

STATE OF MICHIGAN
COURT OF APPEALS

In re HALL, Minors.

UNPUBLISHED
October 20, 2015

No. 326627
Saginaw Circuit Court
Family Division
LC No. 13-033802-NA

Before: BOONSTRA, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

Respondent appeals from an order that terminated her parental rights to the minor children SH and TH pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). For the reasons provided below, we affirm.

I. GROUNDS FOR TERMINATION

Respondent argues that the trial court erred when it found that statutory grounds for terminating her parental rights existed. This Court reviews for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297.

A trial court must terminate a respondent's parental rights if it finds that a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Here, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

Termination pursuant to MCL 712A.19b(3)(c)(i) is proper if "182 or more days have elapsed since the issuance of an initial dispositional order" and the trial court finds 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." To begin with, we note that the initial disposition in this case was

on September 10, 2013, and that termination occurred on February 25, 2015, which was well over 182 days later.

Respondent adequately addressed some of the concerns that were present at the time of adjudication. The children came into care when respondent surrendered them to CPS because she could not provide them with care, in part, because of homelessness and substance abuse issues. It is undisputed that respondent addressed her substance abuse issues and had been in full remission for over a year. Respondent also made significant strides in addressing her housing concerns. Although she had a history of erratic housing at the time of the termination hearing, she had been in appropriate housing for about four months. Further, at the time of the initial disposition, she had an erratic employment history, but at the time of the termination hearing, she was working 50 to 60 hours per week at two part-time jobs and had sufficient income to meet her needs.

However, respondent continued to demonstrate inadequate parenting techniques and did not adequately address the concerns surrounding her mental health. Despite participating in three parenting classes and getting feedback from professionals after supervised visits, she failed to show that she had benefited from these services. Respondent continued to provide unequal attention to the children, favoring TH at the expense of SH, and she required assistance during parenting time to calm or control the children. More alarmingly, there is a definite pattern of making significant progress toward reunification, receiving increased parenting time with her children, and then calling her caseworkers and insisting that the children be removed from her care. Given the fluctuation in progress, nothing on this record inspires confidence that any apparent progress by respondent would be lasting. Moreover, although respondent was diagnosed with bi-polar disorder, anxiety disorder, and attention deficit disorder, she opted to discontinue her medication without consulting a doctor. She also stopped attending individual mental health counseling. Given that it does not appear that she is properly treating her mental health issues, it is even more uncertain whether any apparent progress will be lasting. The children are both under six years of age. They have already been through five different placements during the pendency of this case—including one placement with respondent. On these facts, the trial court did not clearly err in finding that the conditions that led to adjudication continued and would not be rectified within a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(i).

The trial court also terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g), which provides that termination is proper if "[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." We note that the same facts relied on in supporting statutory ground (3)(c)(i) also support termination under (3)(g). The children came into care when respondent indicated that she could not provide them with proper care and custody. They were returned to respondent after she made progress in her treatment, but she was unable to handle caring for them and again requested the children be removed from her care. Then, when her parenting time was expanded to include unsupervised overnight visits, she again contacted her caseworker to request that the children be picked up because it was hot and she did not want to run around after them. Furthermore, there was testimony about a particular parenting time incident, where respondent was unable to provide proper care and custody. While on a

supervised visit with the children and waiting in a van for a restaurant to open, respondent became very upset and frustrated, and decided that she wanted to go home and abandon the visitation 15 minutes into the two-hour scheduled visit. This incident shows that respondent was unable to provide care because of her inability to properly handle or cope with normal, everyday stresses. Accordingly, the trial court did not clearly err in finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence.

Because it is only necessary for the court to find by clear and convincing evidence the existence of at least one statutory ground to terminate parental rights, we need not address respondent's additional argument that the trial court erred by terminating her parental rights under MCL 712A.19b(3)(j). See *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

II. BEST INTERESTS

Respondent argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. We review a trial court's best interests decision for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "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). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "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*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider a respondent's unfavorable psychological evaluation and the children's ages. See *In re Jones*, 286 Mich App at 131.

Here, the record shows that there was a strong bond between respondent and the children. However, the record also shows that the instability and uncertainty about when, if ever, the children would be permanently reunited with respondent, was negatively affecting the children, especially SH. His behavior deteriorated as the case progressed. His counselor testified that he was at a toddler level as far as emotionally needing constant supervision, that his inability to form a lasting and permanent healthy attachment was hurting him, and that there was only a limited amount of time for him to form such an attachment. Moreover, respondent's behavior demonstrates that she cannot provide a stable environment for the children. With respondent having a history of throwing her hands in the air and wanting to walk away from the children when difficulties arise, it is clear that this raises serious questions about respondent's parenting ability and her ability to provide permanency and stability to the children. As a result, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Joel P. Hoekstra