

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C. J. HAMILTON, Minor.

UNPUBLISHED
November 19, 2013

No. 315144
Oakland Circuit Court
Family Division
LC No. 11-784585-NA

Before: M. J. KELLY, P.J., and CAVANAGH and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j).¹ Because we conclude that there were no errors warranting relief, we affirm.

Respondent first argues that the trial court clearly erred when it found that the Department of Human Services had established the statutory grounds for terminating her parental rights by clear and convincing evidence. This Court reviews the trial court's findings and ultimate determination that the Department established a ground for terminating the respondent's parental rights for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, despite evidence to support the finding, the reviewing Court is left with the definite and firm conviction that a mistake has been made. *Id.*

In order to justify the termination of a parent's parental rights, the Department must establish at least one ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012). If the court finds that the Department has established at least one ground for termination and further finds that the termination is in the child's best interests, the court must order the termination of the parent's parental rights. MCL 712A.19b(5); *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010).

¹ The trial court terminated the legal father's parental rights to the child in a separate order, which is not at issue in this appeal.

The court may terminate a parent's parental rights if it finds that 182 or more days have elapsed since the 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's age." MCL 712A.19b(3)(c)(i); *In re Trejo*, 462 Mich 341, 357-358; 612 NW2d 407 (2000). Although the trial court terminated her parental rights on this ground, respondent did not address it on appeal.

The primary factor in the minor child's removal was respondent's substance abuse. Indeed, the child came under the court's jurisdiction after respondent was arrested for prescription fraud, illegally purchased and used Vicodin, drove under the influence with the child, and ended up being treated for an apparent overdose. Thereafter, the Department provided respondent with services to treat her addictions and required her to remain sober as part of her reunification plan. But respondent was unable or unwilling to meet the plan's requirements.

From the inception of this case, respondent submitted several positive drug screens and missed others. As a result, she served nearly two months in jail for violating the terms of her probation. She tested positive for benzodiazepines for which she did not have a prescription, and, during another relapse, failed to contact the Department's workers for approximately two weeks. Linda Lundstrom, respondent's stepmother, said respondent admitted to her that she had smoked marijuana in the week before the dispositional hearing, which was about 18 months after the initial dispositional order. Given the evidence that respondent cycled in and out of sobriety, we cannot conclude that the trial court clearly erred when it found there was no reasonable likelihood that the conditions that led to the adjudication would be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i); *Trejo*, 462 Mich at 357-358.

The court may also terminate parental rights to a child if it finds by clear and convincing evidence that "[t]he 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," MCL 712A.19b(3)(g), or that "[t]here 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," MCL 712A.19b(3)(j).

Here, the trial court found that both the child's parents "have continuously failed to address their drug and alcohol abuse. Both parties have recent convictions for drug charges," and respondent "has failed to address her mental[-]health concerns. She is in a pattern of sobriety and relapse and her issues have placed the [minor] child in danger." The minor child would be "deprived [of] a normal home for a period exceeding 2 years, and [both parents] have failed to provide proper care and custody for the minor child[] and there is no reasonable expectation that they will be able to provide proper care within a reasonable time considering the [minor] child's age." Further, it found there was a reasonable likelihood that, given respondent's ongoing drug-related activity, "that the minor child [would] be harmed if he [was] returned to [respondent's] home." Although respondent successfully completed parts of her treatment plan, including an inpatient rehabilitation program and individual counseling, her tendency to relapse created an unreasonable risk of harm to the minor child and demonstrated an inability to provide him with proper care and custody. Accordingly, the trial court did not clearly err when it found termination of her parental rights justified under MCL 712A.19b(3)(g) and (3)(j).

Respondent argues that the trial court clearly erred in making these findings because there was no evidence that her drug use actually harmed the child. However, the statutory grounds do not require proof of actual harm. Under MCL 712A.19b(3)(c)(i), the trial court has the authority to terminate parental rights if the adverse conditions that led to a child's removal have not been addressed. Further, the plain language of MCL 712A.19b(3)(j) requires the court to determine objectively whether the status quo places a child at risk of future harm. See, e.g., *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012). Even though there was no evidence of physical harm to the minor child, it is doubtful that respondent was or would be capable of providing him with "proper care or custody," MCL 712A.19b(3)(g), so long as she continued to abuse controlled substances. Finally, respondent cannot state with certainty that the minor child has not been already harmed by her actions. Douglas Park, a clinical psychologist, testified that respondent's relapses could cause the child to have "separation issues" and "difficulty attaching to other adults", which problems are "linked with . . . relationship issues" and "personality disorders."

Respondent's assertion that DHS improperly proceeded against her based on "anticipatory neglect" is similarly inaccurate. The doctrine of anticipatory neglect recognizes that evidence of how a parent treats one child is evidence of how he or she may treat the other children. *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011). While the Department alleged that respondent tested positive for marijuana during the birth of a second child in 2011, respondent voluntarily placed that child in an adoptive home and there was no indication that the trial court relied on that information in these proceedings.

Respondent next argues that the trial court clearly erred when it determined that termination was in the child's best interests. This Court reviews for clear error the trial court's finding that termination is in the child's best interests. *In re Mason*, 486 Mich at 152.

Once the trial court determines that there is a statutory ground for termination, it must then determine whether a preponderance the evidence shows that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). To make that determination, "the court may consider 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 (internal citations omitted).

The minor child was removed after respondent put the child in danger by driving under the influence of Vicodin. While the child was in foster care with his paternal grandmother, respondent oscillated between sobriety and relapse. She even failed to contact the Department for about two-weeks after a relapse with "marijuana and alcohol." Although she "admitted herself into an inpatient program", she still had several positive drug screens and missed others without a satisfactory explanation. She also started to miss Alcoholics Anonymous and Narcotics Anonymous meetings during the period leading up to the dispositional hearing. Moreover, Park recommended termination because, in his view, respondent's continued drug use and psychological evaluation suggested that "the chance of relapse is very high for her." The potential for relapse, he stated, outweighed the bond respondent had because the child required "stability and permanence and . . . [he did not] believe that she [was] able to provide that for him." Respondent's substance abuse could create "separation issues" and "difficulty attaching to

other adults”, which are “linked with . . . relationship issues” and “personality disorders.” Eric Johnson, a Department foster care worker, also testified that the child was “doing really well in his placement”, “getting better with . . . disciplin[e] and taking verbal commands,” “current on his medicals and dentals and all of his shots,” and attended Head Start.

Respondent’s argument that the Department provided her with inadequate services misconstrues the purpose of the best-interests finding. “Once the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under [MCL 712A.19b(3)], the liberty interest of the parent no longer includes the right to custody and control of the children.” *Trejo*, 462 Mich at 355. In determining whether termination of parental rights is in the minor child’s best interests, therefore, the trial court does not seek to apportion blame, but to decide the best placement for the child.

Respondent also repeats her contention that termination was inappropriate because there was no evidence that she actually harmed the child, but the present and future interests of the minor child are the focus of the best-interests finding, not how he was treated in the past. Given respondent’s history of substance abuse, her failure to demonstrate an ability to remain sober after the minor child had been placed in foster care for nearly two years, and the minor child’s success in his current placement, we cannot conclude that the trial court clearly erred in finding that termination was in the child’s best interests.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Douglas B. Shapiro