

STATE OF MICHIGAN
COURT OF APPEALS

In re G A MANCHESTER, Minor.

UNPUBLISHED
November 17, 2016

No. 332212
Calhoun Circuit Court
Family Division
LC No. 2013-003610-NA

Before: BOONSTRA, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to the minor child, GM, based on the statutory grounds found in MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions exist that cause the child to come within the court's jurisdiction), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the child will be harmed if returned to the parent). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

GM was born to respondent in August 2013.¹ During a routine doctor's appointment when GM was three months old, her pediatrician noticed that her leg was swollen. X-rays revealed a bilateral clavicle fracture, 8-10 bilateral leg fractures, 10-12 rib fractures, and evidence of an older, partially healed fracture. According to GM's doctors, the injuries were consistent with physical abuse. Police interviews with respondent and GM's father revealed that GM's father had abused GM and that respondent was aware, at least to some extent, of the injuries but did not seek medical care for the infant. GM was immediately removed from respondent's and her father's care and initially placed in non-relative foster care; she was later placed with her paternal grandparents, where she remained for the duration of the proceedings below.

On December 3, 2013, the Department of Health and Human Services (DHHS) filed a petition alleging that GM had suffered severe physical abuse while in respondent's and her father's care. In March 2014, following an adjudicative hearing, GM's father voluntarily

¹ GM's father voluntarily released his parental rights to GM in 2014, and is not a party to this appeal.

released his parental rights. GM remained placed in foster care and respondent was ordered to participate in services, including domestic violence counseling, parenting classes, mental health treatment, substance abuse counseling, and random drug screens. She was also required to maintain employment and housing. Respondent partially complied with her service requirements throughout the duration of the case. At least three times during the pendency of the case, respondent would be sober for five months or more and then relapse into the use of controlled substances. She also enrolled in two inpatient substance abuse treatment programs but left each of them after just a few days. She was employed and lived with her mother for much of the pendency of the case below.

On February 2, 2016, a supplemental petition was filed, requesting that respondent's parental rights be terminated. The petition alleged that respondent tested positive for methamphetamine in November 2015. It also alleged that respondent failed to complete inpatient substance abuse treatment, failed to attend counseling consistently, and failed to attend all of her drug screens.

A termination of parental rights hearing was held on March 9, 2016. At the time, GM was approximately two and a half years old, and had been in foster care for at least 25 months. The principal concerns at the time of the hearing were respondent's substance abuse and failure to comply with her case service plan. The evidence established that respondent tested positive for methamphetamine in November 2015 and that, after her relapse, she ceased consistently participating in services, including drug screens and therapy, including at one point missing twenty consecutive drug screens. At the time of the hearing, respondent had for three weeks, and for a third time, been enrolled in an inpatient substance abuse treatment facility. She did not possess appropriate housing or employment. According to GM's foster care worker, based on respondent's pattern of sobriety and relapse, DHHS would need "at least nine to twelve months before [it] would be able to consider a return home" for GM, at which point she would have been in foster care for over three years.. Following the termination hearing, the trial court found that grounds for termination were established under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). The court also found that termination was in GM's best interests. This appeal followed.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred by finding that a statutory ground for termination had been proven by clear and convincing evidence. We disagree. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's determination for clear error. "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 286, 296-297; 690 NW2d 505 (2004).

The trial court did not clearly err by finding that at least one statutory ground for termination was established by clear and convincing evidence. *VanDalen*, 293 Mich App at 139; *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). The trial court terminated

respondent's parental rights to the child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), which provide, in relevant part:

(3) 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:

* * *

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, 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.

* * *

(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.

With regard to subsection (c)(i), we do agree that the trial court clearly erred by finding that this ground had been proven by clear and convincing evidence. Termination is proper under MCL 712A.19b(3)(c)(i) where the conditions that led to adjudication continue to exist. This Court has held that termination is proper where "the totality of the evidence amply supports that [the respondent] had not accomplished any meaningful change in the conditions" that led to the adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Here, the condition that led to respondent's adjudication was her failure to protect GM from her abusive father. See *In re Sours*, 459 Mich 624, 636; 593 NW2d 520 (1999). The record reflects that, after respondent learned the extent of GM's injuries, she "kicked [GM's father] out" of the house and obtained a restraining order against him. The record also reflects that, when GM's father was released from prison, respondent did not contact him and had no plans to see him; in fact, she testified that she had a personal protection order (PPO) against him. Further, there is nothing

in the record that supports an inference that respondent would resume a relationship with GM's father or expose GM to the risk of his abuse. Therefore, there is nothing to support that, at the time of termination, the condition that led to respondent's adjudication continued to exist. See *Sours*, 459 Mich at 636.

However, the other statutory grounds for termination cited by the trial court had ample evidentiary support. Termination is proper under MCL 712A.19b(3)(c)(ii) where other conditions exist causing adjudication and where the parent has not rectified the conditions. Here, the other conditions causing adjudication were respondent's substance abuse and failure to fully comply with her case service plan. The record reflects that respondent had a long history of sporadic drug use, and that she exhibited a pattern of periodic relapses. After GM was removed from her care, respondent maintained a period of sobriety before testing positive for methamphetamine in July 2014 and August 2014. Respondent then had another period of sobriety until she admitted to using methamphetamine in March 2015. Respondent then remained free of illegal substances until she once again tested positive for methamphetamine in November 2015. Thus, the record supports that respondent had a persistent pattern of relapsing following periods of sobriety.

Additionally, respondent only partially complied with her case service plan during this case. She attended a variety of counseling services and successfully completed parenting classes and an outpatient substance abuse treatment program. However, respondent was referred to two separate inpatient treatment programs but left both programs without making any meaningful progress. Also, after respondent's positive drug screen in November 2015, she stopped complying with her case service plan. She ceased attending counseling consistently, and, after the permanency planning hearing in January 2016, respondent stopped attending drug screens altogether. Overall, respondent only completed 57 out of 96 required drug screens through the duration of this case, which amounted to approximately 60% of her drug screens.

Respondent's caseworker testified that respondent was in denial about her substance abuse issues and did not understand the gravity of her problem. Respondent testified that her outpatient substance abuse counseling helped her to understand the seriousness of her substance abuse issues, but she tested positive for methamphetamine and amphetamine approximately three months after completing the program. At the time of the termination hearing, respondent again was enrolled in an inpatient substance abuse treatment facility but had not yet completed the program. Respondent's mother testified that respondent was not in a position to provide care for GM, and that she was not sure how long it would take before respondent would be ready to do so. Respondent's mother further testified that respondent was still struggling with substance abuse at the time of the termination hearing. The caseworker testified that, based on respondent's pattern of relapsing after periods of sobriety, he did not believe that respondent's substance abuse issue would be rectified within a reasonable period of time given GM's age. The trial court therefore did not err by finding that clear and convincing evidence established that termination was appropriate under subsection (c)(ii). *VanDalen*, 293 Mich App at 139.

This same evidence supports the trial court's findings relative to subsections (g) and (j). MCL 712A.19b(3)(g) provides that a trial court may terminate parental rights when "[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." Here, the trial court found that respondent could not provide proper care or custody for GM because of her substance abuse issues. The trial court further found that there was no reasonable expectation that respondent would be able to do so within a reasonable time considering GM's age. The record supports that the trial court did not clearly err in so finding. MCL 712A.19b(3)(g); *VanDalen*, 293 Mich App at 139.

Termination under MCL 712A.19b(3)(j) is appropriate when "[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." MCL 712A.19b(3)(j) considers the risk of physical and emotional harm to a child. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014). At the termination hearing, the trial court found that there was a reasonable likelihood that GM would be harmed if returned to respondent's care. The trial court found that "it's not much of a problem for the Court to figure out you can't have—as I indicated, a parent who's engaging in illicit drug activity having a child back with them because the danger of harm is just too significant." As noted earlier, respondent had serious and long-standing substance abuse issues that were not rectified at the time of the termination hearing. The record supports that respondent attended various treatment programs throughout the case, but continued to relapse. Moreover, respondent completely stopped participating in her required drug screens by the end of the case, and overall she missed 40% of her screens. The record thus supports the trial court's finding that clear and convincing evidence established that termination was appropriate under this subsection. MCL 712A.19b(3)(j); *VanDalen*, 293 Mich App at 139.

III. BEST-INTEREST DETERMINATION

Respondent also argues that the trial court erred by finding that termination of respondent's parental rights was in GM's best interests. We disagree. Once a statutory ground for termination is established, a trial court must terminate a respondent's parental rights if it finds by a preponderance of the evidence that termination is in the child's best interests. MCR 3.977(E)(4), (F)(1)(c); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). When determining the best interests of the child, the focus should be on the child, not the parent, *Moss*, 301 Mich App at 87, and the trial court must consider the record as a whole, *In re JK*, 468 Mich 202, 211; 661 NW2d 216 (2003). The trial 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). It may also consider the length of time the child was in foster care, the likelihood that the child could be returned to the parent's home in the foreseeable future, and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Other factors include evidence that the child is not safe with the parent and is thriving in foster care, *In re VanDalen*, 293 Mich App at 141, "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption," *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). We review the trial court's decision regarding the child's best interests for clear error. *Moss*, 301 Mich App at 90.

The trial court found that termination of respondent's rights was in GM's best interests because of respondent's substance abuse issues. The trial court also considered GM's placement with relatives, her bond with respondent, and her ability to be adopted. The evidence supports the trial court's finding. Respondent had not rectified her issues with substance abuse at the time of the termination hearing. Respondent was offered two inpatient substance abuse treatment programs but left both facilities without completing any meaningful progress. She was enrolled in a third at the time of the termination hearing. She repeatedly relapsed throughout the duration of the case, despite her participation in various outpatient services. Because of respondent's continued substance abuse, the record supports that GM would not be safe in her care. See *In re VanDalen*, 293 Mich App at 141. Moreover, the record reflects that respondent was never able to consistently comply with every aspect of her case service plan. Additionally, the record supports that, although GM was bonded with respondent, she had a stronger bond with her foster parents, who were willing to adopt her. The trial court also noted the foster parents' willingness to allow respondent to have some relationship with her daughter in the future. Thus, the bond between GM and respondent may not have been entirely severed by the trial court's ruling. In any event, evidence of a bond between parent and child must sometimes give way to concern for the child's safety and stability. See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Accordingly, the evidence established that termination of respondent's parental rights was in GM's best interests. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ Mark T. Boonstra
/s/ Douglas B. Shapiro
/s/ Michael F. Gadola