

STATE OF MICHIGAN
COURT OF APPEALS

In re COLLEY/AYERS, Minors.

UNPUBLISHED
October 18, 2016

No. 331998
Oakland Circuit Court
Family Division
LC No. 2014-821562-NA

Before: MURRAY, P.J., and CAVANAGH and WILDER, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her two minor children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (parent failed to provide proper care or custody), and (j) (children will likely be harmed if returned to respondent's care). We affirm.

Respondent argues that the trial court clearly erred in concluding that the statutory grounds were proven by clear and convincing evidence and that termination was in the best interests of the children. We disagree.

In a termination proceeding, the petitioner has the burden of proving at least one statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews “for clear error a trial court’s factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). If the petitioner establishes a statutory ground for termination, the trial court must terminate parental rights if termination is in the children’s best interests. MCL 712A.19b(5). This Court also reviews for clear error the trial court’s decision on the best-interest issue. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Clear error occurs if “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Mason*, 486 Mich at 152 (quotation marks and citations omitted). This Court gives deference to the trial court’s special opportunity to assess the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court did not err in concluding that clear and convincing evidence supported termination of respondent’s parental rights under MCL 712A.19b(3)(c)(i), which is permitted if at least 182 days elapsed since an initial dispositional order, 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.” The children had been removed

from respondent's care on June 17, 2014, when she was arrested following a drug raid on her home where drugs were being sold and prostitution was occurring. Even after her arrest and the removal of her children, respondent repeatedly tested positive for opiates, cocaine, and heroin. Parenting time that had been scheduled for right before Christmas and respondent's criminal sentencing hearing in 2014—likely the last visit she would have with her children for a significant period of time—had to be cancelled because when she arrived for her visit it was very obvious that she was using drugs. In fact, that amount of drugs in her system was so high, they could not be measured. Even after respondent entered into a residential drug treatment program in March 2015—through a deferred criminal sentence—she continued to use drugs. That is, in June respondent went AWOL from the drug treatment program for one week and then tested positive for cocaine when she was screened by her probation officer. Respondent then returned to the residential drug treatment facility where she stayed until September 2015. Nevertheless, the discharge summary from the residential drug program projected a poor prognosis with regard to the likelihood that respondent would remain drug-free and avoid criminal conduct. And at the time of the hearing, respondent had not secured housing that was suitable for her and the children. Given these circumstances, the trial court did not clearly err in terminating respondent's parental rights under subsection (3)(c)(i). Because termination was proper under this subsection, we need not consider the remaining two statutory grounds for termination on appeal. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

In any case, respondent's parental rights were also properly terminated under MCL 712A.19b(3)(g), which provides for termination if 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.” And termination was proper under MCL 712A.19b(3)(j), which provides for termination when there is a reasonable likelihood, based on the parent's conduct or capacity, that the children will be harmed if returned to the parent. As discussed above, respondent continued to have substance abuse issues despite the fact that her children were removed from her custody in June 2014 at the ages of about eight and 16-months. Consequently, at the time of the bench trial in November 2015, the children had been with their foster parents for about 17 months. And respondent had not seen the children for almost a year—since December 2014. Further, as noted by the trial court, as of the time of the bench trial, respondent had not provided proof that she had suitable housing or a financial plan to care for the children. Thus, almost a year-and-one-half after the children were removed from her custody, respondent still did not demonstrate that she could provide for her two minor children. Given these circumstances, the trial court did not clearly err in terminating respondent's parental rights under subsections (3)(g) and (j).

Further, the trial court did not clearly err when it concluded that termination of respondent's parental rights was in the children's best interests. See *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

A trial court must order termination of parental rights if a statutory ground for termination is established by clear and convincing evidence and the court finds by a preponderance of the evidence that termination is in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In making that determination, the court may consider a number of different factors, such as the parent's history, parenting ability, and participation in a treatment program, the children's ages and bond to the parent, the foster care environment, and

children's need for permanency, stability, and finality. See *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012); *In re VanDalen*, 293 Mich App 120, 141-142; 809 NW2d 412 (2011).

By the time the best-interests hearing was conducted in February 2016, the children had been with their foster parents since June 2014, and respondent had not seen them since December 2014. The evidence presented at the best-interests hearing included that when respondent's minor son went into foster care, he had nightmares about the raid on his mother's home and he was wetting his bed. After time in foster care, the issues went away but returned every time he had parenting time with respondent. When her visits stopped, the nightmares and bedwetting issues stopped. When respondent's son first went into foster care, he was very protective of his baby sister and would not let her out of his sight; he even insisted on sleeping in the same room. And she also looked to her brother for anything that she needed, not to her foster parents. When respondent's daughter first came into care, she was afraid of everyone, but mostly women. She would not interact with other children. She would scream hysterically when her diaper was being changed, and try to get away. At the time of the best-interests hearing, respondent's son was very happy with his foster parents and foster family, and was bonded to them. Although when he came into care he was behind in school, he was doing much better. Respondent's daughter was a completely different child; she was personable, happy, funny, and laughed all the time. The foster parents wanted to adopt both children if respondent's parental rights were terminated.

The evidence also included testimony from a psychologist employed by the court psychology clinic who testified about her interview with respondent in December 2015. According to the psychologist, respondent believed that she properly sheltered her children during the time that she was using and selling drugs from her home where prostitution was occurring. While respondent refuted that claim during her testimony, credibility is for the trial court to determine. See *In re HRC*, 286 Mich App at 459. Further, while the children were in respondent's care, the psychologist testified, respondent was disconnected from the important aspects of their lives as evidenced by the facts that respondent was not aware that her son had missed a significant number of days of school when he was in her care and that he had been touched inappropriately by the son of a friend. Respondent failed to recognize, even after several months of treatment, the dangers she had exposed her children to and that she did not properly protect her children. That is, the psychologist opined, respondent's state of mind at the time the children were removed and her state of mind 18 months later had not significantly changed. And even the residential drug treatment program considered respondent's prognosis poor with regard to future drug use and criminal activity. The psychologist also concluded that respondent's son was very bonded to his foster parents and family, noting that he said that he would "maybe visit his mom even though she couldn't take care of him." Further, respondent's daughter's bond with respondent was highly questionable because of her young age at the time of her removal and the limited contact with respondent since that time.

In light of the record evidence, we agree with the trial court's conclusion that it was in the children's best interests to terminate respondent's parental rights. Respondent failed to comply with the parent-agency treatment plan, and did not significantly benefit from either the parenting classes or treatment programs in which she participated. She had not seen her children in well over a year, impacting on the bond they once shared. The children had been in foster care for

almost two years and were thriving. The foster parents had planned to adopt the children. The children urgently needed finality, permanency, and stability, particularly considering their young ages when they came into care, the several issues they had, the length of time they were in care, the progress they made, and the bonds that developed. In summary, 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/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Kurtis T. Wilder