

STATE OF MICHIGAN
COURT OF APPEALS

In re DANELUK/SIEGEL, Minors.

UNPUBLISHED
November 17, 2016

No. 332441
Crawford Circuit Court
Family Division
LC No. 15-004237-NA

Before: OWENS, P.J., and HOEKSTRA and BECKERING, JJ.

PER CURIAM.

Respondent's parental rights to her two children, C.D. and R.S., were terminated pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and (ii) (other conditions continue to exist), as well as MCL 712A.19b(3)(g) (failure to provide proper care and custody). Respondent appeals as of right. Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

Respondent has a long history of substance abuse, domestic violence, and neglect of her children, which prompted the intervention of Children's Protective Services (CPS) and the provision of services to respondent on numerous occasions beginning as far back as 2007 when her eldest child, R.S., was an infant. The instant proceedings began in December of 2014, a few months after the birth of her second child, C.D. Petitioner filed a petition alleging that respondent had a substantial history with CPS relating to R.S. and that respondent had an ongoing substance abuse problem as demonstrated by a recent positive drug test and respondent's efforts to obtain an early refill of a prescription. The petition also alleged that C.D. had been diagnosed with failure to thrive. Respondent pleaded no contest to the allegations in the petition, the trial court assumed jurisdiction, and, for a majority of the case, the children were placed with their respective fathers.

For more than a year, respondent received numerous services aimed at reunification, including drug testing, a psychological evaluation, substance abuse counseling, domestic violence programs, parenting visits, and parenting classes. Respondent made some effort by attending numerous counseling sessions as well as the majority of her parenting time visits. However, respondent refused to acknowledge her substance abuse problem and she ultimately failed to maintain sobriety. In this respect, she missed drug tests, she tested positive on several occasions, she disregarded recommendations for inpatient treatment, she changed counselors several times, and she missed numerous visits with counselors. In addition, her conduct during the case was marked by emotional instability, including angry outbursts at caseworkers and the

children's fathers in front of the children, as well as swearing at the children's lawyer guardian ad litem in court. During the pendency of this case, she was also convicted of domestic violence as a result of an incident with C.D.'s father in May of 2015, and yet respondent refused domestic violence services following this incident. Respondent also allowed C.D. and her father to live with her, thereby ignoring the trial court's order that she only receive supervised parenting time.

Based on respondent's minimal progress after more than a year of services, the trial court found statutory grounds for termination under MCL 712A.19b(3)(c)(i), (ii), and (g). In particular, as support for its statutory findings, the trial court discussed respondent's substance abuse, her communication and interpersonal skills, her emotional instability, and her problems with domestic relations, ultimately noting that respondent had failed to comply with and benefit from services. After also determining that termination would be in the children's best interests, the trial court terminated respondent's parental rights. Respondent now appeals as of right.

Respondent first argues that the trial court clearly erred in finding that there were statutory grounds to terminate her parental rights. In particular, respondent notes that the initial allegations involved C.D.'s failure to thrive, which was resolved, and respondent's alleged problem with substance abuse. However, according to respondent, she did not have a substance abuse problem and her children are not at risk from her use of prescription medications. While acknowledging her conviction for domestic violence and other issues cited by the trial court, respondent contends that these concerns are not dispositive and do not demonstrate an inability to care for her children. Instead, respondent emphasizes the positive steps that she took during this case, including her recent counseling with Carol Sheltenhelm, and she asserts that the Department of Health and Human Services (DHHS) failed in its obligation to provide services, including transportation accommodations. Ultimately, respondent argues that, in light of her purported progress, her past difficulties should not be used against her as a reason for terminating her parental rights because she will be able to care for the children in a reasonable time.

"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 a trial court's factual findings and its determination that a statutory ground for termination has been proven by clear and convincing evidence for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous "if although there is evidence to support it," this Court is left "with a definite and firm conviction that a mistake has been made." *Id.* (citation omitted). Deference is given to the trial court's "special opportunity to judge the credibility of witnesses." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

In this case, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (ii), and (3)(g), which provide as follows:

- (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.

Considering these statutory provisions, we can find nothing clearly erroneous in the trial court's decision to terminate respondent's parental rights. Proceedings were initiated in this case in December of 2015 as a result of C.D.'s failure to thrive and respondent's ongoing drug use. Although the issues relating to C.D.'s failure to thrive was resolved and not considered by the court as a reason for termination, respondent plainly failed to address her substance abuse problem. Specifically, the record shows that, in December of 2014, respondent tested positive for methamphetamine, methadone, PCP, and benzodiazepines, and she made repeated attempts to prematurely fill a prescription. When those efforts proved unsuccessful, she told workers at urgent care that she would "buy it on the street."

As part of a plan to address these concerns, respondent underwent a psychological evaluation which showed that she had a substance abuse problem and, one of her counselors, Ed West, confirmed that respondent needed to address severe, long-term substance abuse issues. Despite more than a year of services, including opportunities for random drug testing, substance abuse counseling, and inpatient treatment, respondent failed to maintain sobriety.¹ In fact,

¹ There is no merit to respondent's contention that petitioner failed to provide adequate services. Clearly, numerous services were offered and, contrary to respondent's contention that public transportation difficulties interfered with her ability to attend parenting time, the record shows that respondent had the opportunity for 2 hour visits and left early even if she had non-public transportation. In other words, it was respondent who failed to participate in, and benefit from, the services offered. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). More

respondent largely refused to acknowledge that she had a drug problem or the impact this problem had on her ability to care for her children. Indeed, while respondent contends on appeal that her substance abuse does not affect her ability to parent, it was in actuality a pervasive problem which impacted her conduct as demonstrated by, for example, the fact that she was drinking before the incident of domestic violence with C.D.'s father in May of 2015, which occurred while C.D. was in the home. Moreover, the evidence of respondent's substantial history with CPS, beginning in 2007, confirmed that respondent's substance abuse had long impacted her ability to provide proper care for her children.

Overall, in light of respondent's ongoing substance abuse problem which affected her ability to parent, the trial court did not clearly err by determining that the conditions which led to the adjudication continued to exist at the time of termination. MCL 712A.19b(3)(c)(i). Given the long-standing nature of respondent's problem and her failure to benefit from more than a year of services, the trial court also did not clearly err by concluding that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages.² See MCL 712A.19b(3)(c)(i); *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). Thus, termination was proper under MCL 712A.19b(3)(c)(i).

Having determined that one statutory ground for termination was established by clear and convincing evidence, we need not consider whether the other grounds cited by the trial court also supported termination. See *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). Nonetheless, we note briefly that the trial court did not clearly err by terminating respondent's parental rights under MCL 712A.19b(3)(c)(ii) and (g). Pertinent to MCL 712A.19b(3)(c)(ii), the trial court noted respondent's emotional instability and domestic violence as reasons for termination. In view of respondent's angry outbursts during this case, her act of domestic violence against C.D.'s father, her history of domestic violence against R.S.'s father, her refusal of domestic violence services, her numerous missed counseling sessions, and ultimately her failure to address these issues despite the availability of services, the trial court did not clearly err by finding that "[o]ther conditions exist that cause the child to come within the court's jurisdiction . . . and there is no reasonable likelihood that the conditions will be rectified within a

specifically, respondent cancelled numerous counseling appointments, she missed several drug tests, she tested positive for an alcohol byproduct and Suboxone (for which she did not have a prescription). She tested positive for the prescription drug Adderall beyond therapeutic ranges and in fluctuating levels which indicated she was not taking Adderall as prescribed. She attempted to obtain Adderall from R.S.'s father, she obtained Suboxone from a roommate, and she refused recommendations for inpatient services.

² We note that, toward the end of the case, respondent attended mental health counseling with Sheltenhelm, including five individual sessions and four group classes. While respondent argues she should be given more time in light of this supposed progress, given her history of noncompliance and her refusal to acknowledge a substance abuse problem, the trial court did not err when it determined that respondent's last-minute efforts at counseling came "too little too late," particularly when the trial court largely disregarded the significance of Sheltenhelm's testimony because her opinions were based on respondent's self-reporting and she did not know of respondent's domestic violence or substance abuse problems. We defer to the trial court's assessment of Sheltenhelm's credibility. *In re LE*, 278 Mich App at 18.

reasonable time considering the child's age." MCL 712A.19b(3)(c)(ii). Thus, termination was proper under MCL 712A.19b(3)(c)(ii).

The same facts supporting the trial court's decision in relation to MCL 712A.19b(3)(c)(i) and (ii), also support termination under MCL 712A.19b(3)(g). That is, as discussed, respondent has a long history with substance abuse, which affects her ability to parent; she also struggles with emotional instability as well as domestic violence. Yet, despite numerous services, she has failed to address these significant issues. On this record, the trial court did not clearly err by determining that respondent failed to provide proper care and custody and that there is no reasonable expectation that she will be able to do so within a reasonable time considering the children's ages. See MCL 712A.19b(3)(g); *In re Trejo*, 462 Mich at 346 n 3; *In re White*, 303 Mich App at 710.

Lastly, respondent argues that it was not in the best interests of her children to terminate her parental rights. Respondent argues that she is bonded with the children and has a house as well as the income needed to support her children. According to respondent, the trial court erred by failing to take into account respondent's rights as a parent and it would be in the best interests of respondent and the children if she were given additional time to work toward reunification.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in a child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The minor child—not the parent—is the focus of the best-interest determination. *Id.* at 87. In deciding a child's best interests, a court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, a parent's compliance with a case service plan, and the advantages of alternative homes. *In re White*, 303 Mich App at 713-714 (citations omitted). We review a trial court's best interests determination for clear error. *Id.* at 713.

In this case, the trial court determined that respondent had a "very limited" bond with the children given C.D.'s young age and the fact that, after spending a large portion of her life out of respondent's care, R.S.'s interactions with respondent had become "institutionalized." Moreover, during the course of this case, as a result of her difficulties with substance abuse, emotional instability, and domestic violence, respondent proved herself unable to provide appropriate parenting and to offer the children permanence and stability. In contrast, the trial court noted the children were placed with their respective fathers, who offered appropriate homes, and that the children were each strongly bonded to their fathers. Respondent had engaged in acts of domestic violence involving both fathers, and neither father wished to have respondent involved in their lives or their daughters' lives. Given respondent's serious problems, her minimal bond with the children, and her failure to benefit from services, the trial court did not clearly err by determining that termination was in the children's best interests.

Affirmed.

/s/ Donald S. Owens
/s/ Joel P. Hoekstra
/s/ Jane M. Beckering