

STATE OF MICHIGAN
COURT OF APPEALS

In re BERBERIAN/GOMEZ, Minors.

UNPUBLISHED

July 26, 2016

No. 330571

St. Clair Circuit Court

Family Division

LC No. 13-000277-NA

Before: WILDER, P.J., and MURPHY and O'CONNELL, JJ.

PER CURIAM.

Respondent J. Berberian appeals as of right the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were proved by clear and convincing evidence and in finding that termination of respondent's parental rights was in the children's best interests. We disagree. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Termination of parental rights is appropriate under § 19b(3)(c)(i) if "[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . [that] [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." Respondent was adjudicated in January 2015, although he had already been participating in reunification services for a year by that time. The condition that led to respondent's

adjudication was physical violence. The evidence showed that respondent pleaded guilty to one count of child abuse, completed domestic violence and anger management classes, and attended counseling for a diagnosis of an intermittent explosive disorder. Nevertheless, respondent denied committing child abuse, which he claimed was predicated on “false allegations,” and denied having any anger management or mental health issues that needed to be addressed. Consequently, his participation in services to address the abuse issue was more an exercise in “going through the motions” than recognizing a need for improvement and working to make a change, and thus he did not benefit from the services. Considering respondent’s failure to benefit after having well more than a year to address the issues relating to child abuse, the trial court did not clearly err in finding that the condition that led to the adjudication continued to exist and was not likely to be rectified within a reasonable time considering the children’s ages.

The evidence also supports the trial court’s reliance on § 19b(3)(g), which permits termination where “[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.” Respondent did not provide proper care or custody for the children, who were living with an unfit mother. Respondent even testified that he tried to report the children’s mother to Children’s Protective Services (CPS) rather than take custody of the children or seek an appropriate caretaker. Respondent was provided with a multitude of services to address various issues relating to parental responsibilities. He failed to recognize that his limited income was insufficient to meet the family’s needs and took no steps to improve his situation. Respondent completed two sets of parenting classes, but did not appear to benefit from them because he continued to favor his son over his daughter, pitted the children against one another to induce his son to interact with him, and did not develop a strong bond with either child. In fact, there was evidence that the children had to be coaxed to attend visits. Respondent denied that his son had any developmental delays and opposed treating his attention deficit hyperactivity disorder because the child did not need to be in preschool. And as discussed in conjunction with § 19b(3)(c)(i), respondent made no progress with the issue of child abuse. The trial court did not clearly err in finding that respondent would not be able to provide proper care and custody within a reasonable time given the children’s ages.

Termination of parental rights is appropriate under § 19b(3)(j) if “[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.” The matter of child abuse and respondent’s failure to acknowledge and meaningfully address it supported termination under § 19b(3)(j). In addition, respondent refused to recognize his son’s special needs and thus was resistant to treating them. The trial court did not clearly err in finding that the children were likely to be harmed if placed in respondent’s home.

With respect to the trial court’s best-interests determination, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider such factors as “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 Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Although respondent complied with some aspects of his case service plan, he failed to benefit from services because he denied that he had any issues that needed to be addressed. That placed the children at a risk of harm because of respondent's history of child abuse. The children did not have a strong bond with respondent and had to be coaxed to participate in visits. During the visits, respondent favored one child over the other and had to resort to making his son jealous of his daughter to get his son to interact with him. Respondent also refused to recognize his son's special needs or his own inability to meet the children's material needs. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder

/s/ William B. Murphy

/s/ Peter D. O'Connell