

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 19, 2013

In the Matter of CLARMONT, Minors.

No. 310118
Wayne Circuit Court
Family Division
LC No. 10-491894-NA

Before: CAVANAGH, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i), (g), and (j).¹ We reverse and remand.

Before a court can enter an order terminating parental rights, petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Because petitioner relied entirely on respondent's criminal history and substance abuse before the child protection proceedings began, her imprisonment, and the unavoidable difficulties she would face after her expected release in five months, the Supreme Court's decision in *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), is directly relevant. In *Mason*, 486 Mich at 166-167, the Court held that incarceration with a possible release date in less than two years and criminal history do not justify termination under MCL 712A.19b(3)(c)(i), (g), or (j) except under certain enumerated circumstances not applicable in the present case. The Court found it significant that the respondent engaged in some services in prison, maintained contact with his children through cards, and arranged employment and housing for after his release. *Id.* at 150, 163.

Respondent in the present case needed a relative sponsor in Michigan to obtain an interstate compact and transfer her probation to this state; therefore, she had not yet arranged housing that would allow her to care for her children. It was unknown whether respondent would be able to obtain the compact and find appropriate housing and employment after her

¹ Respondent asserts on appeal that the lower court also found statutory ground for termination under MCL 712A.19b(3)(h); however, the lower court declined to find sufficient evidence under subsection (h) because respondent was not going to be incarcerated for another two years.

release. Petitioner did not dispute that respondent completed all services available in prison, including parenting classes, and sent monthly letters to her children. A corrections officer testified that she did not have any major behavior issues in prison and earned all possible good time. Her criminal history was nonviolent and did not directly relate to her parenting ability.

Petitioner presented only limited evidence regarding respondent's parenting ability when she was last out of prison. The caseworker admitted she had not evaluated respondent's current parenting skills. See *Mason*, 486 Mich at 160. Options for obtaining a psychological evaluation and parenting assessment were not explored before termination and respondent was not provided with family counseling via telephone. Termination of parental rights was premature under the holding in *Mason*. The lower court clearly erred in finding statutory grounds to terminate respondent's parental rights. The children should remain temporary court wards pending reunification or termination proceedings with additional information regarding respondent's ability to provide proper care in a reasonable time after her release.

We need not decide whether the court also erred in finding that termination was in the children's best interests. MCL 712A.19b(5). However, we note that because the separations caused by incarcerations had weakened the children's bond with respondent and they would benefit from permanence, the trial court did not clearly err in its best-interest determination.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Henry William Saad