STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED July 26, 2012
In the Matter of M. E. GHANT-BARNES., Minor.	No. 308668 Saginaw Circuit Court Family Division LC No. 10-032853-NA
In the Matter of O. M. BARNESVELA, S. D. VELABARNES, and A. I. VELABARNES, Minors.	No. 308669 Saginaw Circuit Court Family Division LC No. 10-032802-NA
In the Matter of O. M. BARNESVELA, S. D. VELABARNES, and A. I. VELABARNES, Minors.	No. 308670 Saginaw Circuit Court Family Division LC No. 10-032802-NA

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ

PER CURIAM.

In these consolidated cases, respondent-appellants appeal as of right from orders terminating their parental rights to their minor children under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist), and (g) (failure to provide proper care and custody).[1] We affirm.

I. FACTS

[1] All the children involved in this case are the natural issue of both respondent-appellants, except M. E., whose father was also a respondent in this case. He has not appealed the decision terminating his parental rights.

Proceedings in this case began in November 2010. Petitioner alleged the parties' youngest child was born with Down's Syndrome and a heart defect; the latter was surgically repaired, but with the result that the child needed a tracheotomy, which required frequent attention. Petitioner further alleged that respondent-mother had a serious substance-abuse problem with marijuana, that the youngest child was born with marijuana in his system, that respondent-mother had begun, then abandoned, then returned to, an inpatient substance-abuse program, and that there was a concern that, especially in light of the substance-abuse problem, respondent-mother was not able to meet her children's needs, especially those of the youngest. Petitioner opined that the children should not remain in the care of respondent-mother, because she "does not seem to grasp the importance of the need to prioritize the children's needs over her own personal needs or interest." Petitioner additionally opined that respondent-father had shown the ability to address the youngest child's special medical needs, but reported that his work schedule prevented him from being that child's primary caregiver.

Respondent-father was advised from the beginning that having his children returned to him required that he offer a plan to care for them while he was at work, and that he obtain suitable housing. Respondent-mother was offered various services, including referrals to substance-abuse programs.

In the hearings that followed, respondent-mother admitted that she had a problem with marijuana, and respondent-father admitted that respondent-mother's problem in this regard prevented her from providing proper care for the children and that he could not provide the care that O. M. required.

Over the months that followed, respondent-mother was incarcerated several times on various warrants, refused several random drug screens because of anticipated unfavorable results, and failed to follow through properly on referrals to substance-abuse treatment. Both parents were less than reliable about attending scheduled parenting-time sessions, or in receiving training for the care of their special-needs child or demonstrating their abilities in that regard.

At the time of the termination hearing, the parties were living together in the childhood home of respondent-mother. The latter had still not gained control over her marijuana habit, and respondent-father had still not offered a plan for the care of his children while he was at work. Asked about this, respondent spoke of pressing family members into service, but ultimately admitted that, if the children were returned to him, he would rely on respondent-mother for their care while he was at work.

II. LEGAL FRAMEWORK

"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." MCL 712A.19b(5). The trial court found that termination was warranted under MCL 712A.19b(3)(c)(*i*) and (g). Those statutory provisions set forth the following bases for termination:

(3) 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:

* * *

(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 . . . 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.

An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 5.974(I). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

III. ISSUES ON APPEAL

Respondent-mother admits on appeal that her testimony alone provided the trial court with clear and convincing evidence that termination of her parental rights was warranted under the two statutory criteria. Respondent-mother challenges the decision to terminate, however, on the ground that the court erred in concluding that termination was in the children's best interests.

Respondent-mother protests that there was no evidence that her marijuana consumption interfered with her parenting ability. However, the record reveals far more than that respondent-appellant Barnes occasionally uses the drug; she herself has accepted that her habit is the "issue" giving rise to this case, and indeed one that has persisted despite great pressure from the criminal law, child protective authorities, and even respondent-father.

This record clearly establishes that, whether or not respondent-mother's marijuana use alone caused her to be an unfit parent, whose children's interests were for that reason best served

by termination of her parental rights, respondent-mother's marijuana consumption was at least a continuous and persistent aggravating factor in connection with her inability to take responsibility for her legal troubles, attend to services offered with the goal of reunification, acquire skills needed for the care of her special needs child, and even take full advantage of her parenting time opportunities with all her children during the pendency of these proceedings. A parent's persistent failure to gain control over a substance-abuse program is ground for termination of parental rights. See *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (clear and convincing evidence of a failure to overcome alcoholism despite extensive treatment may justify termination of parental rights under § 19b(3)(c)(*i*) and (g)). See also *In re Trejo Minors*, 462 Mich at 346 n 3 ("Failure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." [Internal quotation marks and citation omitted.]).

In short, respondent-mother had a persistent problem with marijuana from the start of this case, consistently showed an inability to get the problem under control, and admits on appeal that the trial court had a sound evidentiary basis for concluding that this condition was not going to be corrected in reasonable time. For these reasons, the trial court did not clearly err in concluding that termination of her parental rights was in the children's best interests.

Respondent-father argues that the trial court clearly erred both in concluding that clear and convincing evidence established that termination of his parental rights was warranted on two statutory bases, and in concluding that termination was in his children's best interests. We disagree.

Respondent-father unequivocally agreed that respondent-mother needed to get her substance-abuse problem under control before she could be a suitable caretaker for the children. Still, at the termination hearing, he admitted that he was living with respondent-mother, that the latter's drug habit was still a concern, yet that, at present, if the children were returned to him, respondent-mother would be taking care of the children while he was at work. And, despite being advised from the beginning that having at least his two older children returned to him required that he offer a care plan, none was ever forthcoming. Asked why he had not developed a plan for getting at least his two older children back into his care, respondent-father responded, simply, "I'm not sure." This despite acknowledging that he understood that getting his children back meant either establishing a residence of his own or persuading respondent-mother to leave the house they shared.

Respondent-father protests that he was not offered services, and argues that the trial court erred in concluding, before respondent-father had an opportunity to take advantage of any services, that termination of his parental rights was in his children's best interests. However, respondent-father does not specify what services he might have benefitted from, other than asserting that DHS could have assisted him with a security deposit on a suitable residence and signing the children up for daycare. However, the foster care worker assigned to the case testified that she had informed respondent-father that her agency would be willing to help him with his first month's rent and security deposit if he were to locate suitable housing, but that respondent-father had never followed up on the offer. Additionally, despite being told a year before the termination hearing that he had to come up with an acceptable care plan for the

children, respondent-father admitted at the termination hearing that, if returned to his current home, respondent-mother would be taking care of the children while he was at work.

"[T]he Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991), citing MCL 712A.19b(3)(c)(*i*). In light of respondent-father's complete failure to offer a specific and acceptable plan for the care of his children while he was at work, or to obtain suitable housing for himself and the children, despite having been advised of those needs from the beginning, the trial court did not clearly err in concluding that termination of his parental rights was in his children's best interests. The court was not required to make the children wait still longer in hopes that some offer of services, which respondent-father never requested below nor specifies on appeal, would have caused him to offer a care plan and obtain suitable housing.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Donald S. Owens