

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAMS, Minors.

UNPUBLISHED

July 24, 2014

No. 319083

Calhoun Circuit Court

Family Division

LC No. 09-004128-NA

Before: MARKEY, P.J., and OWENS and FORT HOOD, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication), (c)(ii) (failure to rectify other conditions causing the children to come within the court's jurisdiction), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the children will be harmed if returned to parent). We affirm.

Respondent first argues that the trial court erred by finding statutory grounds for terminating his parental rights. "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.*

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), which provide:

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parents after the parent has received notice and a hearing and has been given reasonable opportunity to rectify the conditions, 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.

Termination pursuant to subsection (3)(c)(i) was not applicable here because other conditions did not exist to cause the children to come within the court's jurisdiction. However, we find that there was sufficient evidence to terminate respondent's parental rights pursuant to subsections (3)(c)(i), (g), and (j). See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011) ("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 the other statutory grounds.").

Respondent had previously been the subject of a drug raid in 2009 that resulted in removal of the older child from respondent's and the mother's home. Although the child was returned after respondent and the mother completed services, in March 2012, another drug raid occurred at respondent's apartment where the police found heroin in a baking soda box in the refrigerator next to baby food. Consequently, respondent was convicted of delivering/manufacturing less than 50 grams of a controlled substance, for which he served a period of incarceration. During the proceedings, respondent tested positive for alcohol multiple times and had several "diluted" drug screens. He was involved in multiple incidents of domestic violence with the mother of the minor children, some of which involved alcohol and resulted in arrests for domestic violence and resisting and obstructing a police officer. Respondent was also incarcerated during the proceedings for failing to pay child support. With respect to respondent's parenting skills, he failed to attend multiple parenting time visits because of his incarceration and was inconsistent in participating when he was not in jail. When he did participate, he sometimes failed to properly engage with the children, appeared unconcerned or oblivious, and even fell asleep. One of the minor children displayed behavioral changes after the parenting time visits, and respondent denied to the child that he had assaulted the child's mother, in contradiction to the child's own memory. Further, respondent's apartment was not suitable for the children, and subsequently, he was evicted from that apartment. While respondent received income from social security disability and various forms of state assistance, his expenses

exceeded his income and he did not demonstrate an ability to support the children financially. Finally, the evidence shows that respondent did not sufficiently benefit from the services offered to him.

While respondent argues that he should have been given more time to rectify the conditions, the record clearly establishes that there was no reasonable likelihood that respondent would benefit from more time, especially in light of the fact that the children were in foster care for more than 19 months and the fact that respondent made minimal progress with his substance abuse and parenting skills during that time. Further, the record supports that there is no reasonable likelihood, given the children's age, that respondent would be able to provide proper care and custody within a reasonable time, particularly where he denied events such as domestic violence on the children's mother and failed to commit to and follow through with his service plan. Accordingly, the trial court did not clearly err in terminating respondent's parental rights under subsections (3)(c)(i), (g), and (j).

Respondent also challenges the trial court's determination that termination of his parental rights was in the best interests of the children. "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review that determination for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The record reflects that the two children were removed from respondent's care when one child was three years old and the other was six months old. The proceedings lasted more than 19 months. During that time, respondent showed minimal progress from the services offered to him, as evidenced by his multiple positive screens, acts of domestic violence, periods of incarceration, and failure to consistently participate in parenting time visits or otherwise demonstrate a willingness and ability to properly care for his children. These circumstances make it unlikely that the children could be returned to his home in the foreseeable future, and the children need a permanent, safe, and stable home. See *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). The record reflects that both children were placed in a foster home where their needs were being met, and the foster parents indicated an interest in adopting both children together. Accordingly, the trial court did not clearly err by finding, by a preponderance of the evidence, that parental termination was in the best interests of the children.

Affirmed.

/s/ Jane E. Markey
/s/ Donald S. Owens
/s/ Karen M. Fort Hood