

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J. ESTES, Minor.

UNPUBLISHED
March 13, 2014

No. 317084
Ingham Circuit Court
Family Division
LC No. 13-000420-NA

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

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights pursuant to MCL 712A.19b(3)(j) and (l).¹ For the reasons stated below, we affirm.

I. STANDARD OF REVIEW

This Court reviews the trial court's "decision that a ground for termination has been proven by clear and convincing evidence" for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (internal citations and quotation marks omitted). The trial court's findings are only set aside if the appellate court "is left with the definite and firm conviction that a mistake has been made." *Id.* at 41 (internal quotation marks omitted). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

II. ANALYSIS

A. MCL 712A.19B

MCL 712A.19b(3)(l) reads, in relevant part:

(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:

¹ The trial court also terminated the mother's parental rights. She is not a party to this appeal.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state. [MCL 712A.19b (footnote omitted).]

Here, respondent does not dispute that his parental rights to his other children were terminated in 2011, after the initiation of child protective proceedings. As noted, "[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights." *Ellis*, 294 Mich App at 32. Accordingly, the trial court properly granted termination under this section of the statute.

Because the trial court's decision may be upheld on the basis of MCL 712A.19b(3)(l) alone, it is unnecessary to consider whether termination was also warranted under MCL 712A.19b(3)(j) (reasonable likelihood of harm to the child if returned to parent). Nonetheless, the trial court correctly terminated parental rights under MCL 712A.19b(3)(j) as well. "[A] parent must benefit from 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 by statute on other grounds.

Here, defendant had a limited amount of time he could spend with the child, as he was incarcerated. In fact, he was returned to jail after the instant proceedings for new criminal charges.² Though he claims he is interested in seeing his daughter, his behavior during supervised visiting time suggests otherwise. Specifically, the trial court heard testimony that respondent would repeatedly take bathroom or cigarette breaks during the one-hour visits. He also behaved inappropriately, as he used profanity in front of his daughter, despite being told it was wrong to do so. And on one occasion, he skipped a visitation because it was raining. Respondent's conduct indicates that he learned little from the parenting classes, and the class instructor stated that respondent appeared not to benefit from them. He also did not accept the state's attempts to help him with his substance abuse. Accordingly, the trial court properly terminated parental rights pursuant to MCL 712.19b(3)(l) and (j).³

² Though "[t]he mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination," the trial court did not base its decision to terminate solely on respondent's incarceration. *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010).

³ Respondent unconvincingly suggests that the Department of Human Services was required to attempt to reunify him with his child before termination under MCL 712A.19a(2). Petitioner's initial petition sought termination of respondent's parental rights to the child. See MCL 712A.19b(4) and MCR 3.961(B)(6). Therefore, respondent was not entitled to services, because termination was petitioner's goal and the case involved the exceptional circumstances enumerated in MCL 712A.19a(2)(c). See *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013). Moreover, the trial court properly held that the reunification efforts made were unsuccessful as to respondent. Although a petitioner generally "has a responsibility to expend

B. BEST INTERESTS OF THE CHILD⁴

“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.” *Olive/Metts*, 297 Mich App at 42, quoting MCL 712A.19b(5). To determine a child’s best interests, the trial court may consider a number of factors, including the respondent’s bond with the child, his parenting ability, and “the child’s need for permanency, stability, and finality.” *Id.*

Here, the trial court explicitly considered the bond the child had with respondent, and stated that the bond was not strong. It also noted that respondent evinced little parenting ability—as noted, his behavior during the supervised visitation sessions indicated that he was not interested in spending time with the child. The trial court thus properly found that termination was in the child’s best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Patrick M. Meter

reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Respondent did not make use of the services that the state provided him. Although he was offered numerous services to help him care for his child, including supervised parenting time, a parenting class, and substance abuse referrals, he failed to make responsible use of these programs.

⁴ Our Court reviews the trial court’s best interests determination for clear error. *Olive/Metts*, 297 Mich App at 40, citing *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000). The trial court’s findings are set aside only if the appellate court “is left with the definite and firm conviction that a mistake has been made.” *Id.* at 41.