

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 23, 2013

In the Matter of T. M. SPANOS, Minor.

No. 313619
Wayne Circuit Court
Family Division
LC No. 09-490537-NA

Before: GLEICHER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

The trial court terminated respondent-mother's parental rights to her young son pursuant to MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (g), (j), and (k)(*i*). Because the court's finding of a statutory ground for termination was based on clear and convincing evidence and the best interest analysis was supported by a preponderance of the evidence, we affirm.

I. BACKGROUND

The Department of Human Services (DHS) took the minor child, TS, into care upon his release from the hospital two weeks after his birth. Respondent-mother had abused several substances during her pregnancy and the newborn remained hospitalized until he overcame the effects of withdrawal. After meeting with foster care workers, respondent was ordered to submit to substance abuse treatment and psychological and psychiatric evaluations, provide random drug screens, participate in parenting classes, and obtain suitable housing and a legal source of income.

Respondent and TS's father initially worked together to regain custody of their son. Respondent eventually completed parenting classes. A psychiatrist diagnosed respondent with bipolar and attention deficit-hyperactivity disorders and she began taking medication. Respondent continued to struggle with substance abuse, however. After regaining custody of TS for a four-month period, respondent relapsed and was arrested and jailed for shoplifting. TS's

father agreed to sever ties with respondent and proceed alone in meeting TS's needs. The father subsequently relapsed into drug abuse, ceding custody of the child, and thereafter died.¹

In the meantime respondent essentially abandoned her reunification efforts. At a March 22, 2012 dispositional review hearing, the case worker described respondent's level of compliance as "[z]ero." Respondent was arrested and jailed several times for controlled substance possession and shoplifting. She repeatedly "fell off the grid," failing to inform DHS case workers of her whereabouts. Beginning in 2011, respondent missed most drug screens and tested positive for substances on several occasions. Respondent stopped visiting TS regularly and her last parenting time session was in December 2011. She saw the child once thereafter and only in passing at his father's March 2012 funeral. Respondent stopped taking her psychotropic medications and only reentered inpatient drug treatment when required as a condition of her probation. As time wore on, respondent also stopped appearing at court dates scheduled in this matter.

Respondent ultimately pleaded for additional time to comply with her parent-agency agreement. The trial court denied that request and terminated respondent's parental rights three years and one month after the child's birth. Essentially, the court determined that respondent had been given extra time and opportunities to comply with her service agreement and had fallen short time and again. The court also deemed that respondent had abandoned TS by absenting herself for long periods of time during the proceedings. Given her past performance, the court determined that respondent would be unable to remedy her shortcomings within a reasonable time and that termination was therefore in the child's best interests.

II. STANDARD OF REVIEW

Pursuant to MCL 712A.19b(3), a trial 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). Where, as here, the termination is based on grounds not raised in the initial petition, the court's decision must be based on legally admissible evidence. MCR 3.977(F). "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 is required by law to order termination. MCL 712A.19b(5). This Court reviews for clear error the circuit court's determination that a statutory ground for termination has been established. MCR 3.977(K); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). A decision "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." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356. Whether termination is in the

¹ The father's death certificate does not list a cause of death. However, the record indicates that he suffered from cardiac problems that were exacerbated by his drug and alcohol abuse.

child's best interests must be proven by a preponderance of the evidence. *In re Moss*, ___ Mich App ___; ___ NW2d ___ (Docket No. 311610, issued May 9, 2013), slip op at 3.

III. TERMINATION DECISION

In terminating respondent's parental rights, the court relied upon the following five statutory grounds:

(a) The child has been deserted under either of the following circumstances:

* * *

(i) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(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.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(i) Abandonment of a young child. [MC: 712A.19b(3).]

Termination was supported under factor (c)(i) as respondent had not remedied the conditions that led to adjudication and could not do so within a reasonable time. The DHS took TS into custody because of respondent's abuse of multiple substances throughout her pregnancy. The DHS noted that respondent admitted to being diagnosed with bipolar disorder and ADHD but was not taking required medications. The DHS further noted respondent's criminal history.

Three years later, respondent was still struggling with substance abuse and had failed to complete several rehabilitation programs. Respondent had not consistently taken her psychotropic medications or engaged in mental health therapy. And respondent continued to run afoul of the law and had been jailed on numerous occasions. The court accurately determined that respondent could not establish that she could remedy these problems within a reasonable time given that she had four months remaining in her most recent drug rehabilitation program and would require even more time to prove herself. Respondent's inability to overcome substance abuse addiction and failure to follow through on her psychiatric treatment also supported termination under factors (g) and (j).

There was also sufficient legally admissible evidence to support termination under the later-added factors (a)(ii) and (k)(i), involving desertion or abandonment of the child. Respondent testified that she discontinued her compliance with her parent-agency agreement and stopped visiting the child after the DHS and the child's father deemed her participation to be detrimental to the child. After the child's father died, however, respondent failed to reenter the picture. By the time of the termination hearing, respondent had not attended a parenting time session in over 10 months and had not seen the child in seven. Respondent's whereabouts were unknown for extended periods of time until the case worker finally discovered in August 2012 that respondent had been incarcerated for heroin possession. In addition, respondent stopped attending court hearings for over a year. Respondent never provided financial or in-kind support for the child or inquired into his well-being. By voluntarily absenting herself from the child's life for such an extended period, respondent both deserted and abandoned him.

A preponderance of the evidence also supports the trial court's determination that termination was in the child's best interests. As noted by the DHS, the trial court considered, as required, that TS was in a relative placement but concluded that termination was required in any event. The court also took into consideration that "the caregiver will have some sort of relationship between the mom and the juvenile" By the time of the termination hearing, however, the three-year-old child had no bond with respondent while enjoying a strong bond with his foster mother who wished to adopt him. Respondent was still unable to provide the child with a safe and stable home. The court correctly determined that it was time to give the child permanency.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro