

STATE OF MICHIGAN
COURT OF APPEALS

In re VIRTÁ, Minors.

UNPUBLISHED
June 21, 2016

No. 328954
Eaton Circuit Court
Juvenile Division
LC No. 12-018414-NA

Before: FORT HOOD, P.J., and RONAYNE KRAUSE and GADOLA, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent first argues that the trial court erred in finding statutory grounds for termination. We disagree. “To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “We review for clear error a trial court’s finding of whether a statutory ground for termination has been proven by clear and convincing evidence.” *Id.*; see also MCR 3.977(K). “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 Moss*, 301 Mich App at 80.

The trial court terminated respondent’s rights under MCL 712A.19b(3)(c)(i) and (g), which permit termination under the following circumstances:

(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 either of 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.

Respondent argues that termination was improper under MCL 712A.19b(3)(c)(i) because she was no longer living with the children's father, she no longer used Vicodin or other controlled substances, and she had obtained employment and housing. The evidence did show that respondent had ended her relationship with the children's father and that she obtained regular employment. However, during the more than 2-1/2 years the older children were in foster care, respondent continued to have inadequate housing, no transportation, and problems with substance abuse, albeit with periods of improvement followed by relapse. She consistently failed to submit to random alcohol screenings, and continued to use alcohol, despite being told that alcohol use was improper because of her ongoing methadone use. Over the years, respondent's visitation with the children went from supervised, to unsupervised, back to supervised, and then to sporadic. There was evidence that she arrived intoxicated at one visit approximately a month before the termination hearing. Respondent also failed to consistently and regularly attend counseling sessions. Considering the length of time the children had been in care, respondent's lack of progress during that period, and that respondent's participation with counseling and visitation had become more inconsistent during the latter part of this period, the trial court did not clearly err in finding that the conditions that led to adjudication continued to exist and were not reasonably likely to be rectified within a reasonable period of time in light of the children's ages.

These same facts support the trial court's finding that respondent, without regard to fault, was unable to provide proper care and custody for her children, and there was no reasonable expectation she would be able to do so within a reasonable period of time. Contrary to what respondent suggests, the trial court did not rely on her poverty alone to find that termination was warranted under MCL 712A.19b(3)(g). The record discloses that a combination of factors, including respondent's continued alcohol use, lack of follow-through with counseling, and inconsistent visitation, supported termination.

To the extent respondent asserts that petitioner failed to provide reasonable services, we disagree. "In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights. *Id.* at 541. Here, respondent primarily claims that she should have been provided further assistance in obtaining housing. While respondent, who consistently struggled to maintain appropriate housing, was renting an apartment at the time of the termination hearing, it only had one bedroom. The evidence showed that petitioner generally considered a one-bedroom apartment to be too small to accommodate four children. While respondent seems to suggest that petitioner failed to assist respondent in obtaining larger accommodations, it does not appear that such an option was feasible for petitioner, particularly in light of the fact that it was difficult for respondent to obtain even a one-bedroom apartment. Moreover, we do not agree that the trial court clearly erred in its determination that a one-bedroom apartment was insufficient in size to house four children and one adult as there was

record evidence to support this finding. We further note that respondent's suggestion that services were unreasonable ignores the fact that respondent failed or refused to take advantage of many services offered by respondent, including services for counseling, housing, and alcohol screening. The evidence also showed that petitioner attempted to accommodate respondent's claimed barriers to visitation, namely transportation and scheduling, but respondent failed to consistently cooperate with these efforts. In sum, the record does not support respondent's claims that she was not provided reasonable services. Accordingly, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Respondent next argues that the trial court erred in finding that termination was in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child[ren]'s best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child[ren] must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. This Court reviews the court's determination regarding the children's best interests for clear error. *In re Olive/Metts*, 297 Mich App at 40. "In deciding whether termination is in the child[ren]'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." *Id.* at 41-42 (internal citations omitted).

Although the children were bonded to respondent, the children had been in foster care for more than two years. The caseworker testified that they were in need of permanency and stability. Respondent correctly states that the children's foster home was not able to provide permanency because the foster parents did not intend to adopt the children. However, the foster mother was willing to remain the children's foster parent for as long as necessary. On the other hand, respondent offered less in the way of stability, failing even to visit the children regularly. The foster mother stated that this was hard on the children, who never knew whether they would have a visit with respondent. The trial court correctly recognized that, under the circumstances, the foster home offered more stability, if not permanency, and the present situation was not one that could continue indefinitely given its effect on the children. Considering the length of time the children had been in care, respondent's lack of progress, and the children's need for permanency and stability, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Relying on *In re Olive/Metts*, 297 Mich App at 43-44, respondent argues that the trial court was required to consider each child's best interests individually. The trial court recognized this duty in its decision and acknowledged each child separately in its analysis, but ultimately decided that the best interests of the children were the same. Although respondent states that the needs of her oldest child differed significantly from the needs of the other children because the older child was more bonded with respondent, the trial court's finding that the child's placement with her siblings was in her best interests was not clearly erroneous. In most cases, it is in the best interests of the children to keep brothers and sisters together. *Id.* at 42. Therefore, we conclude that the trial court did not clearly err in its finding that termination was in the children's best interests.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Amy Ronayne Krause
/s/ Michael F. Gadola