court  
Family Division  
LC No. 13-006486-NA

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Before: SAAD, P.J., and BORRELLO and GADOLA, JJ.

PER CURIAM.

Respondent, the mother of two minor twins, appeals the trial court’s order that terminated her parental rights to the children under MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons provided below, we affirm.<sup>1</sup>

A trial court must terminate a respondent’s parental rights if it finds that a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the children’s best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

Respondent argues that the trial court erred when it ruled that termination was warranted under each of the three statutory factors and when it concluded that termination was in the children’s best interests. An appellate court “review[s] for clear error both the court’s decision that a ground for termination has been proven by clear and convincing evidence and . . . the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

I. STATUTORY FACTORS

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<sup>1</sup> The children’s father was initially involved in these proceedings, but he subsequently released his parental rights and is not participating in this appeal.

Again, the trial court terminated respondent-appellant's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide as follows:

(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.

Respondent pleaded no contest in connection with a supplemental petition whose allegations against her included a history of alcohol abuse, housing instability, and exposure of the children to domestic violence involving their father.

Statutory ground § 19b(3)(c)(i) "exists when the conditions that brought the children into foster care continue to exist despite 'time to make changes and the opportunity to take advantage of a variety of services . . .'" *In re White*, 303 Mich App at 710, quoting *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000). Respondent's entire argument regarding the court's finding with respect to this ground consists of the single sentence: "Respondent mother had benefited from counseling services[,] began taking ADHD<sup>[2]</sup> medication, found employment, and appropriate housing." Respondent thus invites this Court to confirm her assertions that the evidence included some indication that respondent put forth some efforts to benefit from counseling, treat her ADHD, obtain employment, and obtain suitable housing. But respondent otherwise offers no argument to challenge the evidentiary bases for the trial court's conclusions

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<sup>2</sup> Attention deficit-hyperactivity disorder.

that respondent has generally failed to participate in (or benefit from) counseling, that she was homeless when the children were born and lived in approximately nine different places since then and was evicted from several of them, or that respondent failed to participate in (or benefit from) services intended to help her gain control over her substance-abuse problems. Further, substance abuse, particularly alcoholism, has been a major concern from the start, and respondent's cursory argument concerning the conditions of the adjudication wholly fails to address the court's conclusion that respondent failed to gain control over that problem. See *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996) (clear and convincing evidence of a failure to overcome alcoholism despite extensive treatment may justify termination of parental rights under § 19b(3)(c)(i) and (g)). For these reasons, respondent fails to show that the trial court clearly erred in concluding that clear and convincing evidence showed that termination was warranted under MCL 712A.19b(3)(c)(i).

Respondent also challenges the trial court's finding related to statutory ground (g), which is based on a finding of neglect, but "culpable neglect" is not required. *In re Jacobs*, 433 Mich 24, 37; 444 NW2d 789 (1989). Respondent's argument related to this ground is similarly brief. Respondent merely makes several factual assertions without any corresponding analysis of how these assertions are relevant. As such, respondent offers no argument to challenge the trial court's reliance on (1) respondent's psychotherapist, who found that respondent "was not able to use 'coping skills' on a consistent basis, and in particular in regards to housing, employment, finances, and loss of her children," or (2) the foster-care worker's concern that respondent "lacked the skill to provide structure and safety for the children." Also unrebutted was the court's observation, as noted above, that over the children's lifetimes, respondent had vacillated between homelessness and transient living situations, which typically ended with her eviction. Further, if respondent did indeed end her relationship with the children's abusive father, that itself does not answer the trial court's concerns over respondent's failure to provide petitioner with the names of persons she was residing with so petitioner could verify the appropriateness of placing the children in such company. And respondent again fails to refute the trial court's conclusions concerning her continued problems with substance abuse, thereby leaving unchallenged an important factual finding that directly speaks to respondent's inability "to provide proper care and custody within a reasonable time." See *In re Conley*, 216 Mich App at 44. For these reasons, respondent fails to show that the trial court clearly erred in concluding that clear and convincing evidence showed that termination was warranted under MCL 712A.19b(3)(g).

Likewise, respondent's cursory argument that challenges the trial court's determination regarding statutory ground (j) does nothing to call into doubt the court's expressed concerns over respondent's failure to conquer her substance-abuse problem, to allow petitioner to determine if the company she was keeping was suitable for young children, or to maintain suitable housing with any consistency. Nor does respondent's argument include any attempt to refute or mitigate the trial court's repeated observations that respondent largely refused to participate in, or cooperate with, the services offered. "Failure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *In re Trejo*, 462 Mich at 346 n 3 (quotation marks and citation omitted). For these reasons, respondent fails to show that the trial court clearly erred in concluding that clear and convincing evidence showed that termination was warranted under MCL 712A.19b(3)(j).

## II. BEST INTERESTS

MCL 712A.19b(5) commands, “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.” Although termination of parental rights requires proof of at least one of the statutory termination factors on clear and convincing evidence, “the preponderance of the evidence standard applies to the best-interest determination.” *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

The trial court’s comments concerning specifically the children’s best interests consisted of the following:

As to the best interest determination of the children, this Court does find that the child-parent bond does not exist. Furthermore, this Court does find, based on the testimony, that the children have an extreme need for stability and permanency, something that [respondent] is unable to provide. Furthermore, there is a high likelihood that the children would be adopted and would provide permanence for the children. Clearly, it is in the best interests of the children that their mother’s parental rights be terminated.

Respondent’s argument in response consists of the following, along with citations of several pages of transcript from the termination hearing:

The Court relied on the testimony of [the children’s psychologist] to determine there was no child-parent bond. [The psychologist] had never seen respondent mother and her children interact. All parties that did observe respondent mother and her children together did report some level of attachment and bonding. Relative to stability and permanency[,] Respondent mother’s testimony indicated that she had housing and employment and this testimony was supported by the testimony of [her long-time friend and sometime coworker.]

But the children’s psychologist was not the only witness to speak to the existence or not of child-parent bonds. The trial court also found credible another psychologist, whom the trial court recognized without objection as an expert in assessing parenting strengths and weaknesses, who completed an evaluation, then a supplemental evaluation, of respondent. This expert concluded that respondent had ADHD, a condition that tended to make a parent “very disorganized”; major depressive disorder, a condition that tended to cause a parent to neglect disciplining her children, preparing their meals, or doing laundry; and also dependent personality disorder, whose sufferers tend to make poor relationship choices and “depend on another person to kind of take care of them.” The expert additionally expressed his concern that respondent “may be using more alcohol than she’s reporting.” This expert participated in two parent-child observations, several months apart, and described the first as follows:

From a positive perspective, I saw that the children did respond to [respondent], that they did not avoid eye contact. . . .

From [respondent's] perspective, there were some positives. She complimented her children. She gave some touch to her children, put one of the children . . . in her lap and followed up as to what the children wanted to do. . . .

However,

[respondent] tended to be an observer. She kind of watched the children with their activity but [did] not participate in them . . . . There was really no structure. It was rather chaotic and at times she would kind of . . . lay back or watch the children play and not involve[] herself in that. . . .

When asked about parent-child bonds, the expert replied, "I think there's anxiety in that relationship . . . because the children don't have this very responsive mother," but rather one "who is kind of there but does not provide a lot of support and structure, not a lot of high energy or nurturing activities." The witness added that respondent "should be able to set forth some . . . projects or activities and provide a rhythm or structure so the children feel more secure and less anxious," but that she did not do so in his observation. The expert continued that the follow-up observation revealed "similar" strengths and weaknesses on respondent's part, but for only "[s]ome mild improvement," and confirmed that respondent ignored her daughter when the latter called out "mommy" at least five times in an attempt to involve her. The expert opined that respondent's prospects for becoming a functional parent in short order were "poor."

Further, respondent's assertion that "[a]ll parties that did observe respondent mother and her children together did report some level of attachment and bonding" actually asserts very little because "some level" could be a mere scintilla or otherwise a quantum of evidence far short of establishing the strength of attachment or bonding that would militate in favor of preserving the relationship. The testimony of the expert just discussed was a case in point, describing minimal attachment and bonding while concluding that respondent's ability to interact with the children was so poor as to render her a nonfunctional parent.

Respondent's argument concerning stability and permanency—that respondent's and her friend's testimony indicated that respondent had suitable housing and employment—ignores the fact that the trial court was not obliged to believe the accounts of either respondent or her friend. See *In re Miller*, 433 Mich at 337. Further, even taking at face value respondent's testimony that she had been living for the past month in a house she was renting on a month-to-month basis, and the testimony of her friend, which buttressed that account, this evidence falls well short of bringing to light satisfactory refutation of the trial court's concerns over respondent's homelessness, or rapid changes of residency, during the pendency of this case.

Additionally, although respondent asserts that she stands ready to demonstrate her ability to see to the children's emotional and mental health needs, she fails to explain how the trial court clearly erred when it credited respondent's psychotherapist, who opined that respondent needed to improve her coping skills "before she could meet the needs of children with developmental delays and other mental health diagnosis" and that respondent "never appreciated the level of severity" of the children's respective special needs. Moreover, respondent fails entirely to address the trial court's finding that there was a "high likelihood" that the children would be successfully adopted.

For these reasons, respondent fails to show that the trial court clearly erred when it concluded that termination of her parental rights was proven by a preponderance of the evidence to be in the children's best interests.

Affirmed.

/s/ Henry William Saad

/s/ Stephen L. Borrello

/s/ Michael F. Gadola