

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 12, 2010

In the Matter of DARLING-SMITH/HAWKINS,
Minors.

No. 296090
Kent Circuit Court
Family Division
LC Nos. 08-050936-NA
08-050937-NA

In the Matter of S. C. HAWKINS, Minor.

No. 296093
Kent Circuit Court
Family Division
LC No. 08-050937-NA

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

PER CURIAM.

In Docket No. 296090, respondent mother appeals the termination of her parental rights to K. M. Darling-Smith and S. C. Hawkins under MCL 712A.19b(3)(c)(i), (g), and (l). In Docket No. 296093, respondent father appeals the termination of his parental rights to S. C. Hawkins under MCL 712A.19b(3)(c)(i), (g), and (l). For the reasons set forth below, we affirm.

Before it terminates a respondent's parental rights, a trial court must find that the petitioner established a statutory ground for termination by clear and convincing evidence, and that termination is in the children's best interests. MCL 712A.19b(5). We review these findings for clear error. MCR 3.977(K); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Further, we give due regard to the special ability of the trial court to judge the credibility of the witnesses who appear before it. MCR 2.613(C); *In re Fried*, 266 Mich App at 541.

We find no clear error. Pursuant to MCL 712A.19b(3)(c)(i), termination is appropriate when more than 182 days have passed since the court issued an initial dispositional order and the court finds that the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the parent will rectify these conditions within a reasonable time considering the child's age. Here, the conditions leading to adjudication included domestic

violence and substance abuse, both of which evidence a failure to provide proper care of the children. Well over 182 days elapsed between the initial disposition and the order terminating respondents' parental rights. The evidence showed that two additional domestic violence incidents occurred during the pendency of this case, and respondent father tested positive for alcohol, marijuana, and cocaine on numerous occasions. Moreover, both respondents tested positive for marijuana during the termination hearing. Though respondents denied domestic violence and substance abuse, the trial court did not find their denials to be credible, and chose instead to believe the above evidence to the contrary. The trial court has the best opportunity to judge the witnesses' credibility, and the court's conclusion is supported by the record. MCR 2.613(C); *In re Miller*, 433 Mich at 337.

We also hold that the trial court did not clearly err when it found grounds for termination pursuant to § 19b(3)(g), which provides that parental rights may be terminated when there is clear and convincing evidence that, regardless of intent, the parent failed "to provide proper care or custody for the child" and that there is no reasonable expectation that he or she will be able to do so within a reasonable time considering the child's age. A parent's persistent failure to gain control over a recurring problem is a ground for termination of parental rights under § 19b(3)(g). See *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996) (holding that the respondent's failure to adequately address a substance-abuse problem was ground for termination). A respondent's failure to comply with the court's order is also indicative of continuing neglect. *In re Trejo*, 462 Mich 341, 361 n 16; 612 NW2d 407 (2000).

Here, the court ordered respondents to cooperate with the agency and to refrain from drug and alcohol use. Nonetheless, there were two additional domestic violence incidents and numerous positive drug and alcohol screens through the pendency of this case, including both respondents' drug screens during the termination hearing. Respondents failed to benefit from the many services they received and respondent father continued to abuse drugs and alcohol and to act violently toward respondent mother. Notwithstanding this continued substance abuse and violence, respondent mother continued to live with respondent father. Grounds for termination were clearly established under § 19b(3)(g).

Respondents admitted that the court had terminated their rights to other children. However, respondent mother argues that this occurred eight years ago and should not be used as a basis for termination pursuant to § 19b(3)(l). When statutory language is not ambiguous, we apply the language as written and, here, the statute is unambiguous. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). It does not contain an exception for terminations that took place sometime prior to an adjudication and we decline to read such an exception into the statute. In any case, in light of respondents' continuing domestic violence and substance abuse problems, and the undisputed evidence that both respondents lost their parental rights to other children, the trial court did not clearly err when it found that all three statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich at 356-357.

The trial court also correctly found that termination of respondent father's parental rights is in his child's best interests.¹ "If the court finds that there are grounds for termination of

¹ Respondent mother does not challenge the trial court's best interests finding.

parental rights *and that termination of parental rights is in the child's best interests*, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5) (emphasis added). Determination of the child's best interest can be based on the record as a whole. *In re Trejo*, 462 Mich at 353. The existence of a bond between parent and child can be outweighed by other considerations in determining the best interests of children. See, e.g., *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008).

Respondent father asserts that his house is clean and adequately furnished, the children were not neglected, and he was appropriate with both children. However, as noted, evidence showed that respondent father continues to have substance abuse problems and he continues to deny those problems. It is unsafe for any child to be in his care and custody, particularly because he has experienced blackouts. And, despite continued denials, evidence shows that respondent father has been involved in a domestic violence incident every year since 2006. Moreover, respondent father never provided verification of employment, he missed numerous visits with the child, and he was incarcerated three times during the pendency of this case. The trial court correctly ruled that termination of respondent father's parental rights was in the child's best interests.

Finally, respondents urge us to overturn the trial court's decision because they allegedly did not receive a parent agency agreement until August 9, 2009, and they claim they did not know what they needed to do to regain custody of their children. The evidence contradicts respondents' position in both respects.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Henry William Saad