

STATE OF MICHIGAN  
COURT OF APPEALS

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*In Re* D. Q. FERGUSON, Minor.

UNPUBLISHED  
October 16, 2014

No. 321545  
Oakland Circuit Court  
Family Division  
LC No. 13-815282-NA

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Before: CAVANAGH, P.J., and JANSEN and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Two of respondent's infants died in her care of position/compression asphyxia while co-sleeping with their father, respondent's live-in boyfriend. After her infant son died in 2009, respondent was warned of the dangers co-sleeping with adults posed to infants. Nonetheless, her infant daughter died under similar circumstances in 2013. Respondent had also medically neglected her daughter. After the death of the second infant, Children's Protective Services (CPS) investigated the home and discovered that respondent's infant daughter had been co-sleeping with her parents since birth. The couple slept in the basement of a drug house, which was cluttered and dirty, with hazardous conditions. The minor child at issue in this appeal, DQ, who was older than either of the infants and had a different father, was out of respondent's care due to her criminality on two occasions before the termination petition was filed. DQ visited respondent on the weekends and also slept on a couch in the basement. Respondent had a CPS history involving DQ, had mental health issues, and a history of noncompliance with mental health treatment.

After determining that the statutory grounds for termination had been established by clear and convincing evidence, the trial court held a best-interest hearing and received testimony about respondent's current employment, housing, and recent participation in services, as well as DQ's situation. Following the proofs, the court found that termination was in DQ's best interests and entered an order terminating respondent's parental rights. This appeal ensued.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights

is in the best interests of the child. MCL 712A.19b(5). Whether 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). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Respondent's parental rights to DQ were terminated under MCL 712A.19b(3)(g) and (j), which permit termination under the following circumstances:

(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.

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(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.

The trial court did not clearly err in determining that subsections (3)(g) and (3)(j) had been established by clear and convincing evidence. The child had been out of respondent's care on two prior occasions due to her criminality. The child was placed in a guardianship when respondent went to jail for possession of crack cocaine in 2008, and he was sent to live with his maternal grandmother in 2011 when she was in jail for uttering and publishing. Respondent also provided an inappropriate living environment for the child. The residence was apparently a drug house and had been the subject of numerous police responses because of shootings and a raid in 2012. This home was described as deplorable and hazardous, and it had no appropriate sleeping accommodations for respondent's children. Respondent had participated in the Oakland County nursing program in 2009, was educated on safe sleep for infants, and was fully aware that safe sleep for a baby was sleeping alone in a crib. Although one child had already died while co-sleeping with an adult, respondent acknowledged that her daughter had been co-sleeping with her and the baby's father since birth. Respondent had also medically neglected her daughter before she died by failing to adhere to a medical recommendation to take her to a specialist to follow up on her possible sickle cell trait. The CPS worker did not think DQ would be safe with respondent, and felt that there was a high risk if DQ was placed back in respondent's care. The worker also felt that respondent lacked stability.

The trial court also did not clearly err in its best-interest determination. In deciding a child's best interests, a court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court may also consider a child's well-being while in care, *White*, 303 Mich App at 714, and a respondent's parental history in determining the child's best interests, *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

Respondent argues that the court erred in failing to explicitly consider the issue of relative placement. A child's placement with relatives weighs against termination and is an explicit factor to consider in determining whether termination is in a child's best interests. *Mason*, 486 Mich at 164; *Olive/Metts*, 297 Mich App at 43. If the court fails to explicitly address placement with a relative, the record is inadequate to make a best-interest determination, and reversal is required. *Id.* However, for purposes of this evaluation, the term "relative" is defined as an individual who is "related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above[.]" MCL 712A.13a(1)(j). This definition does not include a person related to a child as a parent, and DQ lived with his father whose parental rights remained intact. Therefore, the court was not required to consider the issue of relative placement in determining whether termination of respondent's parental rights was in DQ's best interests.

Respondent argues that her life skills therapist gave favorable testimony. According to the therapist, respondent met all of her goals, which involved grief issues, obtaining safe and appropriate housing, and creating community connections to identify various resources. The therapist was impressed with respondent's motivation, consistent work history, and time management skills, and she had no concerns about respondent. Respondent had been consistently employed over the past several years and had recently obtained her own apartment.

However, as the trial court noted, respondent had a lengthy CPS history, as well as mental health issues, and her infant daughter had recently died in her care while co-sleeping with her parents, despite respondent's education and first-hand knowledge of the harm co-sleeping with adults could pose for infants. Respondent had recently exposed DQ to an inappropriate and dangerous living environment. The CPS worker expressed concern about DQ's safety if placed with respondent. DQ's medical needs were being met in his father's care. His behavior and medical issues had improved and he was excelling at school. The father's home was clean and appropriate, and DQ was bonded to his father.

Given these circumstances, the trial court did not clearly err in concluding that termination of respondent's parental rights was in DQ's best interests.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Amy Ronayne Krause