

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 24, 2012

In the Matter of HUTSON/JACKSON, Minors.

Nos. 305443; 308044
Wayne Circuit Court
Family Division
LC No. 05-445151-NA

Before: DONOFRIO, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

In these consolidated appeals, respondent father, C. Hutson, and respondent mother, C. Jackson, appeal as of right the trial court's order terminating their parental rights to the minor children. The trial court terminated Hutson's parental rights to CCH and Jackson's parental rights to CCH, CLJ, CLJ,¹ and DDJ pursuant to MCL 712A.19b(3)(a)(ii) (parent has deserted child for 91 or more days), (c)(i) (the conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) reasonable likelihood of harm if child is returned to the parent's home). Because clear and convincing evidence supported the termination of both Hutson's and Jackson's parental rights, and termination was in the children's best interests, we affirm.

I. DOCKET NO. 305443 (RESPONDENT HUTSON)

Respondent Hutson argues that clear and convincing evidence did not support a statutory basis to terminate his parental rights and that termination was not in CCH's best interests. We review for clear error a trial court's decision whether a basis for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). We also review for clear error the trial court's determination under MCL 712A.19b(5) that termination of parental rights is in a child's best interests. *Id.* A finding "is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

¹ "CLJ" is listed twice because they are twins born on May 21, 2005.

The trial court terminated Hutson's parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j), which provide:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(a) The child has been deserted under any of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(c) The 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 either of the following:

(i) The 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.

* * *

(g) The 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.

* * *

(j) There 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.

Both petitioner and the minor child acknowledge that MCL 712A.19b(3)(c)(i) was not applicable to Hutson and concede that the trial court erred by terminating Hutson's parental rights pursuant to that statutory basis. Because clear and convincing evidence supported the termination of Hutson's parental rights based on the other statutory grounds, however, any error with respect to MCL 712A.19(3)(c)(i) is harmless. See *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000) ("clear and convincing evidence of only one statutory ground [is necessary] to support [a] termination order.")

The trial court did not clearly err by terminating Hutson's parental rights under MCL 712A.19b(3)(a)(ii). The evidence showed that Hutson visited CCH only three times in 2010. During that time, Hutson was not willing to plan for CCH. In January 2011, however, he

indicated that he would give CCH the bedroom in his one-bedroom apartment if she were to live with him. From March 2011 to June 2011, he visited CCH three times, and, on June 24, 2011, he testified that he was prepared for her to live with him.² Hutson's increased visits and seeming willingness to plan for CCH coincided with the beginning of the termination trial. Based on Hutson's actions in 2010, however, the evidence established that Hutson deserted CCH for 91 or more days and that he did not seek custody during that period. Therefore, the trial court did not clearly err by finding that clear and convincing evidence supported terminating Hutson's parental rights under MCL 712A.19b(3)(a)(ii).

The trial court also did not clearly err by terminating Hutson's parental rights under MCL 712A.19b(3)(g). Hutson visited CCH only sporadically and did not have a suitable home until September 2010. Hutson provided financial assistance for CCH only once while she was in care, and he did not participate in her school activities or assist with medical decisions. At the time of termination, he did not know where she went to school or how she was doing in school. Hutson also failed to substantially comply with his parent-agency agreement and failed to make sufficient progress to allow CCH to be returned to his care. "[A] parent's failure to substantially comply with court-ordered treatment plans is indicative of neglect[.]" *In re BZ*, 264 Mich App at 300-301, citing *In re Trejo*, 462 Mich at 346 n 3. Further, Hutson failed to maintain regular contact with the foster care worker, benefit from parenting classes, and submit required drug screens. Therefore, the trial court did not clearly err by finding that Hutson failed to provide proper care or custody and that there was no reasonable expectation that he would be able to do within a reasonable time considering CCH's age. See MCL 712A.19b(3)(g).

Clear and convincing evidence also supported the termination of Hutson's parental rights under MCL 712A.19b(3)(j). Although there is no history of Hutson physically harming CCH, the history of neglect indicates a reasonable likelihood that CCH will be harmed if she is returned to Hutson's care. Hutson's failure to regularly comply with drug screens is also indicative of a likelihood of harm. Therefore, the trial court did not clearly err by finding that the requisites for termination under MCL 712A.19b(3)(j) were proven by clear and convincing evidence.

Further, the trial court did not clearly err by finding that termination of Hutson's parental rights was in CCH's best interests. "In deciding whether termination is in the child's best interests, the 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*, ___ Mich App ___; ___ NW2d ___ (Docket No. 306279, issued June 5, 2012) (slip op at 3) (internal citations and quotations omitted). Here, CCH had been living with relatives since December 2008, and, at age 9, it was the second time that she had been removed from her parents' care. Hutson did not exhibit a willingness to provide for CCH until the time of the termination trial and, even then, he was unable to state where she went to school or how she was doing in school. Thus, considering Hutson's infrequent visits, failure to maintain contact with the case worker, failure to provide weekly random drug screens, failure

² The trial court erroneously determined that Hutson had not visited since September 2010.

to participate in school activities or medical decisions, and general lack of involvement, the trial court did not clearly err by determining that termination of Hutson's parental rights was in CCH's best interests.

II. DOCKET NO. 308044 (RESPONDENT JACKSON)

Respondent Jackson contends that the trial court erred by failing to specify which statutory grounds pertained to which respondent. The trial court terminated the parental rights of all parties involved under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j), but did not specify which grounds applied to which respondent. Petitioner acknowledges that MCL 712A.19b(3)(a)(ii) was not applicable to Jackson and that the trial court erred to the extent that it terminated her parental rights on that basis. In any event, because clear and convincing evidence supported the termination of Jackson's parental rights on the other statutory grounds, any error is harmless. See *In re Powers*, 244 Mich App at 118 ("clear and convincing evidence of only one statutory ground [is necessary] to support [a] termination order.")

The trial court did not clearly err by terminating Jackson's parental rights under MCL 712A.19b(3)(c)(i). The conditions that led to the adjudication involved Jackson assaulting one of her children while she was intoxicated. The evidence showed that Jackson had positive drug screens on three occasions, at one point she stopped providing drug screens altogether, and she was terminated from substance abuse counseling for noncompliance. Despite the positive drug screens, Jackson denied using drugs. Therefore, the trial court did not clearly err by finding that Jackson's substance abuse problems continued to exist and that there was no reasonable likelihood that they would be rectified within a reasonable time.

The trial court also did not err by terminating Jackson's parental rights pursuant to MCL 712A.19b(3)(g). Jackson did not consistently visit the children and did not attend medical appointments or school events. She did not have suitable housing during much of the proceedings. In November 2010, her whereabouts were unknown, and the following month she was living in a shelter. In March 2011, Jackson was living in a one-bedroom apartment with her fiancé, who was a convicted felon. She acknowledged that her fiancé was her only source of income. In addition, with respect to DDJ, who has significant special needs, Jackson was not involved with the child's care or treatment and would therefore be unable to care for her. Accordingly, the trial court did not clearly err by finding that Jackson failed to provide proper care or custody and that there was no reasonable expectation that she would be able to do so within a reasonable time.

Clear and convincing evidence also supported the termination of Jackson's parental rights under MCL 712A.19b(3)(j). Jackson's failure to complete her substance abuse treatment is problematic given that she assaulted one of her children while she was intoxicated. Her noncompliance with substance abuse counseling indicates a reasonable likelihood of harm if the children are returned to her. The fact that Jackson was residing with a convicted felon instead of attempting to obtain suitable housing for her children is also indicative of harm. Further, the fact that Jackson is unable to properly care for and provide for her children indicates a reasonable likelihood that the children would be harmed if returned to her care. Therefore, the trial court did not clearly err by finding that this statutory ground was proven by clear and convincing evidence.

Finally, termination of Jackson's parental rights was in the children's best interests. Considering her failure to regularly visit, obtain suitable housing or income, attend medical appointments or school activities, provide drug screens, and complete substance abuse treatment, termination was in the children's best interests. Jackson herself even testified that she believed that the children would be better off if they remained in their current placements. Thus, the trial court did not clearly err by finding that termination was in the children's best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra