STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED January 12, 2012
In the Matter of A. N. PERRY, Minor.	No. 303729 Ionia Circuit Court Family Division LC No. 2005-000063-NA
In the Matter of A. N. PERRY, Minor.	No. 303730 Ionia Circuit Court Family Division LC No. 2005-000063-NA
In the Matter of A. TAYLOR, Minor.	No. 303731 Ionia Circuit Court Family Division LC No. 2005-000062-NA

Before: HOEKSTRA, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondent H. Tunney, the mother of AT and AP, and respondent M. Perry, the father of AP, appeal as of right the trial court's orders terminating their parental rights to the children at the initial dispositional hearing.[1] The trial court terminated Tunney's parental rights pursuant to MCL 712A.19b(3)(d) and (j), and terminated Perry's parental rights pursuant to MCL 712A.19b(3)(a)(*ii*) and (j). We affirm in all three appeals.

I. FACTS & PROCEEDINGS

[1] The trial court also terminated the parental rights of the father of AT, but he is not a party to this appeal.

Tunney had custody of both children when the Department of Human Services became involved in 2006 because Tunney was unemployed, had a substance abuse problem, lacked housing, and had difficulty managing her bipolar disorder. Tunney agreed to place the children in a limited guardianship with her sister.

By 2010, Tunney had secured stable employment in the oil and gas industry, but she was required to work in various southern and western states for several weeks at a time. Her typical schedule required her to work six to eight weeks on site out of state, but then allowed her to return to Michigan for two weeks. Because of her schedule, she did not maintain regular visits with the children or participate in services in Michigan. Despite being gainfully employed, Tunney contributed little to the children's support.

In September 2010, petitioner, the lawyer and guardian ad litem for the children, filed a petition requesting that the trial court both assume jurisdiction over the children and terminate the parental rights of Tunney and the children's fathers. The terms of the guardianship required Tunney to obtain employment, find housing, and obtain treatment for her substance abuse problem. She was also required to pay support of $20 a week, visit the children twice a week, and call them daily. Tunney did not comply with the visitation and contact requirements of the treatment plan, and her payment of child support was sporadic. In March 2010, the trial court suspended visits at the recommendation of the children's counselors because it was in their best interests to terminate all contact with Tunney. The guardianship was to continue until Tunney could provide a drug-free home, had completed a parenting course, and the children's counselors and Tunney agreed that the guardianship could be terminated. Petitioner requested that the trial court terminate Tunney's parental rights at the initial dispositional hearing because Tunney had failed to comply with all the terms of the guardianship.

Petitioner also requested that Perry's parental rights be terminated because he had not seen AP since the summer of 2006, and neither the child nor her guardian had had any contact with him since then. Perry did not voluntarily provide any child support, but some support was provided through non-voluntary garnishment of Perry's unemployment compensation between June 2008 and August 2010.

The trial court found that it had jurisdiction over the children after an adjudication hearing on March 9, 2011. The trial court found that jurisdiction was proper pursuant to MCL 712A.2(b)(1), (3), and (5), based on the fathers' abandonment of the children, and based on Tunney's failure to comply with the terms of the limited guardianship agreement, failure to regularly pay child support for at least two years, and had not regularly visited the children for two years. The disposition and termination hearing was held on April 21, 2011. After the hearing, the trial court found termination of Tunney's parental rights was warranted under §§ 19b(3)(d) and (j), and that termination of Perry's parental rights was warranted under §§ 19b(3)(a)(*ii*) and (j). Lastly, the trial court found that termination of respondents' parental rights was in the children's best interests.

II. STANDARDS OF REVIEW

A petitioner is required to establish a statutory ground for jurisdiction by a preponderance of the evidence. *In re Utrera*, 281 Mich App 1, 16; 761 NW2d 253 (2008); MCR 3.972(C)(1).

We review the trial court's decision to exercise jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

A petitioner is required to prove a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once a statutory ground for termination has been established, the trial court "shall order termination of parental rights" if it finds that "termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5). The trial court's findings regarding the existence of a statutory ground for termination and a child's best interests are both reviewed for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich at 152. Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

III. DOCKET NO. 303729

A. ABANDONMENT

Respondent Perry argues that the trial court erred in finding that § 19b(3)(a)(*ii*) was established by clear and convincing evidence. We disagree.

Parental rights may be terminated pursuant to § 19b(3)(a)(*ii*) if "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period."

Although Perry does not dispute that he last saw AP in 2006, he argues that the evidence did not support a finding that he deserted his child because he provided support for her through his unemployment compensation, he did not believe that he was allowed to visit the child under the terms of the limited guardianship, and he knew that the child was being safely cared for by the child's aunt. These reasons do not establish that the trial court clearly erred in finding that § 19b(3)(a)(*ii*) was proven by clear and convincing evidence. It was undisputed that Perry had not provided any support for AP since June 2010. The only form of support AP previously received from Perry was through non-voluntary garnishment of his unemployment compensation. Further, the fact that Perry knew that AP had been placed in a limited guardianship where she was being properly cared for does not change the fact that Perry had no contact with her since 2006. Further, Perry made no attempt to obtain custody or maintain a relationship with AP since 2006. Moreover, Perry made no attempt to request any visitation rights when the guardianship was initially established, or to assert any parental rights thereafter. The trial court did not clearly err in finding that Perry deserted the child for 91 or more days without seeking custody during that period.

Perry's reliance on MCL 712A.2(b)(1) or (2) in support of his argument that the ground for termination set forth in § 19b(3)(a)(*ii*) was not established by clear and convincing evidence is misplaced. Those subsections concern only the trial court's jurisdiction over the child, which

is a prerequisite to a finding that statutory grounds for termination exist. Nevertheless, even assuming Perry challenges the grounds for jurisdiction pursuant to MCL 712A.2(b)(1) on appeal, he does not challenge the trial court's jurisdiction pursuant to §§ 2(b)(3) and (5). In this case, the trial court found that it had jurisdiction over the minors based on §§ 2(b)(1), (3), and (5). The trial court found jurisdiction was proper pursuant to §§ 2(b)(3) and (5) because of Tunney's failure to comply with the terms of the guardianship. Accordingly, we need not address whether the trial court properly exercised jurisdiction on the basis of Perry's actions because its determination that jurisdiction was proper based on Tunney's actions is unchallenged. The trial court was not required to establish jurisdiction with respect to both parents. *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2002).

B. REASONABLE LIKELIHOOD OF HARM

Perry also argues that the trial court erred in finding that § 19b(3)(j) was established by clear and convincing evidence. We disagree.

Initially, because termination need only be supported by a single statutory ground, *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991), and because we have concluded that the trial court did not clearly err in finding that § 19b(3)(a)(*ii*) was established, any error in relying on § 19b(3)(j) as an additional statutory ground for termination would be harmless. Nonetheless, the evidence supports the trial court's finding that § 19b(3)(j) was established.

Parental rights may be terminated under § 19b(3)(j) when "[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 trial court did not find that AP was reasonably likely to be physically harmed if returned to Perry's home, but found that she was likely to be emotionally harmed. AP was approximately two years old when she was placed in her aunt's care. Perry had not had any contact with her for more than five years since then. AP did not know anything about Perry, possibly other than his name. There was clear and convincing evidence that AP was already experiencing psychological distress because of the possibility that her custodial arrangement might be disturbed. It was reasonably likely that she would be further emotionally harmed if her custodial relationship was severed with her aunt, the only person she had known as a custodial parent, and she was returned to Perry, whom she did not know and had not seen since 2006. The trial court did not clearly err in finding that termination of Perry's parental rights was warranted under § 19b(3)(j).

C. BEST INTERESTS

Perry also argues that the trial court erred in finding that termination of his parental rights was in AP's best interests. We disagree.

There was clear and convincing evidence that AP was experiencing psychological problems because of the lack of permanency in her custodial situation. The trial court did not clearly err in concluding that prolonging that lack of permanency, and thereby continuing the attendant psychological effects caused by that situation, so that Perry could attempt to establish a relationship with a child he had made no effort to contact for more than five years was not in AP's best interests. Moreover, as the trial court noted, there was no reasonable expectation that

Perry would even be able to establish a relationship with AP and work toward reunification in the immediate future. The trial court balanced AP's need for permanency against "the need for parents to try to continue being parents," and concluded that termination of Perry's parental rights was in AP's best interests. Accordingly, we conclude that the trial court's best interests decision was not clearly erroneous.

IV. DOCKET NOS. 303730 AND 303731

A. JURISDICTION

Respondent Tunney argues that the trial court erred in finding that a statutory basis for jurisdiction existed under MCL 712A.2(b)(3) and (5).

Initially, we reject petitioner's argument that this issue is not properly before this Court. Because Tunney's parental rights were terminated at the initial dispositional hearing, the trial court's entry of the initial dispositional order terminating her parental rights was her first opportunity to appeal the jurisdictional decision. MCR 3.993(A). This Court has jurisdiction to review both the trial court's jurisdictional decision and its dispositional decision terminating parental rights. See *In re SLH*, 277 Mich App 662, 668-669 n 13; 747 NW2d 547 (2008).

The trial court found that it had jurisdiction over the children under MCL 712A.2(b)(3) and (5) because of Tunney's actions, but also found that jurisdiction existed under MCL 712A.2(b)(1) because of the fathers' abandonment of the children. The trial court was only required to find a single statutory basis for jurisdiction, and it was not required to establish jurisdiction with respect to each parent. *In re CR*, 250 Mich App at 202-203. Tunney does not address the trial court's determination that jurisdiction also existed under § 2(b)(1). Her failure to challenge the trial court's finding that jurisdiction existed under § 2(b)(1) precludes appellate relief with respect to the question of jurisdiction. Regardless, the trial court did not clearly err in finding that jurisdiction also existed under § 2(b)(3). That subsection provides that a court has jurisdiction over a child "[w]hose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the juvenile."

Tunney focuses on the requirements of the initial guardianship plan, which required that she establish a drug-free household and follow the counselors' recommendations. Tunney fails to acknowledge that the plan was amended in 2007 to require that she establish parenting time, set up income-withholding orders for the children's support, and participate in family counseling with the children. The trial court did not clearly err in finding that Tunney did not comply with these latter requirements. The evidence showed that Tunney had not regularly visited the children since 2007. The irregular and sporadic visitation caused the trial court to enter an order in 2010 suspending further visitation at the recommendation of the children's therapists. Tunney disingenuously argues that she complied with the trial court's visitation orders because she had not visited the children since that order was entered. Tunney's argument ignores the fact that the order was entered because she had already failed to comply with the parenting time requirement of the guardianship plan. Tunney also argues that she was not able to comply with the family counseling requirement because the children's therapists agreed that the children were not ready for family counseling. Again, however, it was Tunney's failure to maintain a regular

relationship with the children that was the reason they were not ready to move toward reunification through family counseling. Further, although Tunney had been working for more than a year, she had not made arrangements to pay regular support for the children.

The trial court did not clearly err in finding that Tunney had substantially failed to comply with the terms of the limited guardianship agreement, thereby establishing a basis for jurisdiction under § 2(b)(3). Because a statutory ground for jurisdiction existed under § 2(b)(3), it is unnecessary to consider whether jurisdiction was also established under § 2(b)(5). See *In re SLH*, 277 Mich App at 669 (trial court properly exercises jurisdiction if at least one statutory ground for jurisdiction contained in MCL 712A.2(b) is proven).

B. STATUTORY GROUNDS FOR TERMINATION

Tunney argues that the trial court clearly erred in finding that termination of her parental rights was warranted under MCL 712A.19b(3)(d), which permits termination under the following circumstances:

> The child's parent has placed the child in a limited guardianship under section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

Termination of parental rights is appropriate under § 19b(3)(d) if the respondent fails to substantially comply with a limited guardianship plan without a "legally sufficient or substantial reason," and the noncompliance results in a disruption of the parent-child relationship. *In re Utrera*, 281 Mich App at 22.

The trial court did not clearly err in finding that Tunney failed to substantially comply with the limited guardianship plan, primarily because she had not fully participated in necessary counseling. While Tunney had rectified her substance abuse and employment issues, it was clearly apparent from both the history of this case and Tunney's psychological evaluation that to enable her to reestablish a relationship with the children, counseling was critical for her to understand the problems in her relationship with the children, including the absence of a consistent bond and the effect on the children of not maintaining regular parenting time. Tunney's "deplorable" visitation record led to a disruption of the parent-child relationship because it caused the trial court to suspend visitation at the recommendation of the children's therapists. Thus, the trial court did not clearly err in finding that Tunney's parental rights should be terminated under § 19b(3)(d).

Furthermore, the trial court also found that Tunney's parental rights should be terminated under § 19b(3)(j) and Tunney has not challenged that determination. Because termination of parental rights need only be supported by a single statutory ground, *In re McIntyre*, 192 Mich App at 50, Tunney's failure to challenge the trial court's findings with respect to § 19b(3)(j) precludes appellate relief with respect to the existence of a statutory ground for termination.

C. BEST INTERESTS

Tunney lastly argues that termination of her parental rights was not in the children's best interests. We disagree. The children had been in a stable home for more than five years, during which time Tunney had not made any serious effort to regain custody. Tunney conceded that she was not in a position to immediately regain custody, and her plans for doing so and to repair her relationship with her children were not realistic. The children did not want their placement disrupted, and the uncertainty over their situation was affecting them emotionally. It was not improper for the trial court to weigh the permanence and stability the children would have with their aunt against the continued uncertainty that would result from allowing Tunney to maintain her parental rights. See *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

Although Tunney asserts that her parental rights should not be terminated because she can now provide financial support for the children, as petitioner points out, our Supreme Court has held that a parent's support obligation is independent from the retention of parental rights. Therefore, a parent's support obligation may continue even after parental rights are terminated. *In re Beck*, 488 Mich 6, 14-16; 793 NW2d 562 (2010).

Tunney has not shown that the trial court clearly erred in finding that termination of her parental rights was in the children's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Stephen L. Borrello