

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
June 20, 2013

In the Matter of D.D.C. DAVIS, Minor.

No. 312740  
Livingston Circuit Court  
Family Division  
LC No. 2011-013731-NA

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Before: WHITBECK, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if child is returned to parent). Because clear and convincing evidence supported the statutory bases for termination of respondent's parental rights and the trial court properly determined, by a preponderance of the evidence, that termination was in the child's best interests, we affirm.

In order to terminate parental rights, clear and convincing evidence must support at least one statutory ground for termination. *In re Powers*, 244 Mich App 111, 117; 624 NW2d 472 (2000). We review for clear error a trial court's finding that a statutory basis for termination has been proven by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks, citation, and brackets omitted).

The trial court did not clearly err by determining that clear and convincing evidence supported the termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). The child was removed from respondent's care because of respondent's criminal history and recent parole violation that led to his incarceration, as well as respondent's substance abuse and mental health issues. The parent-agency agreement required respondent to submit to a psychological evaluation and follow all recommendations, complete a substance abuse evaluation and follow all recommendations, refrain from using alcohol or drugs unless prescribed, participate in random drug screens, and obtain housing and employment. The record demonstrates that respondent failed to adequately address those barriers to reunification. Notably, respondent did not comply with required drug screens, and, although he apparently participated in substance abuse services while he lived in Ludington, he did little else to address

his substance abuse problems. Respondent was inconsistent regarding his previous and ongoing drug and alcohol use and admitted that he continued to consume alcohol. Respondent also admitted that he was aware that he was required to submit random drug screens and attend aftercare services. Respondent claimed, however, that his caseworker had told him that he did not have to attend aftercare services, a claim that the caseworker disputed.

Respondent also failed to comply with the requirements concerning a psychiatric evaluation and counseling, and he admitted that he was unable to maintain stable employment, which also placed his housing at risk. Respondent further chose to live in Ludington while he completed his parole requirements, which resulted in his inability to regularly visit the child during that time. Although respondent attended parenting classes, the testimony indicates that he failed to substantially benefit from them. Respondent had a practice of “flicking” the child as a method of discipline, and problems arose after respondent was provided unsupervised overnight visitation. Such problems included behavioral issues with the child and his return to foster care with cuts and bruises, the origin of which respondent could not explain. Respondent also continued to have contact with the child’s mother and hid that fact from the caseworker. Although respondent challenges the caseworker’s testimony concerning the timing of when his progress began to falter, the evidence shows that that in fact occurred at some point after June 2012. Given the overall lack of progress and the amount of time that the child had been in care at the time of the August 2012 hearing, the trial court did not clearly err by determining that the conditions that led to the adjudication continued to exist and were unlikely to be rectified within a reasonable time and that there existed a reasonable likelihood of harm if the child was returned to respondent’s care. Further, “a parent’s failure to comply with the parent-agency agreement is evidence of [his] failure to provide proper care and custody for the child.” *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

Respondent next argues that the trial court erred by determining that termination of his parental rights was in the child’s best interests, particularly considering the bond that he shared with the child. If the trial court concludes that at least one statutory basis for termination exists, then the court must order the termination of parental rights if it determines, by a preponderance of the evidence, that termination is in the child’s best interests. MCL 712A.19b(5); *In re Moss*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2013).<sup>1</sup> The trial court may consider the child’s need for permanency, stability, and finality when making its best-interest determination. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The court may also consider the bond between the child and the parent, the parent’s ability to parent, and the advantages of a foster home over the parent’s home. *Id.* We review for clear error the trial court’s determination that termination is in the child’s best interests. *Id.* at 40.

Although the trial court acknowledged the strong bond between respondent and the child, it concluded that other considerations warranted a determination that termination was in the child’s best interest. These considerations included respondent’s lack of progress in working

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<sup>1</sup> In the instant case, the trial court used the previous, heightened clear and convincing evidence standard in determining that termination of parental rights was in the child’s best interest.

toward reunification, the child's need for stability, the amount of time that the child had already been in care, and the fact that the child was thriving in foster care. The evidence supported the trial court's findings by a preponderance of the evidence. Accordingly, the court did not clearly err by determining that termination was in the child's best interest.

Affirmed.

/s/ William C. Whitbeck  
/s/ Patrick M. Meter  
/s/ Pat M. Donofrio