

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* J. W. WILSON, Minor.

UNPUBLISHED  
February 16, 2016

No. 328251  
Washtenaw Circuit Court  
Family Division  
LC No. 2014-000032-NA

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Before: HOEKSTRA, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Respondent mother appeals as of right an order terminating her parental rights to a minor child under MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (h) (parent is imprisoned and fails to provide proper care and custody). We affirm.

Respondent challenges the trial court’s findings regarding the statutory grounds for termination and the child’s best interests. To terminate parental rights, a trial court must find that a statutory ground for termination in MCL 712A.19b has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Thereafter, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence “that termination of parental rights is in the child’s best interests[.]” MCL 712A.19b(5); see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). A trial court’s factual findings in terminating parental rights, including a finding that a ground for termination has been established and that termination is in a child’s best interests, are reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The Michigan Supreme Court has stated:

MCL 712A.19b(3)(h) authorizes termination only if *each* of three conditions is met:

“The parent is imprisoned for such a period that [1] the child will be deprived of a normal home for a period exceeding 2 years, *and* [2] the parent has not provided for the child’s proper care and custody, *and* [3] 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. [Emphasis added.]” [*In re Mason*, 486 Mich 142, 160-161; 782 NW2d 747 (2010), quoting MCL 712A.19b(3)(h).]

Regarding the first two elements, the Supreme Court in *Mason* explained:

The combination of the first two criteria—that a parent’s imprisonment deprives a child of a normal home for more than two years *and* the parent has not provided for proper care and custody—permits a parent to provide for a child’s care and custody *although the parent is in prison*; he need not *personally* care for the child. [*Id.* at 161.]

Accordingly, a parent may fulfill the duty to provide proper care and custody by voluntarily granting custody of a child to a relative. *Id.* at 163-164.

Respondent was jailed in March 2014 and moved to prison on September 3, 2014, and her earliest release date from prison was March 24, 2017. The termination order was entered on June 12, 2015. MCL 712A.19b(3)(h) focuses on “whether the imprisonment will deprive a child of a normal home for two years *in the future*, and not whether past incarceration has already deprived the child of a normal home.” *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992) (emphasis added; citation and quotation marks omitted). Here, there was testimony that once respondent was released from prison, she would need approximately one year to successfully address her issues before the child could be placed with her. Accordingly, we find that the trial court did not clearly err in finding that respondent was imprisoned for such a period that the child would be deprived of a normal home for a period exceeding two years.

Respondent argues that she provided or would have provided the child with proper care and custody because she provided several alternatives to petitioner’s placement of the child in non-relative foster care. Respondent initially placed the child with respondent’s mother, who was subsequently arrested. Thus, respondent did not provide the child with proper care and custody during her incarceration. In fact, the child was ultimately placed in licensed, non-relative care by petitioner after respondent’s mother was arrested and the child was located in an unfit environment. Thereafter, respondent recommended that the child be placed with a series of relatives and friends. Four of respondent’s relatives were investigated and found to be improper guardians for the child. Respondent’s final relative was not recommended by respondent until mere days before the termination hearing began, and there was insufficient evidence that he could have provided the child with proper care and custody. Additionally, while mother suggested that two of her friends would be good guardians for the child, mother did not actually take prompt, appropriate action to arrange with these friends for custody of or guardianships over the child; indeed, as noted above, the child was taken into foster care after being found in an unfit environment. Mother’s mere suggestions, without additional actions on her part, were insufficient to provide for the child’s proper care and custody and were insufficient evidence of a reasonable expectation that mother would be able to provide for proper care and custody within a reasonable time.

Respondent also argues that she could have provided the child with proper care and custody when she was released from prison on March 24, 2017, and that it was reasonable to expect the child to wait until respondent’s release. However, before respondent’s incarceration, she smoked marijuana, was unemployed, and lived with the child in a motel after staying for approximately two months with the victim of respondent’s home-invasion crime. The child’s father was killed during the home invasion. Respondent also had mental health concerns related

to her self-reported post-traumatic stress disorder. Things were so desperate for respondent that she decided to participate with the child's father in the home invasion, despite the fact that her friend had previously provided her with a place to stay almost rent-free. Also, as noted, there was testimony that respondent would need approximately one year after her release from prison to successfully complete her treatment plan regarding marijuana use, mental health, and lack of housing and employment before the child could be placed with her. Further, at the time of termination, the child was almost 1-1/2 years old, and he had been placed in non-relative foster care for almost that entire time. On this record, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child's age. The trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(h). MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357. Because the circumstances pertaining to MCL 712A.19b(3)(g) are "factually repetitive" of the circumstances pertaining to MCL 712A.19b(3)(h) under the posture of this case, see *Mason*, 486 Mich at 165, the trial court also did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(g).

Regarding the child's best interests, the child's need for permanency and the advantages of the foster home weighed in favor of a finding that termination was in the child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter  
/s/ Michael J. Kelly