

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 6, 2012

In the Matter of J. R. LUDWIG, JR., Minor.

No. 310230
Wayne Circuit Court
Family Division
LC No. 11-503298-NA

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Respondent appeals the trial court’s order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(ii), MCL 712A.19b(3)(g), MCL 712A.19b(3)(i), MCL 712A.19b(3)(j), and MCL 712A.19b(3)(l). For the reasons set forth below, we affirm.

Respondent argues that the trial court erred by holding that clear and convincing evidence established a statutory ground for termination. This Court reviews the trial court’s “decision that a ground for termination has been proven by clear and convincing evidence” for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; ___ NW2d ___ (2012) (internal quotations and citations omitted); MCR 3.977(J). This Court may only set aside the trial court’s findings if it “is left with a definite and firm conviction that a mistake has been made.” *Id.* at 41. “When reviewing the trial court’s findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses.” *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

“The existence of a statutory ground for termination of parental rights must be proven by clear and convincing evidence.” *In re LE*, 278 Mich App 1, 26; 747 NW2d 883 (2008), citing MCR 3.977(F)(1)(b), MCR 3.977(G)(3), and MCL 712A.19b(1).

[Clear and convincing evidence] must produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact-finder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. [*Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009) (internal quotations omitted).]

Once the petitioner presents clear and convincing evidence that there is a statutory ground for termination, “the parent’s interest in the companionship, care, and custody of the child gives way

to the state's interest in the child's protection." *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

MCL 712A.19b(3) provides, in relevant part:

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:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(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.

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(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.

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

"The petitioner bears the burden of establishing the existence of at least one [] ground[] by clear and convincing evidence." *In re JK*, 468 Mich 202, 213-214; 661 NW2d 216 (2003).¹

¹ The guardian ad litem and petitioner concede that evidence did not show that respondent failed to prevent physical injury or physical or sexual abuse pursuant to MCL 712A.19b(3)(b)(ii). This

Pursuant to MCL 712A.19b(3)(g), respondent did not provide proper care and custody for the child. Respondent allowed the year-and-a-half year old child to live in a home that had animal urine and feces covering the floor and on the bottom of the child's high chair. The house was so cluttered that there was only a narrow path to navigate through the house. Respondent left medicine and cleaning products within the child's reach. Also, the animals in the home were diseased and the Humane Society had to remove and euthanize them. Respondent did not bathe the child regularly and he contracted scabies. Evidence also established that respondent did not properly treat the child's diaper rash and it developed into a yeast infection. This does not constitute proper care.

Furthermore, there is no reasonable expectation that respondent will be able to provide proper care and custody for the child in the future given the child's age. Respondent argues that, if the DHS provided her with rehabilitation services, she could properly care for the child. However, respondent has had many chances to correct her behavior. The DHS provided respondent with time to clean up the house, yet she failed to do so. Further, respondent has a long history of providing her children with improper housing. She has been offered rehabilitation services on at least two previous occasions. The services and previous terminations of her rights to other children have had no effect on respondent's behavior. Similarly, respondent does not accept responsibility for failing to take proper care of her children. Respondent denied that the house needed cleaning, or that it was her responsibility to clean. Disturbingly, she also *denies the existence of her previous children and termination of her rights regarding those children*. This does not bode well for the future. Moreover, pursuant to MCL 712A.18f(1)(b), the DHS was not required to provide respondent with services because it sought termination in the initial petition.

We further hold that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(j). There is a reasonable likelihood, based on respondent's conduct, that the child will be harmed if the court returns him to respondent's home. Again, the house in which respondent was living with the child was not safe or sanitary. Despite the possibility of the removal of a fifth child from her custody, respondent failed to clean up the house. Even after respondent moved out of that house, she neglected to bathe the child or provide him with clean clothes and, again, she failed to provide proper medical care for the child's diaper rash and scabies.

Respondent argues that, because the trial court placed the child with his father, he is no longer in danger of harm. "The primary goal of statutory construction is to give effect to the Legislature's intent." *McCormick v Carrier*, 487 Mich 180, 191; 795 NW2d 517 (2010). "[I]f the language is clear and unambiguous, it is presumed that the Legislature intended the meaning expressed in the statute." *Id.* MCL 712A.19b(3)(j) provides, "[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." (Emphasis added.) The Legislature used the word "the" to indicate that the relevant parent is the parent that is subject to the termination proceedings.

was not a proper statutory ground for termination. However, as discussed in this opinion, clear and convincing evidence established grounds for termination under other statutory sections.

Therefore, whether the child is likely to be harmed in his father's house is irrelevant to the inquiry of whether there was a statutory ground for terminating respondent's parental rights.

The court also correctly terminated respondent's parental rights pursuant to MCL 712A.19b(3)(i) and MCL 712A.19b(3)(l). Clear and convincing evidence showed that respondent's parental rights were terminated for four other children. Despite respondent's denial that she has had any other children, three witnesses identified respondent as "[M. Long]." The trial court explicitly found that respondent and "[M. Long]" are the same person. The trial court took judicial notice of "[M. Long's]" four prior terminations in Virginia and West Virginia. In 2005, West Virginia terminated respondent's parental rights to two of her children. In 2006 and 2008, Virginia terminated respondent's parental rights to two more of her children.

In addition to clear and convincing evidence that respondent has had her parental rights terminated to these other children, previous efforts to rehabilitate respondent have been unsuccessful. In West Virginia, respondent was offered rehabilitation services and she failed to comply. In Virginia, respondent worked with a social worker for three years in order to regain custody of her other children, yet these efforts were unsuccessful. Therefore, pursuant to MCL 712A.19b(3)(i) and MCL 712A.19b(3)(l), there were statutory grounds for termination.

Respondent maintains that the trial court erred by holding that termination is in the child's best interests. This Court reviews the trial court's best interest determinations for clear error. *Olive/Metts*, 297 Mich App at 40. This Court may only set aside the trial court's findings if it "is left with a definite and firm conviction that a mistake has been made." *Id.* "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *Fried*, 266 Mich App at 541.

Once the petitioner presents clear and convincing evidence that there is a statutory ground for termination, "the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *Trejo*, 462 Mich at 356. Additionally, "[i]f 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." *Olive/Metts*, 297 Mich App at 42, quoting MCL 712A.19b(5); MCR 3.977(E)(4).

When determining the best interests of a child in a termination case, a trial court may consider the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, participation in the treatment program, the foster environment and possibility for adoption, and the parent's continued involvement in situations involving domestic violence. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). A court may also consider "the child's need for permanency, stability, and finality." *Olive/Metts*, 297 Mich App at 42.

Respondent's past behavior and current denial of responsibility for raising this child is clear and convincing evidence that it is in the child's best interest to terminate respondent's parental rights. As discussed, respondent has a long history of neglecting her children. Again,

starting in 2005, respondent's parental rights to four of her children have been terminated. Respondent has a pattern of neglecting her children by failing to provide them with proper housing. Similarly, respondent neglected to provide this child with a safe home. She has not benefitted from past services and has not learned from the previous terminations. She did not clean the home even after the DHS warned her about the unsafe conditions. She also failed to appear for her permanency planning conference. Respondent refuses to acknowledge the existence of her other children and denies responsibility for the conditions of the home or that the house was unsanitary. She failed to keep the child clean or provide him with basic medical care and clean clothes. Finally, the child is doing well living with his father in West Virginia. For these reasons, it is clearly in the child's best interests to terminate respondent's parental rights.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter