

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 13, 2012

In the Matter of MCQUEEN/MOORLET/LYLE
Minors.

No. 309554
Wayne Circuit Court
Family Division
LC No. 09-489565-NA

Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Respondent, T. A. McQueen, appeals by right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm the trial court's findings that at least one statutory ground supported termination, but vacate the best interest determination and remand for further consideration of that issue in light of any relative placement.

On September 10, 2009, a petition was authorized to initiate child protective proceedings against respondent, alleging alcohol and substance abuse and abandonment of her eight children without provisions. After the petition was filed, respondent gave birth to two additional children. Respondent did not obtain suitable housing, did not comply with the drug testing procedure, and did not visit the older children. The court found that respondent did not comply with the terms of the parent-agency agreement and terminated her parental rights to the four children who are the subject of this appeal.¹

Appellate review of the trial court's finding regarding grounds for termination and the best interest determination is for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). 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; 817 NW2d 111 (2011). “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's

¹ Respondent's six other children are not at issue in this appeal.

parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *Id.* Once a statutory ground for termination is established, and it is factually concluded 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.

MCL 712A.19b(3)(c)(i) provides 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.” The trial court did not clearly err in determining that this basis for termination was established. *Rood*, 483 Mich at 90-91. The petition to initiate child protective proceedings in this case was filed on September 10, 2009. On October 5, 2009, respondent pleaded to the allegations in the petition—specifically that she abused marijuana and alcohol, was homeless, and had abandoned her children with no provisions. The termination hearing began on December 12, 2011, over two years later. At the hearing, respondent admitted that she had a problem with marijuana and alcohol abuse and did not have a place to live with her children. Respondent had no source of income and was still unable to provide for her children. According to respondent’s caseworker, respondent had not made progress in obtaining the return of her children. Based on the record, there was clear and convincing evidence that the conditions that led to adjudication continued to exist at the time of the termination hearing. Furthermore, respondent had been given over two years to rectify the conditions that led to adjudication and had made no progress, and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children’s ages.

Additionally, the trial court did not clearly err in concluding that respondent failed to provide proper care or custody for the children and respondent could not provide such care within a reasonable period of time, MCL 712A.19b(3)(g). *Rood*, 483 Mich at 90-91. A parent’s failure to comply with a parent-agency treatment plan pursuant to a court order is “indicative of neglect.” *In re Trejo Minors*, 462 Mich 341, 360-361 n 16; 612 NW2d 407 (2000). Despite the opportunity to complete the parent-agency agreement over a two-year period, the trial court properly concluded that respondent failed to comply. Respondent had been referred to a substance abuse treatment program, but failed to complete treatment. She failed to regularly submit to drug screens and testified that she did not have a reason for failing to complete drug screens. Respondent had not obtained housing or employment. She had started attending therapy, but at the time of the termination hearing was no longer receiving therapy. Respondent was not compliant with visitation, and it was suspended for a period of time because she had not completed the necessary drug screens. Even when she was permitted to visit her children, she did not always do so. When asked why she did not visit her children, she said she did not know. Respondent’s failure to comply with the majority of the parent-agency agreement was a valid indication of neglect. *Id.* Therefore, there was clear and convincing evidence that, without regard to intent, respondent failed to provide proper care or custody for her children. Furthermore, given the fact that respondent had over two years to comply, there was no

reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the children's ages.²

Respondent next asserts that the trial court erred when it found that termination was in the children's best interests and that the trial court failed to consider the children's placement with relatives when it made its decision regarding the best interests of the children. The trial court did not err when it found that termination was in the children's best interest. However, we must vacate the trial court's best interests' determination because the record does not contain an express consideration of the children's placement with relatives.

MCL 712A.19b(5) provides:

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 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).

In this case, the evidence supported the trial court's finding that termination was in the children's best interests. The CPS caseworker testified that respondent's children were doing well in their placements. While the children loved respondent, they looked to their caretakers for stability and support, not respondent. The children had been in foster care for over two years, and their need for permanence, stability, and finality outweighed any bond they had with respondent. While the evidence showed that respondent loved her children, respondent's testimony demonstrated indifference. Furthermore, the evidence established that respondent continued to struggle with substance abuse and did not have a home or income. Respondent could not care for her children. Additionally, one of respondent's children had special medical needs. Respondent was not aware of the child's medical issues and was not in a position to care for a child with special needs. For these reasons, the evidence supported the court's finding that termination was in the children's best interests.

² In light of our affirmance of the trial court's findings in support of MCL 712A.19b(3)(c)(i) and (g), we need not address the other basis for termination, MCL 712A.19(j) (harm if the child is returned). *Ellis*, 294 Mich App at 32. For purposes of completeness, we note that the trial court did not clearly err on this basis in light of respondent's history of domestic violence, the failure to protect the children from sexual abuse, and noncompliance with drug screens.

However, the trial court failed to consider the fact that some of respondent's children were living with relatives at the time the case proceeded to termination. "[A] child's placement with relatives weighs against termination [of parental rights] under MCL 712A.19a(6)(a), [and] the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in a child's best interest." *Olive/Metts*, ___ Mich App at ___ (slip op at 4), citing *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010) (internal quotation marks omitted); see MCL 712A.19a(6)(a). "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best interest determination and requires reversal." *Olive/Metts*, ___ Mich App at ___ (slip op at 4). The trial court may still terminate parental rights despite placement with relatives if it finds that termination is in the child's best interests, but the court must expressly consider that fact on the record. *Id.* In this case, the trial court did not expressly address the children's placement with relatives even though some of the children were placed with relatives at the time of termination. Therefore, we vacate the determination regarding best interests to address relative placement on the record. This holding only pertains to the children placed with relatives at the time of termination.

Affirmed with respect to the children not placed with relatives at the time of the termination hearing. Affirmed in part, vacated in part, and remanded for further proceedings with respect to the children placed with relatives at the time of the termination hearing. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Karen M. Fort Hood