

STATE OF MICHIGAN
COURT OF APPEALS

In re W. D. BIVENS, Minor.

UNPUBLISHED
October 18, 2016

No. 331837
Wayne Circuit Court
Family Division
LC No. 94-317383-NA

Before: FORT HOOD, P.J., and GLEICHER and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's February 26, 2016 order terminating her parental rights to the child pursuant to MCL 712A.19b(3)(b)(i), (g), (i), (j), and (l).¹ We affirm.

On appeal, respondent first argues that the circuit court's statutory-grounds determination was clearly erroneous because no statutory grounds were established by clear and convincing evidence. We disagree.

To terminate a parent's parental rights to a child, the circuit court must find, by clear and convincing evidence, that at least one of the statutory grounds set forth in MCL 712A.19b(3) has been established. *In re Trejo Minors*, 462 Mich 341, 360; 612 NW2d 407 (2000). Only one statutory ground needs to be established. *Id.*; see also *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 parental rights, even if the court erroneously found sufficient evidence under other statutory grounds."). A circuit court's statutory-grounds determination will only be reversed if it is clearly erroneous. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

In this case, respondent's parental rights were terminated pursuant to several statutory grounds, including MCL 712A.19b(3)(i), which provides for the termination of parental rights if clear and convincing evidence reflects that a parent's "[p]arental rights to 1 or more siblings of

¹ Although the order terminating respondent's parental rights also identifies MCL 712A.19b(3)(a)(i) as an additional ground for termination, it is apparent that this statutory ground applied only to the child's unidentified father, not respondent. The parental rights of the child's father are not at issue in this appeal.

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.” In finding that at least subsection (i) was established by clear and convincing evidence, the circuit court pointed to, amongst other things,² the fact that respondent’s parental rights to two other children had been terminated due to serious and chronic neglect or physical abuse. This finding is supported by the record. As the circuit court correctly indicated, respondent’s parental rights to two other children had been terminated due to serious and chronic neglect or physical harm; specifically, her parental rights to these two other children were terminated due to her lengthy history of cocaine abuse. With respect to each of those cases, all prior attempts to rehabilitate respondent have proved unsuccessful, and we are unable to find anything in the record to support a conclusion that rehabilitation efforts with respect to the child at issue in this case will prove any different.³ Accordingly, we conclude that the circuit court did not clearly err in concluding that MCL 712A.19b(3)(i) had been established by clear and convincing evidence. Because only one

² The circuit court additionally pointed to respondent’s lengthy history of cocaine abuse, failure to obtain prenatal care for the child, and refusal to meaningfully participate in this case. While unnecessary in light of our conclusion with respect to subsection (i), we find these additional issues identified by the circuit court equally important. The child was born prematurely and positive for cocaine and was immediately placed in the neonatal intensive care unit where she remained for “approximately 40 days.” On the day after the child was born, Julia Cohen, a social worker at the hospital, met with respondent and learned that respondent did not have prenatal care for the child as well as that she had been previously involved with child protective services due to substance abuse. When Cohen informed respondent that she was required to report this information, respondent “got very upset,” “walked out of the room[,] and refused to continue speaking with [her].” Tonita Johnson, a child protective services specialist with the Department of Health and Human Services (DHHS), testified that respondent had “had several prior contacts with children’s protective services,” including the termination of her parental rights with respect to at least two other children in 1998 and 2008 due to serious and chronic neglect or physical abuse, specifically cocaine abuse. Johnson testified that, while she was originally unsuccessful in contacting respondent, she eventually spoke with her. According to Johnson, respondent denied using cocaine during her pregnancy, instead stating that she only used marijuana, but admitted not having housing or “provisions” available for the child at birth. Despite attempting to contact her via telephone numerous times throughout this case, Johnson was only able to communicate with respondent by phone on November 20, 2015, at a family team meeting on December 17, 2015, and at court hearings when respondent was present. Respondent was not present at either day of the termination hearing. Similarly, Angela Gillis, a foster care specialist with the Children’s Center, testified that she was largely unsuccessful in contacting respondent throughout the pendency of this case. In total, respondent visited the child for approximately three-and-a-half hours during the three-and-a-half months between the child’s birth and the second day of the termination hearing. In our view, nothing in the record suggests that respondent will be able to adequately care for the child.

³ This Court has recently distinguished subsection (i) from subsection (l) as it relates to a circuit court’s statutory-grounds determination. See *In re Gach*, ___ Mich App ___, ___; ___ NW2d ___ (2016); slip op at 7.

statutory ground need be established, it is unnecessary to address the other statutory grounds relied upon by the circuit court.⁴

Respondent also argues on appeal that the circuit court's best-interests determination was clearly erroneous. We disagree.

Once at least one statutory ground for termination has been established by clear and convincing evidence, the circuit court must conclude that termination is in the child's best interests before an order terminating parental rights may be entered. MCL 712A.19b(5). A circuit court must determine that the termination of a parent's parental rights is in the child's best interests by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 88-90; 836 NW2d 182 (2013). A circuit court's best-interests determination will only be reversed if it is clearly erroneous. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013).

In this case, the circuit court determined that termination of respondent's parental rights was in the child's best interests based on a variety of factors, and we agree with its decision. The child was placed in neonatal intensive care unit after being born positive for cocaine, and respondent simply denied cocaine use during her pregnancy. Even though it is true that she had apparently been enrolled in a rehabilitation program for 29 days as of the day of the termination hearing,⁵ it is equally true that services have proved unsuccessful with respect to at least two other children as well as that she essentially refused to communicate with DHHS and the Children's Center personnel throughout the majority of this case. Additionally, although respondent was able to act appropriately around the child during the two visits that she had with the child, she had only visited the child for approximately three-and-a-half hours over the nearly four months since the child's birth. Moreover, there is no bond between respondent and the child. While respondent now claims that her boyfriend, the putative father, could adequately care for the child, this assertion is not supported by the record. Her boyfriend failed to visit the child, failed to attend DNA testing to prove paternity, and expressed no interest in being involved in the child's life. Indeed, contrary to respondent's claim that DHHS would not seek the termination of her parental rights if her boyfriend was determined to be the child's biological father, the record reflects that termination was the goal regardless of whether paternity was established. Accordingly, we conclude that the circuit court did not clearly err in concluding that

⁴ Respondent does not raise any argument regarding the adequacy of the services provided by DHHS in this case. Nevertheless, we would note that DHHS made significant attempts to contact respondent and were largely unsuccessful. Additionally, services were not required. See MCL 712A.19a(2)(c).

⁵ At the time of the second day of the termination hearing, respondent had been enrolled in "a drug rehab program" called "Genesis House" for 29 days. According to Gillis, respondent stated that this program includes substance abuse counseling, therapy, narcotics anonymous, and dietary classes.

the termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher
/s/ Colleen A. O'Brien