

STATE OF MICHIGAN
COURT OF APPEALS

In re ROBERTS, Minors.

UNPUBLISHED
September 18, 2014

No. 320912
Berrien Circuit Court
Family Division
LC No. 2012-000103-NA

Before: SHAPIRO, P.J., and WHITBECK and STEPHENS, JJ.

PER CURIAM.

Respondent-mother and respondent-father appeal as of right the trial court’s order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication) and (3)(g) (failure to provide proper care and custody). Because the trial court did not err by finding that statutory grounds for termination existed or that termination was in the children’s best interests, we affirm.

Respondents first argue that the trial court erred in finding that statutory grounds for terminating their parental rights had been proven by clear and convincing evidence.¹

MCL 712A.19b(3)(c)(i) provides that a trial court may terminate parental rights to the children if it finds, by clear and convincing evidence, that “[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[ren]’s age[s].” Here, the trial court entered the initial dispositional order on December 11, 2012 and the termination hearing was held on December 10, 2013 and January 21, 2014. Thus, more than 182 days had elapsed since the issuance of the initial dispositional order.

¹ “This Court reviews for clear error the trial court’s ruling that a statutory ground for termination has been established and its ruling that termination is in the children’s best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *Id.*

Termination has been upheld under MCL 712A.19b(3)(c)(i) where “the totality of the evidence amply support[ed] that [the respondents] had not accomplished any meaningful change in the conditions” that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). At the time of termination, the trial court found that the conditions of adjudication continued to exist because mother and father had failed to establish stable housing or employment or to adequately address their substance abuse issues.

With respect to housing, the record supports the trial court’s determination that mother and father failed to rectify this issue. At the time the petition was filed, mother and father were living with three of their children in a small camper. As of October 25, 2012, mother and father had not found a place to stay and were not adequately keeping the Department of Human Services (DHS) apprised of their whereabouts. When they did contact the DHS, they simply indicated that they were “staying from place to place.” As of the December 10, 2012 adjudication and disposition hearing, mother and father were living with father’s sister, but that living arrangement did not last long because, on February 13, 2013 (after a prolonged period in which neither mother nor father had any contact with the DHS and the DHS was unaware of their whereabouts), father reported that he and mother were living in a hotel. As of March 28, 2013, mother and father were living in a vehicle. As of April 30, 2013, mother and father were still homeless. There is some indication in the record that mother and father reported housing to the case worker who took over the case in May 2013, but mother and father never provided any documentation of that housing and the case worker was unable to verify it. In any event, by October 2013, father was incarcerated, and when the case worker visited him in jail, he indicated that he would be homeless upon his release and would attempt to find housing at a homeless shelter. Further, as of the November 19, 2013 dispositional review hearing, father was still incarcerated and mother was living with her cousin. There is no indication in the record that mother and father obtained suitable housing before the December 10, 2013 termination hearing and the case worker indicated her belief at that hearing that suitable housing remained a barrier to reunification. Finally, there is no indication in the record that mother and father obtained suitable housing before the January 21, 2014 termination hearing, thereby supporting the trial court’s finding that mother and father remained without suitable housing. Thus, the record establishes that mother and father failed to rectify their lack of suitable housing during the pendency of this case.

Similarly, the record supports the trial court’s determination that mother and father failed to rectify employment and financial barriers. During the pendency of the previous case involving this family, mother had obtained employment at Wal-Mart and the parents had obtained suitable housing in a three bedroom trailer in Hartford, Michigan, prompting Child Protective Services (CPS) to close the case. However, when CPS made contact with mother and father on October 4, 2012 in connection with the current case, both parents advised that they were unemployed and that they had been denied benefits from the DHS because they failed to submit the required paperwork. There is no indication in the record that mother ever obtained employment during the pendency of this case. There is some indication that father had obtained employment by June 4, 2013. However, as of June 26, 2013, the record indicates that father had been fired for poor attendance and there is no further indication in the record that father was thereafter employed. No evidence was offered at the December 10, 2013 hearing that either mother or father were employed and the trial court found at the January 21, 2014 hearing that

neither parent was currently employed. Thus, the record establishes that mother and father failed to rectify their unemployment and lack of financial resources during the pendency of this case.

Finally, with respect to substance abuse, the record supports the trial court's determination that mother and father failed to rectify this issue. When CPS first made contact with mother and father on October 4, 2012, they agreed to participate in a drug screen, although mother advised that she might test positive for THC. When the results of that drug screen were subsequently received, both parents tested positive for methamphetamines. Mother and father were subsequently ordered to comply with random drug screens, but their participation in those drug screens was sporadic during the pendency of this case. For the first three months, mother and father each submitted to only two drug screens, both of which were positive for opiates or amphetamines. Then, from December 2012 to mid-February 2013, mother and father failed to comply with any services, including drug screens. Finally, from late-June to late-October 2013, mother and father again failed to comply with services and did not submit to any drug screens, in part because they were each incarcerated. The drug screens that mother and father did submit to were continually positive for controlled substances. Specifically, mother tested positive for opiates in 2013 on February 13, February 20, February 25, February 28, March 4, March 11, April 3, April 8, and June 11. Father also tested positive for opiates in 2013 on February 13, February 25, February 28, March 4, March 11, April 3, and April 8. Mother and father claimed to have valid prescriptions for pain killers, but initially failed to provide any such documentation. Further, while there is some indication in the record from the June 4, 2013 hearing that mother and father provided documentation for prescription painkillers, they failed to update the DHS on the currency of those prescriptions in order to verify whether they were still valid and did not provide their case worker with contact information for their doctor so she could independently verify their validity. In addition to opiates, mother and father each tested positive for other substances during the pendency of the case. Specifically, mother tested positive for benzodiazapines on March 4, 2013, for THC on June 13, 2013, and for methamphetamines and two different types of benzodiazepines on October 29, 2013. Mother further admitted to the case worker that she used Adderall without a valid prescription. Father tested positive for cannabinoids on February 13, 2013, for THC on April 24, 2013, and for methamphetamines on December 3, 2013. The record indicates that mother participated in, at most, one substance abuse counseling session, and father participated in none. Thus, the record clearly establishes that mother and father had ongoing issues with substance abuse at the time of termination and that they failed to rectify that issue in any meaningful way during the pendency of this case.

In sum, "the totality of the evidence amply" supports that mother and father "had not accomplished any meaningful change" in the conditions that led to adjudication. See *In re Williams*, 286 Mich App at 272.

In deciding whether to terminate under (c)(i), the trial court had to determine whether mother and father would have been able to rectify the barriers that led to adjudication within a reasonable time considering the ages of the minor children. MCL 712A.19b(3)(c)(i). As this Court has recognized, the Legislature did not intend for the children to be left in foster care indefinitely; thus, it is proper to focus not only on how long it will take mother and father to address their housing, employment, and substance abuse issues, but also on how long the children will have to wait for them to do so. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991).

Mother and father each assert that an additional six months would have allowed them to comply with services in order to be reunited with their children. However, the record does not support this argument. With respect to father, he never showed a willingness to benefit from any services during the pendency of this case and there is no indication that he would begin to do so now. Likewise, mother never showed a willingness to benefit from services for the first year of this case, although there is some indication that, as of the December 10, 2013 hearing, she had begun to participate in some services. Even assuming that mother and father would hereafter continue to participate in all services, it would be a lengthy period of time before they could adequately address their housing, employment, and serious substance abuse issues. At the time of termination, the four children had been in foster care for over one year and they should not be left there indefinitely while mother and father continue to attempt to resolve their issues. *In re Dahms*, 187 Mich App at 647. Thus, the trial court did not clearly err when it determined that there was not a reasonable likelihood that mother and father could rectify the conditions that led to adjudication within a reasonable time. *Id.*; MCL 712A.19b(c)(i).

In sum, the trial court did not clearly err by terminating mother and father's parental rights under MCL 712A.19b(3)(c)(i).²

Respondents also challenge the trial court's determination that termination was in the best interests of the children. "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). The trial court's determination that termination is in the child's best interests must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. "[T]he focus at the best-interest stage" is on the child, not the parent. *Id.* at 87. The trial court should weigh all the evidence available to it in determining the child's best interests and may consider such factors as "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Other considerations include the length of time the child was in foster care or placed with relatives, the likelihood that "the child could be returned to her parent's home within the foreseeable future, if at all[,]" and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). The trial court may also consider the parent's visitation history with the child. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

The record in this case contained sufficient evidence to support, by a preponderance of the evidence, that termination of mother and father's parental rights was in the children's best interests. At the time of termination, the children had spent over a year in relative-placement because of mother and father's continued inability—or unwillingness—to address the issues that

² Because we have concluded that at least one ground for termination existed, we need not consider the additional ground on which termination was based. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Nevertheless, we have reviewed the record and find no clear error in the trial court's ruling that the evidence supported termination under MCL 712A.19b(3)(g).

led to adjudication. Mother and father substantially failed to participate whatsoever in the services offered and had no contact with DHS or the children for substantial periods of time. When they were involved, they participated irregularly in parenting time, continued to test positive for controlled substances, and failed to find suitable housing or employment. It was thus “unlikely that the child[ren] could be returned to [mother and father’s] home within the foreseeable future, if at all.” *In re Frey*, 297 Mich App at 249. As the trial court recognized, the children’s need for permanency, stability, and finality outweighed any bond the parents shared with their children. There was also evidence that the children’s needs were being met while placed with a relative caregiver. Specifically, the children were doing better in school and there were no concerns for their well-being. Thus, the trial court did not clearly err by determining that termination of respondents’ parental rights was in the children’s best interests.

Affirmed.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Cynthia D. Stephens