

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 7, 2012

In the Matter of B. GREWE, Minor.

No. 307890

Macomb Circuit Court

Family Division

LC No. 2010-000021-NA

Before: MURRAY, P.J., and FORT HOOD and BORRELLO, JJ.

PER CURIAM.

Respondent, V. M. Herrera, appeals as of right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm.

This appeal arises from termination of respondent's parental rights. On January 11, 2010, a petition to initiate child protective proceedings was filed. The minor was approximately ten weeks old. The primary basis for initiation of child protective proceedings was respondent's drug addiction, her psychological issues, lack of suitable housing and ongoing criminal activity.

Numerous dispositional review and permanency planning hearings were held over the next 18 months. At the July 13, 2011 disposition review and permanency planning hearing, it was revealed that respondent had a source of income and suitable housing. However questions still remained as to whether respondent had successfully completed her therapy, substance abuse and medical treatment obligations. While respondent had several negative drug screens, she also had missed several drug screens. Respondent had missed two visitation sessions and had been convicted of retail fraud. Based on this, petitioner submitted a petition to terminate parental rights which was rejected by the trial court. However, the trial court informed respondent that she had to be at full compliance by the next hearing. On the same day as the hearing, respondent tested positive for cocaine, and again on August 16, 2011, resulting in petitioner again submitting a petition to terminate respondent's parental rights.

A termination trial was scheduled to begin on October 5, 2011, but was adjourned for sixty days to give petitioner an opportunity to more fully investigate respondent's progress. Following petitioner's additional investigation, a termination trial began on December 7, 2011. At trial, testimony was offered that respondent had tested positive for cocaine, heroin, and other opiates. Additionally, it was revealed that respondent had sought out four different medical providers in an attempt to secure pain medications. Respondent did not comply with her

substance abuse plan, and failed to attend NA or AA meetings. Respondent's continued drug and mental health issues were continuing to be a barrier to the minor child being returned to her.

At the termination trial, respondent admitted that she had used heroin the day before the trial, and that she was addicted to drugs. She stated she had a problem and she needed help. After closing arguments, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The court found that terminating the parental rights of respondent was in the minor's best interests and entered an order consistent with its findings. This appeal ensued.

Respondent argues that the trial court clearly erred in finding that there was clear and convincing evidence of the grounds for termination pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

We review the trial court's finding that a ground for termination has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009), quoting *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* at 91.

"To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; ___ NW2d ___ (2011). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *Id.* If a statutory ground for termination is established, and the trial court finds that termination of parental rights is in the child's best interests, the court must order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made. *Id.* at 32-33. In this case, the court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

MCL 712A.19b(3)(c)(i) states that a court must find by clear and convincing evidence 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." Given the amount of time that had lapsed since proceedings began, and respondent's inability to benefit from or learn from any of the court-ordered services relative to her drug addictions and criminal activity, we find that the trial court did not clearly err in finding that there was clear and convincing evidence of the grounds for termination pursuant to MCL 712A.19b(3)(c)(i). As previously stated, the trial court became involved with respondent and the minor child on January 11, 2010, when a petition to initiate child protective proceedings was filed. The petition was filed after respondent left the minor child with a person without proper care and custody. Most important to the petition, however, was the allegation that respondent was addicted to heroin and crack cocaine. Respondent plead no contest to the allegations in the petition at the hearing to initiate child protective proceedings. On December 8, 2011, almost two years later, respondent admitted that she was still addicted to heroin, and stated that she had used heroin that day. While respondent's honesty and plea for help with her drug problem was admirable, it was clear that she continued to have a serious substance abuse problem after a

substantial amount of time. Furthermore, there was no evidence that showed a reasonable likelihood that respondent's drug problem would be rectified within a reasonable time. Respondent had a drug problem for at least two years, and continually relapsed and refused treatment. While respondent testified that she wanted help, her prior actions provided no indication that she would stop abusing drugs. Therefore, the court did not clearly err in finding that respondent's substance abuse continued to exist, and that there was no reasonable likelihood that it would be rectified within a reasonable time.

MCL 712A.19b(3)(g) states that a court must find 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." A parent's failure to comply with a parent/agency treatment plan pursuant to a court order can be a valid indication of neglect. *In re Trejo*, 462 Mich at 360-361 n 16.

The court did not clearly err in finding that there was clear and convincing evidence of the grounds for termination pursuant to MCL 712A.19b(3)(g). Respondent's failure to comply with the parent/agency treatment plan is an indication of neglect. *In re Trejo*, 462 Mich at 360-361 n 16. Respondent failed to comply with the parent/agency treatment plan ordered by the court. Respondent's parent/agency treatment plan required her to abide by the law. On May 4, 2011, respondent was arrested for retail fraud and sentenced to probation. In addition, respondent failed to continue recommended psychological, psychiatric, and substance abuse treatments. Respondent's failure to follow through on the mental health aspects of her parent/agency treatment plan raised concerns regarding respondent's mental stability. Respondent's parent/agency treatment plan also required that respondent submit to random drug and alcohol screens. Over the course of the proceedings, respondent consistently failed to submit to drug screens. From December 2010 to February 2011, respondent did not complete any drug screens. She also missed required drug screens in April, May, June, October, and November 2011. In addition to missing drug screens, respondent tested positive on a number of occasions. On July 13, 2011, and August 4, 2011, respondent tested positive for cocaine. On September 15, 2011, and October 7, 2011, respondent tested positive for heroin. At trial, respondent admitted that if she took a drug test she would fail because she had used heroin before trial. Not only does the evidence in the record show respondent's noncompliance with the parent/agency treatment plan, but the evidence also makes it is clear that respondent has a serious substance abuse problem that prevents her from providing proper care for the minor child. Based on respondent's noncompliance with the parent/agency treatment plan and her continued drug use over the course of the court proceedings, the court did not clearly err in finding that there was no reasonable likelihood that respondent will be able to provide proper care or custody for the minor child within a reasonable time.

MCL 712A.19b(3)(j) states that a court must find 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." Harm includes both physical harm and emotional harm. *In re Hudson*, 294 Mich App 261, 268; ___ NW2d ___ (2011).

The court did not clearly err in finding that there was clear and convincing evidence of the grounds for termination pursuant to MCL 712A.19b(3)(j). Respondent argues that there was no evidence of physical abuse. However, respondent's argument only considers physical harm, not emotional harm. Respondent's drug abuse has deprived the minor of a normal and stable life with her. The minor was only 10 weeks old when she was put into foster care. The majority of the minor's life was spent in foster care because respondent could not stop abusing drugs, and, thus, could not provide the minor with a safe environment. Furthermore, respondent's continuous drug abuse created an inappropriate and unsafe environment for the minor. Based on respondent's drug abuse and her inability to provide the minor with a stable home, the court did not err in finding that it was reasonably likely that the minor would be harmed if she was returned to respondent's home.

Respondent next argues that the court clearly erred in finding that termination of respondent's parental rights was in the minor child's best interests.

We review a trial court's decision that termination is in the child's best interests for clear error. *In re Rood*, 483 Mich at 90-91 (citations omitted). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* at 91.

MCL 712A.19b provides:

(5) If the court finds that there are grounds for termination of parental rights and 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.

After finding that at least one of the statutory grounds for termination has been met, a court must then determine whether termination is in the minor child'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 quotation marks and citations omitted).

Our review of the record leads us to conclude that termination of respondent's parental rights was in the minor's best interests. Based on the evidence in the record, respondent was not capable of being a parent or providing the minor with a stable, safe and permanent home. At trial, respondent testified that she loved the minor and that she was a good mother. Additionally, the evidence showed that respondent successfully completed parenting classes as part of her parent/agency treatment plan. However, respondent admitted that she had an addiction to drugs, and that she needed additional help to beat her addiction. However, when given the opportunity and services to assist her with her mental health and addiction issues, respondent failed to take advantage of those services. It was not until the day that she testified on her own behalf at the termination hearing that respondent finally admitted to her substance abuse problem. As a result of this testimony it was clear that at the time of trial, respondent was not yet able to care for the minor. Respondent asked the court for more time to get her drug abuse under control, but the

court had already given respondent almost two years to stop abusing drugs and comply with the parent/agency treatment plan, and respondent was not able to reform. Respondent's failure to comply and her consistent drug abuse show that respondent cannot provide an appropriate home for the minor. Continuation of the proceedings until respondent could stop abusing drugs would deprive the minor of a stable and safe home environment. Coupled with the record revealing that the bond between respondent and the minor child was tenuous, the trial court did not err in finding that termination of respondent's parental rights was in the minor child's best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello