

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 18, 2012

In the Matter of K. S. MARSH, Minor.

No. 308377
Oakland Circuit Court
Family Division
LC No. 11-782857-NA

Before: CAVANAGH, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), MCL 712A.19b(3)(i), MCL 712A.19b(3)(j), MCL 712A.19b(3)(l), and MCL 712A.19b(3)(m). We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

Respondent first argues that a statutory basis to terminate her parental rights was not established by clear and convincing evidence. We disagree.

At least one statutory ground under MCL 712A.19b(3) must be established by clear and convincing evidence before parental rights are terminated. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). This Court reviews the trial court's factual findings, as well as the decision whether termination is against the child's best interests, for clear error. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

In this case, at minimum, MCL 712A.19b(3)(l) was established by clear and convincing evidence because undisputed evidence established that respondent's parental rights to another child were previously terminated as a result of similar proceedings. However, we conclude that the trial court's "factual findings" in support of its decision that termination of respondent's parental rights was in the child's best interests were clearly erroneous.

In terminating respondent's parental rights, the trial court rejected the referee's recommendation that termination was premature. In support of its conclusion that termination was in the best interests of the child, the court held: "For the same reasons stated by the prosecutor and the GAL in this matter, the court finds pursuant to MCLA 19b(5) that termination of [respondent's] parental rights is in the child's best interest." After review of the trial court's

opinion, it appears that both the prosecutor and GAL argued that termination was in the child's best interests because (1) respondent had a "profound and lengthy drug history" and the chance of relapse was high, (2) respondent had nine other children that she failed to raise (but only one was subject to similar proceedings), (3) respondent had a history of domestically violent relationships, including with the father of the child, and (4) respondent had a history of failing to maintain employment and of failing to provide a safe and stable home for her other nine children. These arguments, however, did not consider the efforts and significant improvements that respondent consistently made since these proceedings were initiated; rather, they focused on her past history.

The record evidence included that respondent successfully underwent intensive inpatient treatment for drug and alcohol addictions, which was the first time that she had ever received such treatment. She then voluntarily lived for several months in transitional housing. She also participated in extensive and voluntary individual and couples counseling with the father of the minor child. Further, she attended support group meetings and, according to her counselor, was never late or missed an appointment. Her therapist characterized respondent as showing "outstanding engagement, effort, and commitment to both her sobriety and her work within the Intensive Outpatient Program." All of respondent's screenings were negative for drugs and alcohol. She also obtained her driver's license, gained full-time employment, and paid child support. According to the report of the referee in December of 2011, respondent was "in total compliance with the Parent Agency Agreement." She also received her parenting certificate. She had a safe car, and a safe and suitable home. Respondent was never late and never missed a parenting time visit. She was appropriate and affectionate with the minor child. Respondent and the minor child were "mutually excited to see each other each week." And the child reached out for respondent to hold her, calling her "Mama." Respondent's psychological examination indicated a positive prognosis, with the psychologist recommending that termination would be premature. Respondent's counselor also indicated that she believed that respondent had a positive prognosis. Further, it appears from the record that the minor child may be placed with her father, who lives with respondent and is undergoing the same types of treatment as respondent, including attending couples counseling with her. They have been together for many years and appear committed to making a stable home for the minor child.

When determining the best interest of a child in a termination case, a trial court can consider the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, and participation in counseling, among other factors. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App at 301; *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). In this case, by focusing solely on respondent's history and the "possibility" of relapse, to the exclusion of all of the record evidence, the trial court made the premature decision to terminate respondent's parental rights. Accordingly, we are left with a definite and firm conviction that a mistake has been made; thus, we reverse the order terminating respondent's parental rights. See *In re JK*, 468 Mich at 209.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Pat M. Donofrio