

STATE OF MICHIGAN
COURT OF APPEALS

In re SCOTT/ODOM, Minors.

UNPUBLISHED
June 28, 2016

No. 330790
Cass Circuit Court
Family Division
LC No. 14-000003-NA

In re ODOM, Minors.

No. 330791
Cass Circuit Court
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Before: MURPHY, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

In docket no. 330790, respondent-mother appeals as of right the November 18, 2015 order terminating her parental rights to the minor children AS,¹ GN, and GV, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the child will be harmed if returned to the parent). In docket no. 330791, respondent-father appeals as of right the November 18, 2015 order terminating his parental rights to GN and GV under MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Mother's substance abuse, domestic violence, and criminal behavior began many years before the initiation of these proceedings. She described herself as having been a "gangbanger" between the ages of 20 and 30. Throughout that time she smoked crack and left her three oldest children in the care of her mother. Her criminal record includes convictions for check fraud, larceny, and drug possession. She has been incarcerated multiple times. Likewise, father's violent behavior and criminal activity long predate this case. His criminal history includes a

¹ AS's father is not a party to this case.

1988 conviction for beating a woman with a crowbar and a 1989 conviction for reckless homicide after shooting a woman in the face. Father perpetrated domestic violence on his prior wives in the 1990s and he beat a coworker in 2000.

The Department of Health and Human Services (DHHS) characterized mother and father's relationship with each other as unhealthy and unsafe, and the record bears this out. On October 30, 2012, police were dispatched to mother's residence after father grabbed her by the throat and pushed her to the floor while she was holding GN. On November 15, 2013, police were again sent to mother's home after father beat her. Father pleaded guilty to a domestic violence charge arising from that incident. Mother continued her drug use. She tried to obtain prescription medication under false pretenses and she stole gasoline. On January 10, 2014, police found her in possession of marijuana and prescription medication for which she lacked prescriptions. Mother pleaded guilty to charges arising from that incident. The trial court removed AS and GN the same day. GV was born on January 16, 2014, and was removed the next day.

Mother and father participated in services addressing the barriers to reunification. Mother showed progress and AS and GN were returned to her custody on December 2, 2014. However, mother failed to disclose to the trial court or to any service workers that she was to be sentenced on December 29, 2014, for a shoplifting conviction arising from her August 17, 2014 theft of goods from a Walmart. Mother was sentenced to 270 days in jail and the minor children were again removed from her care. Father participated in services in preparation for being GN and GV's primary caretaker. However, father failed to control his violent impulses, at various times lashing out at service providers and the minor children. His parenting skills were inadequate. Although mother participated in services while in jail and in the Kalamazoo Probation Enhancement Program ("KPEP")—where she resided for several weeks after her release from jail—she admittedly failed to rectify her criminal mindset and she persistently attempted to manipulate the system rather than overcome the barriers to reunification.

On November 18, 2015, following a termination hearing, the trial court rendered an oral opinion regarding the DHHS's petition to terminate mother and father's rights. The trial court found that there were multiple instances of dishonesty regarding mother and father. The trial court found that mother was lying when she stated that she did not think in December 2014 that she would be incarcerated for her theft from Walmart. The trial court found that mother and father minimized the domestic violence between them and found that their claims that father accidentally hit mother in November 2013 were not credible.

The trial court found that termination of mother and father's parental rights was proper under MCL 712A.19b(3)(c)(i). The trial court found that mother and father were offered an "amazing" amount of services. However, mother had an extensive history of drug use and criminal behavior, which continued throughout the case. And, mother minimized the domestic violence. The trial court found that mother had not rectified the conditions that led to adjudication. The trial court found that father continued his violent behavior throughout the proceedings and minimized domestic violence, which showed that he did not progress. The trial court found that termination of mother and father's rights was proper under MCL 712A.19b(3)(g) and (j) because throughout the proceedings mother and father minimized domestic violence and they lacked accountability. The trial court found that, given mother and

father's lack of accountability and their minimization, their behavior was unlikely to change. The trial court found that there was a high chance that mother would relapse into drug use. The trial court found that mother and father engaged in criminal thinking.

The trial court also found that termination was in the minor children's best interests because they needed caregivers who could nurture them and provide them with safety and permanency. They needed a home not disrupted by drug use, domestic violence, or criminal behavior. The children needed to be without fear that their caregiver would be arrested.

The court entered a written order reflecting its ruling on November 18, 2015. These appeals ensued.

II. ANALYSIS

Respondents both argue that the trial court clearly erred in finding statutory grounds for termination under MCL 712A.19b.

"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). We review the trial court's determination of statutory grounds for clear error. *Id.* A trial court clearly errs when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

The trial court found that termination of mother and father's parental rights was proper under MCL 712A.19b(3)(g) because throughout the proceedings they minimized the domestic violence between them, because mother had not adequately addressed her substance abuse, and because of father's continued criminal behavior. These findings were not clearly erroneous.

Termination of parental rights is proper under MCL 712A.19b(3)(g) 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."

For years, mother's substance abuse prevented her from providing her children with proper care and custody and she did not rectify this problem. Mother tested positive for cocaine and opiates while she was pregnant with GV. When her older son wrote her a letter in March 2014 regarding her drug use, she called him a "whiner" in response. From January through June 2014, mother tested positive for opiates and for prescription medication for which she lacked prescriptions. She entered Family Treatment Court in May 2014 but withdrew approximately one month later because she did not like the oversight and she was not ready to stop taking pain medication. Beginning in late August, mother began testing negative for illegal drugs. And, she was drug-free from that time until termination of her parental rights. However, she was incarcerated and in KPEP for the majority of the time when she was drug-free. These were controlled environments in which it was easier for mother to abstain from drugs than it would have been otherwise. Furthermore, even after incarceration in 2015 and participation in KPEP, mother told a caseworker on July 20, 2015, that she could not "get past her criminal thinking" Essentially, mother was only drug-free for approximately four months in late 2014 while

outside of a controlled environment, whereas she had substance-abuse issues for well over a decade before that, and the problem persisted well after the minor children were removed from mother's custody in January 2014.

On this record, the trial court did not clearly err in finding that mother's substance abuse prevented her from providing proper care and custody. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Furthermore, there was no reasonable likelihood that she would rectify this problem within a reasonable time. *Id.* Mother was often uncooperative with the DHHS and was reluctant to provide the agency with necessary information. During counseling, mother denied that she had a drug problem and she did not understand why she needed counseling. Although mother participated in drug treatment services while in KPEP, she focused on ways to manipulate the system and did not benefit from the services. Testimony showed that further services—rather than helping mother—could merely render her more adept at manipulation.

Like her drug use, mother's involvement with domestic violence had persisted for years. She stated at a psychological evaluation that the fathers of her older children were abusive. Besides the October 2012 and November 2013 incidents discussed above, there is evidence of further violence between mother and father, and evidence that this violence had a harmful influence on the minor children. GN hit himself in the head and stated that it was because he saw father hit mother. AS hit other children at school and stated that she did so because father hit mother and because mother "whoops" her. Testimony showed that AS exhibited behavior typical of a child who had experienced abuse. Mother was hostile and argumentative with service workers. Despite services addressing domestic violence and its impact on children, mother did not understand its adverse effects. For these reasons, mother's involvement in domestic violence prevented her from providing proper care and custody. And, there was no reasonable likelihood that she would rectify this barrier within a reasonable time. She insisted throughout the case that father hit her accidentally on November 15, 2013, despite abundant evidence that he intentionally abused her. Mother testified that she had no safety plan for handling father. She was dishonest with the DHHS regarding the status of her relationship with father, evidence shows she was inclined to enter into relationships with violent men, and she herself was violent toward the children.

Additionally, mother's criminal behavior supported termination under MCL 712A.19b(3)(g). Mother's criminal record is lengthy, listing approximately one dozen offenses since 1994 until termination of her parental rights. She committed theft in August 2014, which was after the children were removed, and which caused their re-removal in December 2014. And, there was no reasonable likelihood that she would rectify her criminal behavior within a reasonable time. While in KPEP, and even after her release from KPEP, mother was manipulative and dishonest with service workers and the trial court. She admitted while in KPEP that her criminal mindset was not cured. Mother's frequent incarcerations prevented her from providing proper care and custody. She was incarcerated on multiple occasions since 1995, and she was in jail for several months during these proceedings. At termination, mother had an outstanding warrant in Indiana and another in Michigan, making it likely that she would be incarcerated again in the future.

In sum, for all of the above reasons, the trial court did not clearly err in terminating mother's parental rights under MCL 712A.19b(3)(g). *In re Moss*, 301 Mich App at 80.

With regard to father, as discussed above, his violent behavior began at least as early as 1988 and persisted throughout his life. Father exhibited his violent temperament during the pendency of the proceeding. He yelled at a caseworker in August 2014 and became enraged in January 2015 while participating in drug screenings. At visits in 2015, father became increasingly irritable with the minor children. He raised his voice at them and at aides. He screamed at GN during a visit at a park. He made threatening remarks to service workers about his violent past and how he used to carry a gun. Evidence shows that he vandalized the home of mother's oldest daughter. Father backed a caseworker up against a wall in July 2015. Furthermore, there was no reasonable likelihood that father would rectify his violent behavior within a reasonable time. A psychologist who evaluated father concluded that he was "very volatile" and would "tend to minimize and deny the impact" of domestic violence. Father engaged in counseling for emotional stability and domestic violence, but his violent behavior continued. Indeed, it worsened. Father was evasive to services workers regarding the facts pertaining to his violent past and he consistently minimized the domestic violence between him and mother. Throughout the proceedings he insisted that he hit mother accidentally in November 2013. Despite the adverse impact his verbal aggression during visits was having on the minor children, father told the DHHS that he would not change anything about his parenting.

As the trial court found, father's criminal behavior prevented him from providing proper care and custody. He engaged in crime since the late 1980s. He was incarcerated in Indiana on three separate occasions for a total of approximately eight years for driving without a valid license. Father was arrested in February 2015 for failure to pay child support, and he was arrested in March 2015 for, again, driving without a license. Father clearly failed to rectify his criminal behavior. And, there was no reasonable likelihood that he would rectify his behavior within a reasonable time. Father displayed a pattern of refusal to conform his behavior to the confines of the law. Evidence showed that father committed a felony every time he drove an automobile, yet he continued to drive. At the time of the termination hearing he was awaiting sentencing in Indiana for driving without a license, and he faced a sentence of one to six years' imprisonment. He neglected to establish a safety plan for how GN or GV would be cared for if he was incarcerated. Father consistently minimized his criminal behavior and showed no indication that he would rectify it within a reasonable time.

Father exhibited poor parenting skills throughout the proceedings, which further supported termination under MCL 712A.19b(3)(g). Father was often listless and inattentive at visits. Sometimes he fell asleep. He frequently confined GV to a walker, which hindered her development. Although testimony showed that at times he exhibited "beautiful" interactions with the children, there is also abundant evidence of his poor parenting. He had trouble handling GN and GV together, and he relied on case aides to provide discipline and care. And, there was no evidence to show a reasonable likelihood that he would improve his parenting skills within a reasonable time. He was defensive when the DHHS gave him parenting advice, and he did not implement suggestions. His increasing hostility and aggression, discussed above, prevented visits from being expanded so as to determine whether father could parent the children without supervision.

Father argues that the trial court erred in terminating his rights because he had suitable housing and the DHHS failed to investigate his housing. We find no indication that the trial court terminated father's rights for lack of suitable housing. Moreover, DHHS investigated

father's living arrangement in April and May 2015 and determined that it was unsuitable for the minor children. Although the DHHS did not visit father's house after May, after that visit, DHHS, pursuant to policy, submitted a request to Indiana to determine whether father's home was suitable. Indiana officials determined that the home was not suitable. Thus, father failed to provide the minor children with suitable housing. The fact that he was unable to make his house suitable after three investigations indicates that there was no reasonable likelihood that he would provide suitable housing within a reasonable time.

For all of the reasons set forth above, we are not left with a definite and firm conviction that the trial court erred in terminating father's rights to GN and GV pursuant to MCL 712A.19b(3)(g). *In re Mason*, 486 Mich at 152.

Given that the trial court did not err in terminating both father and mother's parental rights under MCL 712A.19b(3)(g), we need not address the trial court's additional grounds for termination. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

Next, both father and mother argue that the trial court erred in finding that termination was in the children's best interests.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). When considering best interests, the focus is on the child rather than the parent. *In re Moss*, 301 Mich App at 87. "The trial court should weigh all the evidence available to determine the child's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). 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*, 297 Mich App at 41-42 (citations omitted). Other factors that the trial court can consider include how long the child lived in foster care or with relatives, the likelihood that "the child could be returned to [the] parent's home within the foreseeable future, if at all[.]" and a parent's compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). We review the trial court's determination of best interests for clear error. *In re Moss*, 301 Mich App at 80.

The trial court found that termination of mother and father's rights was in the children's best interests because they needed caregivers who could nurture them and provide them with safety and permanency. This finding was not clearly erroneous.

Mother makes no argument regarding the trial court's findings on the children's best interests. Moreover, we note that the record is replete with evidence showing the destructive and harmful influence mother's involvement in domestic violence and denial of father's domestic violence had on the minor children. One child stated that mother "whoops" her and children exhibited anti-social behavior. However, their behavior improved while in foster care, thus indicating "the advantages of a foster home over the parent's home[.]" *In re Olive/Metts*, 297 Mich App at 42. Furthermore, mother's criminal behavior, involvement with drugs and domestic violence, and incarcerations rendered her unable to provide the minor children stability and permanency. Given mother's failure to rectify her lifestyle, it is unlikely that the minor children

could ever be returned to her care. See *In re Frey*, 297 Mich App at 248-249. The trial court did not clearly err in finding that termination of mother's rights was in the minor children's best interests. *In re Moss*, 301 Mich App at 80.

Father's engagement in domestic violence and his violent behavior in general caused GN to behave poorly after visits. GN feared father's violent and angry behavior. Evidence also showed that GV was afraid of father, had no bond with him, and was upset by his behavior. In December 2014, father asked mother to marry him despite their relationship being harmful to the minor children. The DHHS reported that father's parenting regressed after the children were removed in December 2014. The DHHS reported that in February 2015 father's emotions were unstable, and he did not engage with the children at visits. At a July 2015 visit, father was rigid when meeting the children and they showed no joy in seeing him. Testimony showed that GN needed a caregiver to provide him with a good model for emotional control and that GV needed a permanent and nurturing caregiver. Given father's violent behavior and frequent incarcerations, he could not provide the children with the care they needed. In contrast to father's detrimental effects on the children, they did well in foster care, their behavior improved, and their foster caregiver expressed willingness to adopt them. The lack of bond between father and the children, the advantages of the foster home over father's custody, and the permanency that their foster parent offered the children supported the trial court's finding that termination was in the children's best interests. See *In re Olive/Metts*, 297 Mich App at 41-42.

In addition, father's lack of suitable housing, discussed above, supported a finding that termination was in the children's best interests. See *In re Trejo*, 462 Mich 341, 364; 612 NW2d 407 (2000). Father's likelihood of facing future incarceration further supported the trial court's finding regarding best interests. Indeed, because of the likelihood that father would be incarcerated, his persistence in driving without a license, and his failure to properly address domestic violence, it is unlikely that GN or GV could ever be returned to his care. See *In re Frey*, 297 Mich App at 248-249. For the above reasons, the trial court did not clearly err in finding that termination of father's rights was in GN and GV's best interests. *Moss*, 301 Mich App at 80.

Affirmed.

/s/ William B. Murphy
/s/ Henry William Saad
/s/ Stephen L. Borrello