

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C. MCGILLIS, Minor.

UNPUBLISHED
January 14, 2014

No. 315687
Calhoun Circuit Court
Family Division
LC No. 2011-003954-NA

Before: OWENS, P.J., and BORRELLO and GLEICHER, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions exist that cause the child to come under the court's jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent).¹ We affirm.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id.* "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

We first find that the trial court did not clearly err in finding that petitioner established, by clear and convincing evidence, a statutory ground for termination under MCL 712A.19b(3)(c)(i). Termination is proper under MCL 712A.19b(3)(c)(i) when "[t]he 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 . . . [t]he 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."

¹ Although respondent argues on appeal that the trial court improperly terminated his parental rights pursuant to MCL 712A.19b(3)(h), the trial court's written order establishes that it did not rely on this statutory ground when terminating respondent's parental rights to the minor child.

The record establishes that 182 had elapsed since the issuance of the initial dispositional order. The conditions that led to adjudication were respondent's substance abuse and unsafe sleeping arrangements for the child in respondent's home. Respondent failed to confirm attendance at any substance abuse assessments during the 16-month proceedings and failed to provide proof that he attended Narcotics Anonymous and Alcoholics Anonymous as ordered. During the proceedings, respondent tested positive for illegal substances multiple times, missed 80 percent of his drug screenings, and was arrested for and convicted of possession of methamphetamines. He also could not provide proof of adequate housing and employment. With respect to respondent's parenting skills, he failed to attend parenting classes. He also failed to attend 52 percent of his parenting time visitations with the child while he was free from incarceration. Additionally, respondent did not stay in contact with the child, and at the time of the termination hearing, he had not seen the child for six months. Thus, there is sufficient evidence that respondent had not accomplished any meaningful change in the conditions that led to adjudication. While respondent argues that he would have been able to rectify the conditions if given additional time, the record clearly establishes that there was no reasonable likelihood that respondent would benefit from more time given that the child was in foster care for 16 months and during that time respondent made no progress with his substance abuse and parenting skills. Accordingly, the trial court's finding that termination was proper pursuant to MCL 712A.19b(3)(c)(i) was not clear error.

Additionally, for the reasons previously discussed, the trial court did not clearly err in finding that grounds for termination of respondent's parental rights also existed under MCL 712A.19b(3)(g) and (j). Particularly, the child spent all but 5 months of his life in foster care and respondent showed a lack of commitment and inability to address his substance abuse, even while incarcerated. Thus, there is no reasonable expectation, given the child's age, that respondent would be able to provide proper care and custody within a reasonable time and there is a reasonable likelihood that the child would suffer emotional harm if returned to respondent's care. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (noting that (3)(j) includes emotional harm to the child).

However, the trial court did clearly err in determining that statutory grounds for termination of respondent's parental rights existed under (c)(ii). The child had been under the court's jurisdiction since the adjudication and the same conditions that led to the adjudication continued to exist. Thus, there were no "other conditions" that "cause[d] the child to come within the court's jurisdiction." However, because only one statutory ground has to be established for termination, this error is harmless. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent also makes a cursory argument that he was unable to comply with the service agreement because the Department of Human Services (DHS) did not accommodate his need for transportation. However, respondent failed to rationalize this argument and to cite supporting authority. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims." *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). Nevertheless, we find that the record clearly shows that DHS made reasonable efforts to accommodate respondent's transportation issue so that he could complete the required services, which included, but was not limited to, providing in-home counseling and transportation to parenting time visits.

Finally, respondent argues that termination of his parental rights was not in the minor child's 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) and MCR 3.977(E)(4). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's finding that termination is in the child's best interests for clear error. *In re HRC*, 286 Mich App at 459.

The child was removed from respondent's care when he was five-months old. Respondent was incarcerated for nearly eight months of the 16-month proceedings. During the time that he was free from incarceration, respondent missed 52 percent of his parenting time visits with the child. At the time of the termination hearing, respondent had not seen the child for six months. This lack of contact with the child shows that there was not an established parent-child relationship. See *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009). Further, while respondent argues that he should have been given more time and additional assistance, respondent had shown an uncertain potential for success during the 16 months he was provided services, and this Court has to look at the best interests of the child, including the child's need for permanency. See *In re Trejo Minors*, 462 Mich 341, 364; 612 NW2d 407 (2000). The minor child was doing well in his placement. He was happy and developing. He also bonded with his foster mother, who had expressed an interest in adopting him. Based on a review of the record, the trial court did not clearly err in determining that termination of respondent's parental rights was in the child's best interest.

Affirmed.

/s/ Donald S. Owens
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher