STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 12, 2016

In re HOWARD/MURPHY, Minors.

No. 330586
Calhoun Circuit Court
Family Division
LC No. 2014-001484-NA

Before: JANSEN, P.J., and FORT HOOD and BOONSTRA, JJ.

PER CURIAM.

Respondent mother (respondent) appeals as of right the trial court order terminating her parental rights to minor children AJH, EAH, and LDM under MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if returned to parent).[1] We affirm.

Respondent argues that the trial court erred in finding statutory grounds for termination of her parental rights. We disagree.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). This Court reviews the trial court's determination for clear error. *Id*. "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). Further, this Court gives "deference to the trial court's special opportunity to judge the credibility of the witnesses." *Id*.

With respect to MCL 712A.19b(3)(c)(*i*), termination is proper where "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." This Court has previously held that termination was proper under

[1] The trial court declined to terminate under MCL 712A.19b(3)(c)(*ii*) (failure to rectify other conditions causing the child to come within the court's jurisdiction).

MCL 712A.19b(3)(c)(*i*) where "the totality of the evidence amply support[ed] that [the respondent] had not accomplished any meaningful change in the conditions" that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Here, the trial court entered the initial dispositional order on September 2, 2014. The termination hearing was held on November 6, 2015. Thus, more than 182 days had elapsed since the issuance of the initial dispositional order. See MCL 712A.19b(3)(c)(*i*).

The conditions that led to adjudication were respondent's homelessness, the fact that she stayed with the children at the maternal grandmother's house, where a known sex offender resided, respondent's substance abuse, and respondent's lack of compliance with Children's Protective Services (CPS). At the time of the termination hearing, respondent was residing with the maternal grandmother and was looking for housing. Respondent missed 56 out of 59 drugs screens. She tested negative once throughout the entire case, and the one negative screen was not a random screen. Moreover, respondent failed to engage in mental health counseling. Although respondent attended her intake appointment, she failed to follow through with any appointments and was dropped from counseling. Respondent also failed to contact her caseworker on a regular basis. Even considering that respondent did participate in some services, the caseworker testified that respondent did not participate in all services and never benefitted from services or addressed the root of her issues. Given these facts, the totality of the evidence amply supported that respondent failed to accomplish any meaningful change in the conditions that led to adjudication. See *Williams*, 286 Mich App at 272.

Further, there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages. Respondent's nonparticipation was one of the conditions that led to adjudication, and she failed to meaningfully address her issues during the pendency of this case, which had been open for almost 17 months. The caseworker testified that she did not think it was possible for respondent to be in a position to achieve reunification within six months, and "the Legislature did not intend that children be left indefinitely in foster care." See *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). On this record, there was not a reasonable likelihood that respondent would rectify the conditions within a reasonable time. Therefore, we are not left with a definite and firm conviction that a mistake has been made, see *HRC*, 286 Mich App at 459, and the trial court did not clearly err in finding that there was clear and convincing evidence to establish this statutory ground, see *VanDalen*, 293 Mich App at 139; *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999) ("To be clearly erroneous, a decision must strike [this Court] as more than just maybe or probably wrong . . . .") (quotation marks and citations omitted).

Although only one ground needs to be established, we have also reviewed the trial court's findings that MCL 712A.19b(3)(g) and (j) were established and find that the trial court did not clearly err. Termination is appropriate under MCL 712A.19b(3)(g) when the court 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." And, termination is proper under MCL 712A.19b(3)(j) when the trial court finds by clear and convincing evidence 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." The likelihood of harm to the child under MCL 712A.19b(3)(j) may be physical or

emotional harm, *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011), and a parent's noncompliance is evidence of the parent's failure to provide proper care and custody and evidence that the child will be harmed if returned to the parent's home, see *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014).

The facts of this case supported the existence of these statutory grounds because the record showed respondent's noncompliance, inappropriate parenting skills during parenting time, history of substance abuse and poor decision making, failure to comply with mental health counseling, and failure to follow through with AJH's counseling after she was sexually abused. See MCL 712A.19b(3)(g) and (j). With regard to MCL 712A.19b(3)(g), there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the ages of the children because, as discussed above, respondent failed to participate in, or benefit from, services during the 17-month pendency of the case and failed to communicate regularly with her caseworker. See MCL 712A.19b(3)(g).

In reaching our conclusions, we reject respondent's argument on appeal that she was "clean for a significant period of months," and that she should have been given more time to address her issues. The maternal grandmother testified that, to the best of her knowledge, respondent did not engage in illegal drug use since living with her, but she was not sure whether respondent was currently using marijuana. Given that respondent was not recently drug tested, there was no evidence to confirm the maternal grandmother's belief that respondent had been clean. Previously, respondent missed 56 out of 59 screens and only tested negative once during the entire case. Moreover, the trial court expressly considered the issue of providing respondent more time by asking the caseworker, "Why not give Mother more time?" The caseworker responded by testifying that respondent failed to comply with any counseling whatsoever, which would help address the root of her issues, and that respondent indicated that she did not think marijuana was an issue and had not been clean at all. The caseworker further testified that more time would not show any more benefit from respondent and would only "give the girls more time in limbo without permanency." Ultimately, the trial court found that more time would not benefit respondent. Given respondent's history throughout the case, this finding by the trial court was not clearly erroneous. See *HRC*, 286 Mich App at 459.

Respondent also argues on appeal that termination was not in the minor children's best interests. We disagree.

"The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *White*, 303 Mich App at 713. This Court reviews the trial court's decision regarding the children's best interests for clear error. *Id*. The minor child—not the parent—is the focus of the best-interest stage. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). In making its determination, the trial 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 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history

with the child, the children's well-being while in care, and the possibility of adoption." *White*, 303 Mich App at 714.

Here, the court properly concluded by a preponderance of the evidence that all three children's best interests individually favored termination. All three children required a home where they would receive adequate care and supervision, which respondent demonstrated that she was unable or unwilling to provide. LDM previously missed 33 ½ days of school under respondent's care. When placed with his father, LDM was doing well in general and in school. Moreover, the record supported the court's finding that termination would provide LDM with stability. While AJH and EAH experienced psychological issues and acted out in foster placement, their individual best interests still favored termination. Both AJH and EAH were in counseling while in placement, and the counseling would continue after termination. The caseworker was worried that the counseling would not be continued if EAH and AJH were returned to respondent's care, and respondent previously failed to follow through with counseling for AJH after she was sexually abused. Moreover, the caseworker planned for EAH and AJH to be placed together, AJH indicated that she was very happy in her current placement, and the caseworker did not "believe that [AJH] would continue to be in a traumatic situation." EAH's and AJH's best interests were in a placement where they would receive adequate counseling and care, and they deserved stability and permanence. Given these facts, the trial court's finding that termination was in the children's individual best interests does not leave us with a "definite and firm conviction that a mistake has been made." See *HRC*, 286 Mich App at 459. Therefore, the trial court did not clearly err in finding that termination was individually in each child's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Mark T. Boonstra