

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 8, 2012

In the Matter of NIBLOCK, Minors.

No. 306612
Wayne Circuit Court
Family Division
LC No. 09-486559-NA

In the Matter of ROWE/NIBLOCK, Minors.

No. 306954
Wayne Circuit Court
Family Division
LC No. 09-486559-NA

Before: DONOFRIO, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father appeals by right the trial court's order terminating his parental rights to his two minor children pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). Respondent-mother appeals by right the same order terminating her parental rights to her four minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

This Court "review[s] for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). "If the court finds that there are grounds for termination of parental rights and [then finds] that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5). The trial court's best-interest determination is also reviewed for clear error. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

I. STATUTORY BASES FOR TERMINATION OF PARENTAL RIGHTS

The facts leading to adjudication were as follows: Respondent-mother's two older children, twins who were then approximately three and one-half years old, were found walking around unsupervised on Warren Avenue, wearing clothing not appropriate for the weather. This

occurred in the evening; the children had left their home while respondent-mother slept. Respondent-mother had been diagnosed with bipolar disorder, and self-medicated her bipolar disorder, as well as a back injury, with marijuana. Respondent-father was the putative father of respondent-mother's two younger children at the time of adjudication and was not involved in his children's lives.

A. RESPONDENT-FATHER

With regard to respondent-father, we find that the trial court did not clearly err by finding that MCL 712A.19b(3)(a)(ii), (g), and (j) were proved by clear and convincing evidence. MCL 7.12A.19b(3)(a)(ii), (g), and (j) provide for termination of parental rights if:

(a)(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.

(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.

Respondent-father did not appear in court during the time the children were in temporary care and custody until a termination petition was filed, approximately 17 months after the children were removed from respondent-mother's care. After he appeared in court, he was offered a parent-agency agreement but refused to comply, telling the case worker that he did not feel he was in a position to care for his children because he did not have a job. He only visited with his children four times while they were in the temporary care of the court. The evidence was clear and convincing that respondent-father deserted the minor children for a period greater than 91 days and never sought custody of them during that period. Accordingly, the lower court did not clearly err in determining that the statutory grounds set forth in MCL 7.12A.19b(3)(a)(ii) were proven.

Moreover, throughout the course of the proceedings below, respondent-father did not comply with drug screens, did not participate in drug treatment, did not consistently visit the children, did not maintain contact with the case worker, and did not have a legal source of income or appropriate housing. Accordingly, the trial court did not clearly err in determining that the statutory grounds set forth MCL 7.12A.19b(3)(g) and (j) were proven.

Respondent-father argues that he should have been given more time to work on his treatment plan. However, he fails to acknowledge that paternity was not established until the minor children had already been in the care of the court for approximately 17 months. Even

when he did appear in court after the termination petition was filed, he did not engage in services. Based on respondent-father's lack of involvement in the lives of his children before establishing paternity and his lack of cooperation with services that were provided after paternity was established, respondent-father's argument that he should have been given more time is meritless.¹

B. RESPONDENT-MOTHER

With regard to respondent-mother, we find that the trial court did not clearly err when it terminated her parental rights to all four children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Respondent-mother admitted that she continued to use marijuana throughout the proceedings, and approximately a eighteen months after the minor children were removed from her care she obtained a medical marijuana certificate. Moreover, she did not obtain the recommended psychological or psychiatric evaluations recommended by her counselor and was not being treated for her bipolar disorder. She did not have adequate income to care for the children and did not have appropriate housing at the time of the termination hearing. She did not consistently visit with the children when she was provided visitation. She tested positive for a variety of drugs other than marijuana during the course of the proceedings, including barbiturates, opiates, benzodiazepines, propoxyphene, and cocaine. Although she provided prescription bottles sporadically for some of the prescription medications, the prescriptions did not cover the entire period during which positive drug screens were given. Respondent-mother was referred to drug treatment several times and was terminated for noncompliance several times. During the proceedings, she was arrested several times for outstanding warrants. Although respondent-mother's therapist testified that she believed respondent-mother could parent the children if she had adequate income, suitable housing, and medication management along with the additional support of services in her home, the therapist acknowledged that respondent-mother did not have any of those currently. Respondent-mother admitted that she did not have a suitable place for the minor children to live and that it would take four or five months to prepare the home completely for the children to live there. However, this testimony was after the children had been in care for over two years. Accordingly, the trial court did not clearly err in finding that respondent-mother had not rectified the conditions of adjudication, that she could not provide proper care and custody within a reasonable period of time, and that there was a likelihood of harm to the children if returned to her care. MCL 712A.19b(3)(c)(i), (g), and (j).

II. BEST INTEREST OF THE CHILDREN

¹ We need not decide whether the evidence was sufficient to prove the statutory ground set forth in MCL 712A.19b(3)(c)(i) because petitioner needs only to prove one statutory ground in order to terminate a respondent's parental rights. *In re Powers Minors*, 244 Mich App 111, 120; 624 NW2d 472 (2000).

The court also did not clearly err in finding that termination of both respondents' parental rights was in the best interests of their children. MCL 712A.19b(5). Respondent-mother was unable to keep the children safe. While in her care, her twins, then three and one-half years old, were found wandering outside their home during the early evening. The children were not wearing weather-appropriate clothing, and were unsupervised, because respondent mother was at home sleeping. At the time of the termination hearing, after being referred for numerous services, she was still unable to provide for even her children's basic needs.

Respondent-mother argues that the trial court violated her rights to parent her children because she used marijuana pursuant to a medical marijuana certificate under the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.* However, the trial court specifically declined to consider respondent-mother's use of marijuana after she received the medical marijuana certificate. Instead, the court considered her marijuana use only before receiving the certificate. Indeed, even assuming, *arguendo*, that the trial court had no evidence of marijuana use at all, evidence was presented regarding respondent-mother's use of illegal drugs, lack of housing and adequate income to care for the children, inconsistent behavior regarding visitation, failure to complete drug treatment programs, continued incarcerations for outstanding bench warrants, and failure to take responsibility for her actions. This evidence was sufficient for the court to find that terminating her parental rights was in the children's best interest.

Respondent-father suggests, but does not specifically argue, that the trial court erred in determining that termination his parental rights was not in the children's best interest. However, respondent-father never provided for his children and was not in a position to do so at the time of the termination hearing. Accordingly, we cannot conclude that the court erred by finding that terminating respondent-father's parental rights was in the children's best interest.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro