

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* SPRAGG, Minors.

UNPUBLISHED  
December 20, 2016

No. 333019  
Branch Circuit Court  
Family Division  
LC No. 10-004473-NA

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Before: WILDER, P.J., and MURPHY and O'BRIEN, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the two minor children under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and (g) (failure to provide proper care or custody). We affirm.

The children were originally removed from their parents' custody in November 2010, after police found that the children were living in a home under deplorable conditions and where methamphetamine was being manufactured in two labs. Respondent was offered services for his drug use, but he failed to participate for the most part. He was also resistant to drug screens. Although the children were returned to their mother's custody at some point in 2012, they were removed again in early 2015 because of the mother's meth use and mental health problems and because of respondent's continuing criminal activity involving meth and domestic violence against his girlfriend. From that time, respondent stopped communicating with petitioner until he was incarcerated in April 2015 for meth possession and absconding. He remained incarcerated at the time of termination.<sup>1</sup>

On appeal, respondent contends that the trial court clearly erred in finding that there was clear and convincing evidence supporting the statutory grounds for termination and in finding that termination of respondent's parental rights was in the children's best interests. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Moss*, 301 Mich

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<sup>1</sup> The children's mother voluntarily released her parental rights to the children, and she is not a party to this appeal.

App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, “regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Termination of parental rights is appropriate under § 19b(3)(c)(i) if “[t]he 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 . . . [that] [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.” And § 19b(3)(g) provides for termination 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.”

With respect to § 19b(3)(c)(i), there is no dispute that well over 182 days had elapsed since the trial court issued an initial dispositional order. The conditions that led to adjudication were respondent’s failure to provide suitable housing and his criminal conduct connected to domestic violence and the manufacture and use of meth. With regard to his criminal behavior, he was arrested on March 19, 2014, and police found meth paraphernalia in the home where he was living, including inside a baby’s room.<sup>2</sup> Respondent pleaded guilty to possession of meth, and he was arrested for domestic violence in July 2014. He absconded from parole and was arrested again in April 2015. He was incarcerated from that time until the time of termination. The trial court thus did not clearly err in finding that he had not rectified his criminal behavior at the time of termination. Furthermore, evidence shows that his criminal behavior began when he was in his early teens and that it has continued throughout his life. Respondent’s record includes numerous arrests and convictions for assault, domestic violence, driving offenses, criminal sexual conduct, property crimes, and drug-related offenses. Throughout the case, respondent was largely noncompliant with services and he did not regularly participate in drug screens. When he did participate in drug screens, he frequently tested positive for illegal drugs.

With regard to respondent’s failure to provide suitable housing, he was incarcerated at the time of termination, and there is no indication that he attempted to provide the children with housing while he was incarcerated or to arrange for future permanent and suitable housing. We thus find no clear error in the trial court’s ruling that respondent had not rectified his failure to provide suitable housing. Moreover, respondent testified that except for a six-month period

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<sup>2</sup> It appears that the “baby” was another one of respondent’s children who was the subject of separate child protective proceedings in a neighboring county.

during which one of the children lived with him, the children had never lived with respondent at any time in their lives. Throughout the proceedings, respondent was unable to provide himself with stable housing. He lived with friends and family members. Often, his address was unknown and he could not be located. Respondent failed to maintain employment; thus making it difficult for him to obtain stable housing. For the above reasons, the trial court did not clearly err in finding that there was no reasonable likelihood that respondent would rectify his failure to provide stable and suitable housing within a reasonable time.

Respondent argues that termination was improper because he took responsibility for his actions, he participated in services while incarcerated, and he would have found employment and housing after his release. However, despite evidence that respondent participated in services while incarcerated, the evidence shows that he persistently failed to do so while not incarcerated. Respondent's arguments on appeal essentially concern the credibility of his testimony. But this was the province of the trial court, not this Court. *In re HRC*, 286 Mich App at 460. And the trial court did not find respondent to be credible. In sum, the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i).

Moreover, evidence of respondent's criminal history and incarcerations, his extensive drug use, his apparent disregard of the dangers posed by exposing children to meth, his lack of suitable housing, his failure to maintain employment, his questionable parenting skills, his failure to provide support, his tendency to disappear for periods of time, and his failure to show an interest in exercising visitation, all supported termination of respondent's parental rights under MCL 712A.19b(3)(g) for failure to provide proper care or custody.

With respect to the trial court's best-interests determination, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider such factors as "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 Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

The children were removed from the parents twice since 2010. Respondent had a pattern of failing to visit them for months at a time. Petitioner was often unaware of his whereabouts, and he was frequently incarcerated. Although respondent wrote appropriate postcards to the children while he was incarcerated, a caseworker testified that this caused the children to struggle emotionally because they did not know what to expect from respondent. Respondent admitted at the termination hearing that his failure to visit the children indicated that he did not have a close relationship with them. In contrast, evidence shows that the children had a close relationship with their foster parents. This evidence supported the trial court's finding that termination was in the children's best interests.

Respondent argues on appeal that the children's benefit from having him in their lives indicates that the trial court clearly erred in finding that termination was in their best interests. However, the record does not indicate that the children have derived or would derive any benefit from having respondent in their lives, given his past conduct and behavior. Rather, when respondent entered their lives, he failed to provide them with proper care because of his lack of personal stability, the absence of suitable housing, and his ongoing criminal behavior. Indeed, when considering respondent's lengthy criminal history and his inability to provide stability or

housing, it is unlikely that the children could have been returned to him within the foreseeable future, if at all. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). For the above reasons, the trial court did not clearly err in finding that termination was in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ William B. Murphy  
/s/ Colleen A. O'Brien