

STATE OF MICHIGAN
COURT OF APPEALS

In re J S COLLINS, Minor.

UNPUBLISHED
December 13, 2016

Nos. 332427; 332428
Wayne Circuit Court
Family Division
LC No. 14-518244-NA

Before: JANSEN, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

In this consolidated appeal,¹ respondents appeal by right the order terminating their parental rights to the minor child, JSC. The trial court terminated respondents' rights pursuant to MCL 712A.19b(3)(c)(i) (182 or more days have elapsed since issuance of an initial dispositional order, conditions that led to adjudication continue to exist, and no reasonable likelihood conditions will be rectified within a reasonable time), (c)(ii) (other conditions exist that cause the child to come within the court's jurisdiction, conditions have not been rectified, and no reasonable likelihood conditions will be rectified within a reasonable time, (g) (parent failed to provide proper care or custody and no reasonable expectation parent will provide proper care or custody within a reasonable time), and (j) (reasonable likelihood of harm to the child if returned to the home). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

JSC was removed from respondents' home on November 10, 2014. Petitioner, the Department of Health and Human Services (DHHS), filed a temporary custody petition on November 11, 2014, requesting that the court authorize the petition and take jurisdiction over JSC, asserting that respondents' home, by reason of neglect, cruelty, drunkenness, criminality, or depravity, was an unfit place for JSC to live. The petition specifically alleged that: (1) on November 5, 2014, Child Protective Services (CPS) received a referral alleging neglect; (2) respondents tested positive for cocaine and marijuana; (3) domestic violence incidents occurred between respondent-mother (mother) and respondent-father (father) on October 21, 2014 and November 5, 2014; (4) respondents' landlord confirmed that they were facing eviction for failure

¹ *In re J S Collins Minor*, unpublished order of the Court of Appeals, entered April 19, 2016 (Docket Nos. 332427 and 332428).

to pay rent, and utility shutoff; (5) father had been diagnosed with “schizophrenic effective [sic]” disorder and was not taking any medication; and (6) mother had been diagnosed with schizophrenia, multiple personality disorder, and ADHD, and was not taking any medication.

A preliminary hearing was held before a referee on November 11, 2014. Neither respondent was present at the hearing. Felicia Keir, a CPS worker, informed the court that father had assaulted mother during an altercation over drugs on November 5, 2014, and that a warrant had been issued for father’s arrest. Further, Keir stated that the parents faced eviction and utility shutoff, had failed to address mental health issues, and admitted to using cocaine and marijuana. Keir stated that mother had tested positive for cocaine on November 5, 2014. That same day the court entered an order finding probable cause that one or more of the allegations in the petition were true, and authorizing the petition. In addition, the court made the following findings: mother admitted to using cocaine; father had an outstanding arrest warrant; and respondents engaged in domestic violence, faced eviction and utility shutoff, and failed to treat mental health issues.

On November 25, 2014, petitioner filed an amended temporary custody petition, adding to the previous petition the assertion that respondents, when able to do so, failed to provide JSC proper support, or subjected JSC to a substantial risk of harm. The petition also added the following allegations: (1) mother served prison time on two separate occasions, and was on parole from March 21, 2013 to November 7, 2014; and (2) father served 1½ to 5 years in prison for a 2008 gross indecency conviction, and had other past criminal convictions. A pretrial hearing was held the same day with respondents present. The trial court authorized the amended petition on December 4, 2014. JSC was placed in foster care.

The first day of respondents’ adjudication trial was held before a referee on January 20, 2015.² Keir again testified that mother admitted to using cocaine, and tested positive for cocaine on November 5, 2014. Keir also testified that mother informed her that she and father were facing eviction, she had been diagnosed with schizophrenia, multiple personalities, and ADHD, but was not participating in mental health treatment, and father had physically assaulted her during an argument over drugs. On cross-examination by mother’s counsel, Keir confirmed that she knew of two domestic violence incidents between respondents. Father was incarcerated and released for an incident on October 21, 2014, and fled the home following the domestic violence incident on November 5, 2014.

Keir testified that father had admitted to using cocaine and smoking marijuana. He also told Keir that his fight with mother involved her use of drugs, and that he had not been participating in mental health treatment for his diagnosis of “schizophrenic affective [sic]” disorder.

² The trial was originally scheduled for December 11, 2014, but the court adjourned it because father was incarcerated at the time and was not present in court.

Father testified that he fought with mother over guns and drug usage on November 5, 2014, but that he never hit, struck, or punched mother. Further, JSC was not at home during the argument. Father also testified that he used cocaine and smoked marijuana while living with mother, but that he and mother were not in danger of eviction, and that he had never been convicted of domestic violence against mother.

Father testified that he had been incarcerated for resisting and obstructing in 2005, domestic violence between 2007 and 2013,³ possession of marijuana in March 2014, and failure to pay court fines in December 2014. Father also confirmed he had been diagnosed in prison with schizophrenia and multiple personality disorder, and that he was not taking medication to treat the disorders.

The adjudication trial continued on February 5, 2015. Mother testified that she and father got into bad arguments on October 21, 2014 and November 5, 2014, but that she lied to the police about father pushing her. She stated that father had not physically assaulted her during either incident, and that JSC was not present on either occasion. She also then testified that she had only used cocaine once, that her rent was up-to-date at the time of JSC's removal, and that she was then employed at a bar.

According to mother, she and father were living together and intended to plan for JSC together. Further, she stated that she had only been diagnosed with anxiety and depression, not schizophrenia, multiple personality disorder, or ADHD.

At the close of trial, the referee found, by a preponderance of the evidence, that neglect, abuse, and criminality had occurred in the home, that respondents abused drugs, and that domestic violence occurred in the home on two occasions. He recommended that the court take jurisdiction over JSC and order respondents to participate in parenting classes, individual therapy with a focus on domestic violence and anger management, substance abuse therapy, weekly random drug screens, and physical and psychiatric evaluations. The referee also recommended that the court order respondents to maintain a suitable income and housing.

On February 6, 2015, the court entered separate adjudication and disposition orders consistent with the referee's recommendations. The court ordered that JSC remain in petitioner's care and ordered respondents to comply with, and benefit from, their case service plans and exercise supervised parenting time.

At a dispositional review hearing on November 10, 2015, both Vanna Jones, JSC's foster care case manager, and petitioner's counsel requested that the court order the filing of a petition for termination of respondents' parental rights. The referee made the following findings with regard to mother: she had been referred for drug screens, but had not submitted to a screen since the last reporting period; she had been terminated from both parenting and domestic violence classes; she was currently homeless; and she failed to call in for her psychological and psychiatric evaluations. With regard to father, the referee found the following: he had failed to

³ Mother was not the victim in that case.

submit to any drug screens; he was terminated from domestic violence and parenting classes, as well as substance abuse counseling; he failed to participate in psychological and psychiatric evaluations; and he was currently homeless and unemployed. On November 11, 2015, the court entered an order finding that respondents had failed to comply with their service plans and were living together in a motel, father was no longer incarcerated, and, at a recent drug screen, mother tested negative, but father tested positive for cocaine, marijuana, and opiates.

On December 19, 2015, petitioner filed a supplemental permanent custody petition, requesting that the court terminate respondents' parental rights pursuant to MCL 712A.19b(3)(c)(i) and (ii), (g), and (j). The petition alleged that (1) both respondents had been referred for, and terminated from, parenting classes, individual therapy, domestic violence counseling, and substance abuse counseling; (2) neither respondent completed anger management or mental health treatment; (3) neither respondent obtained suitable housing; (4) father was unemployed, and mother failed to provide documentation of income; (5) father missed a significant number of drug screens, and tested positive for cocaine on three occasions, for marijuana on two occasions, and for opiates on one occasion; (6) mother missed a significant number of drug screens, and tested positive for cocaine on four occasions, for marijuana on two occasions, and for opiates on one occasion; (7) both respondents missed a significant number of visits with JSC; and (8) father was charged with domestic violence on July 29, 2015, but the charges were dropped because mother refused to appear.

A final dispositional review hearing was held before a referee on February 10, 2016. Respondents were not present during the hearing. Jones testified that neither respondent was currently incarcerated, but that mother had been arrested in January 2016 on multiple charges, and that father had been arrested in December 2015 for felony larceny. Further, neither respondent had participated in services or drug screens, and mother attended only four visits with JSC in the last reporting period, while father attended only two. On the same day, the court signed and authorized the supplemental permanent custody petition and subsequently entered an order changing JSC's plan from reunification to adoption.

Respondents' termination hearing was held before a referee on March 24, 2016. Father was present, and mother appeared by speakerphone. Jones testified that JSC first became a temporary ward of the court on November 10, 2014. The court ordered mother to comply with a treatment plan consisting of substance abuse counseling, individual therapy, drug screens, domestic violence therapy, parenting classes, participation in psychological and psychiatric evaluations, and finding and maintaining suitable housing and employment. Mother did participate in parenting classes and domestic violence therapy while living in Tennessee from February 2015 to May 2015, but failed to complete parenting classes or domestic violence counseling after being referred for the services upon her return to Michigan. Mother was also referred for, and failed to complete, individual therapy, substance abuse counseling, and psychiatric treatment. Further, Jones informed the court that mother failed to obtain suitable housing or provide paystubs to confirm employment, missed 29 drug screens between June 8, 2015 and November 30, 2015, with positive tests for marijuana and cocaine, and missed 31 of 52 possible visits with JSC.

With regard to father, Jones testified that the court ordered his compliance with a treatment plan consisting of individual counseling, parenting classes, psychiatric and

psychological evaluations, substance abuse counseling, domestic violence counseling, anger management therapy, and maintenance of suitable housing and a legal source of income. Father was referred for, and failed to complete, parenting classes, individual therapy, domestic violence counseling, substance abuse counseling, or anger management courses. Although he did complete a psychological evaluation, Jones was not aware of the results. In addition, father failed to obtain suitable housing, missed 38 random drug screens between March 8, 2015 and November 25, 2015, had positive tests for cocaine, marijuana, and opiates, and missed 34 of 52 visits with JSC.

Jones did testify that father participated in an intake with Team Mental Health (TMH) for individual counseling on March 10, 2016, and had signed up for parenting and domestic violence classes offered by TMH. He had also recently reported receiving medication to treat his mental illnesses. Further, on the morning of the termination hearing, father provided Jones with a letter stating that he was in the process of being hired with a landscaping company, although Jones was unable to verify this.

When questioned by JSC's lawyer-guardian ad litem (L-GAL), Jones agreed that both respondents had a bond with JSC, and that visits with JSC had gone pretty well. However, at the last visit Jones observed, both respondents looked really tired and were falling asleep.

Mother testified that she was currently incarcerated, with a release date of May 5, 2016, but that she was participating in domestic violence and sexual assault groups in prison. She also informed the court that she had secured employment and housing for after her release.

Father testified that he had failed to complete his treatment plan because he had been incarcerated twice during JSC's time in care. According to father, he now had a residence and employment, and, one week prior, had begun taking medication for schizophrenia, manic depression, and anxiety. He believed that he had a bond with JSC and could complete his treatment plan goals within six months.

At the close of the termination hearing, the referee found that respondents had failed to comply with their treatment plans, or establish that they could rectify the conditions leading to adjudication, or provide JSC proper care and custody, within a reasonable time. He then recommended that the court terminate respondents' parental rights pursuant to MCL 712A.19b(3)(c)(i) and (ii), (g), and (j). The referee also found that termination of respondents' parental rights would be in JSC's best interests. On March 30, 2016, the court adopted the referee's report and recommendation and entered an order, finding clear and convincing evidence of statutory grounds to terminate respondents' parental rights, and concluding that termination would be in JSC's best interests. These appeals followed.

II. STATUTORY GROUNDS FOR TERMINATION

Respondents argue that the court clearly erred when it found clear and convincing evidence to terminate their parental rights pursuant to MCL 712A.19b(3)(c)(i) and (ii), (g), and (j). We disagree. "This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App

701, 709; 846 NW2d 61 (2014). A trial court's findings of fact are clearly erroneous if "we are definitely and firmly convinced that it made a mistake." *Id.* at 709-710.

To terminate parental rights, the trial court must first, find by clear and convincing evidence, that the petitioner has established a statutory ground for termination. *In re White*, 303 Mich App at 713. A court may terminate a respondent's parental rights under MCL 712A.19b(3)(c)(i) if "182 or more days have elapsed since the issuance of an initial dispositional order" and "[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." MCL 712A.19b(3)(c)(i). A court may terminate parental rights under MCL 712A.19b(3)(c)(ii) if "[o]ther 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." MCL 712A.19b(3)(c)(ii). A trial court may terminate parental rights under MCL 712A.19b(3)(g) if it finds, by clear and convincing evidence, that "[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." MCL 712A.19b(3)(g). Finally, a court may terminate parental rights under MCL 712A.19b(3)(j) if "[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).

With regard to subsection (c)(i), the court entered its initial dispositional order on February 6, 2015, and entered its order terminating respondents' parental rights on March 30, 2016. Thus, more than 182 days had elapsed since the court issued its initial order of disposition. Further, the evidence presented at respondents' dispositional and termination hearings supported the court's finding that the conditions leading to adjudication continued to exist for both mother and father, and that there was no reasonable likelihood the conditions would be rectified within a reasonable time. The court entered an order removing JSC from respondents' home after mother reported father to the police for domestic violence on October 21, 2014 and November 5, 2014. The trial court took jurisdiction over JSC due to these domestic violence incidents, as well as respondents' substance abuse issues with cocaine and marijuana, impending eviction for failure to pay rent, failure to properly treat mental health issues, and criminal behavior.

Respondents' domestic violence issues had not been addressed at the time of termination. Although mother participated in domestic violence classes while living in Tennessee, she returned to Michigan to live with father, and failed to complete domestic violence counseling. Father had also failed to complete court-ordered domestic violence counseling and anger management therapy at the time of the termination hearing. Considering mother's repeated denial that father had committed domestic violence against her, respondents' failure to utilize services intended to rectify the issue in the significant time provided to comply with their treatment plans, and father's history of domestic violence, including a 2007 conviction, the court did not clearly err by finding that there was no reasonable likelihood that respondents would rectify their domestic violence issue within a reasonable time.

Respondents' substance abuse, criminality, and mental health issues also continued to exist at termination, and their failure to complete or benefit from services designed to rectify these issues during JSC's time in care supported the court's finding that respondents would not do so within a reasonable time. Between June 8, 2015 and November 30, 2015, mother missed 29 drug screens. Although she had a negative screen after the dispositional review hearing on November 10, 2015, she tested positive for cocaine as recently as October 2, 2015. Father missed 38 drug screens between March 8, 2015 and November 25, 2015, and tested positive for cocaine and marijuana as recently as November 10, 2015. Respondents also continued their pattern of criminal behavior. Father admitted that he was incarcerated twice, for approximately two months each time, during JSC's time in care, and mother was incarcerated at the time of the termination hearing.

Despite being given over a year to comply with their case service plans, respondents failed to complete substance abuse counseling, and mother never participated in psychological or psychiatric evaluations, or treatment for her mental health issues. Father did obtain a psychiatric evaluation and begin taking medication for his mental health, but only did so just prior to the termination hearing. Father's last ditch (and short-term) efforts, and mother's initial compliance with some services while living in Tennessee, fail to establish a reasonable likelihood that they would be able to rectify the conditions leading to adjudication within a reasonable time, especially when considering the length of time respondents spent avoiding services and drug screens. We conclude that the trial court did not err by finding that statutory grounds to terminate respondents' parental rights pursuant to MCL 712A.19b(3)(c)(i) had been proven.

The trial court next found clear and convincing evidence to terminate respondents' parental rights pursuant to MCL 712A.19b(3)(c)(ii). We conclude that this determination was in error. The referee's findings on the record at the termination hearing (and in the report and recommendation adopted by the court) give no indication regarding what other conditions existed to justify termination under MCL 712A.19b(3)(c)(ii), and we discern no conditions beyond those leading to adjudication.⁴ However, a court need only find one statutory ground by clear and convincing evidence to terminate a respondent's parental rights. See *In re Utrera*, 281 Mich App 1, 24; 761 NW2d 253 (2008). Therefore, regardless of whether clear and convincing evidence existed to terminate respondents' parental rights pursuant to MCL 712A.19b(3)(c)(ii), termination here was proper. As provided above, the court did not err when it found clear and convincing evidence to terminate respondents' parental rights under MCL 712A.19b(3)(c)(i).

Further, the court did not err when it terminated respondents' parental rights pursuant to MCL 712A.19b(3)(g) and (j). The evidence supported the court's conclusion that respondents failed to provide JSC with proper care and custody. At the time the court entered an order

⁴ On the record, with regard to MCL 712A.19b(3)(c)(ii), the referee stated: "The Court does believe that a reasonable time has been given to rectify these conditions. So the Court finds as to both sections of Section C, I and double I, that services have been provided. A number of referrals have been given to both mother and father. They have failed to successfully complete those services."

removing JSC from respondents' care, domestic violence had occurred at the home between mother and father, and respondents faced eviction, had failed to address mental health issues, and admitted to using cocaine and marijuana. These behaviors and circumstances only continued during JSC's time in care. Further, mother was incarcerated at the time of termination.

The evidence presented also supported the court's determination that respondents would be unable to provide JSC proper care and custody within a reasonable time considering JSC's age. "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710. Over a year went by between the court's initial dispositional order and its order terminating respondents' parental rights. In that time, respondents failed to complete court-ordered parenting classes, domestic violence counseling, substance abuse counseling, and individual therapy. In addition, mother missed 29 drug screens and 31 of 52 possible visits with JSC, while father missed 38 drug screens, and 34 of 52 possible visits with JSC. Respondents' attempts to begin complying with their treatment plans just prior to termination failed to demonstrate any reasonable expectation that respondents would be able to provide JSC proper care or custody within a reasonable time.

In addition to the evidence of domestic violence, substance abuse, and criminal behavior exhibited by respondents here, "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 at 711. As provided above, both respondents failed to comply with, and benefit from, their case services plans. Therefore, we conclude that the trial court did not err by finding that statutory grounds to terminate respondents' parental rights pursuant to MCL 712A.19b(3)(g) and (j) had been proven.

III. BEST-INTEREST DETERMINATION IN DOCKET NO. 332428

Mother also argues that the court clearly erred by finding termination of her rights to be in JSC's best interests.⁵ We disagree.

This Court reviews a trial court's determination regarding best interests for clear error. *In re White*, 303 Mich App at 713. "A trial court's decision is clearly erroneous '[i]f although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.'" *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations and quotation marks omitted; alteration in original).

"The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the child['s] best interests." *In re White*, 303 Mich App at 713; see also MCL 712A.19b(5). To make its best-

⁵ Father did not raise a best-interest determination issue in his statement of questions presented or in the body of his appellate brief.

interest determination, “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 at 41-42 (internal citations omitted). Further considerations may include “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 at 714.

In making its best-interest determination, the court adopted the referee’s findings on the record at the termination hearing, and in the report and recommendation, that JSC’s need for permanency, and respondents’ inability to provide proper care for JSC, outweighed the bond between respondents and JSC. The evidence presented at the terminating hearing and throughout the proceedings supported the court’s determination.

Although Jones testified that a bond existed between JSC and mother, mother missed a significant number of parental visits. In addition, she had a history of domestic violence, substance abuse, and criminality that she failed to rectify during JSC’s time in care, and she did not substantially comply with her case service plan. Evidence of a bond between parent and child does not outweigh the child’s need for safety. Thus, the court did not clearly err when it determined that it would be in JSC’s best interests to terminate mother’s parental rights.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra