

STATE OF MICHIGAN  
COURT OF APPEALS

---

*In re* LEWIS, Minors.

UNPUBLISHED  
December 13, 2016

Nos. 333031 & 333062  
Wayne Trial Court  
Family Division  
LC No. 14-516579-NA

---

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

PER CURIAM.

In these consolidated appeals, respondents appeal as of right an order terminating their parental rights to four of their five children, SPL, JCL, HML, and E JL; their fifth child, TNL, is not a subject of this appeal. In Docket No. 333031, respondent-mother appeals the termination of her parental rights pursuant to MCL 712A.19b(3)(a)(ii) (deserted children for at least 91 days), (c)(i) (conditions that led to the adjudication continue to exist), and (g) (failed to provide proper care and custody). In Docket No. 333062, respondent-father appeals the termination of his parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (h). We affirm.

I. FACTS

On May 11, 2014, an ex parte emergency order was entered that removed all five of respondents' children from respondent-mother's care. Respondent-father was in federal prison in Florida at the time. Respondent-mother had left the children in the care of 14-year-old TNL, who is deaf, and the children were found in the street where JCL was almost hit by cars. They were subsequently made temporary court wards.

Numerous proceedings were conducted over the next two years, culminating in a termination hearing in May 2016. After the close of proofs and the parties' arguments, the hearing referee found it to be "uncontroverted and unrefuted that mother has made absolutely no progress toward remedying the conditions" that resulted in the adjudication. The referee indicated that she was recommending that respondent-mother's parental rights be terminated and addressed respondent-mother directly:

You have shown in two years your children are of little or no importance to you. You are defiant in your attitude that it is someone else's responsibility to pursue you. Your children came into care for very specific reasons. You've done nothing to rectify that. It's not the worker's responsibilities to hunt you down. It's not the worker's responsibility to ensure that you visit your children. You

should want to visit your children. You abandoned them and left them with little self-worth in terms of your relationship to them. You somehow manage to go to the things you want to do but you don't put your children as a priority and that's why I'm recommending your rights be terminated. You are 100 percent noncompliant. Even if I take your admitted document in the light most favorable to you all it shows is that you're still doing methadone for two years. You have not gone to parenting classes. You have not attended counseling. There's no documents that you do anything but drop or receive methadone. That's the only thing that it's showing.

You haven't supported [the] children yet. You're allegedly in a management program. You haven't presented your income tax return or your proof of a pay stub or any documentation to show that we need to give you more time. Had you done any of those things probably we wouldn't be in this boat. We would be working with you but instead it's all everybody else but you, and the Court will make the finding that you have deserted your children for 91 or more days and the Department has proven pursuant to (B) 3 (II) that you were a respondent in a proceeding and more than 182 days have elapsed since the initial dispositional order and I'll recommend termination of your rights pursuant to (B) 3 (C); that without regard to your intent you've been unable to provide for your children. By your own admissions you're living in a house they can't come back to and even though you're working full-time you don't have independent housing for your children were I to release them to you today, and that the Court does find that there are these grounds for the termination of your rights, and that it's in the children's best interest. They deserve a parent who's willing to do something for them not simply put their needs before their children, and it's clear they deserve permanency and stability, neither of which you can provide, and I will recommend that your parental rights be terminated.

The referee also recommended that respondent-father's rights be terminated, noting in part that respondent-father had not identified a relative who could provide for the children until he was out of prison and ready to care for them. The referee found "[e]qually concerning" the fact that respondent-father planned to return to respondent-mother as soon as he could after being released from prison. The trial court adopted the hearing referee's recommendation to terminate the parental rights of both respondents and this appeal followed.

## II. ISSUES ON APPEAL

Both respondents challenge the trial court's determinations that clear and convincing evidence supported the cited statutory grounds for termination and that a preponderance of the evidence proved termination of their parental rights was in the children's best interests. We reject both respondents' arguments.

## A. STANDARD OF REVIEW

Petitioner bears the burden of proving at least one statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000), superseded in part by statute on other grounds as recognized by *In re Moss*, 301 Mich App 76, 83 (2013). Once petitioner has proven a statutory ground, the trial court must order termination if “termination of parental rights is in the child’s best interests.” MCL 712A.19b(5). We review for clear error a trial court’s decision to terminate parental rights. MCR 3.977(K). “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 (2005).

## B. STATUTORY GROUNDS

### 1. DOCKET NO. 333031

The trial court terminated respondent-mother’s parental rights under the following provisions of MCL 712A.19b(3):

(a) The child has been deserted under either of the following circumstances:

\* \* \*

(ii) The child’s parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

\* \* \*

(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.

\* \* \*

(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.

The trial court did not clearly err in concluding that clear and convincing evidence supported termination of respondent-mother’s parental rights under MCL 712A.19b(3)(a)(ii). As

this Court held in the case of *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56 (1991), a finding of abandonment is not clearly erroneous where “[t]he evidence established that respondent had little or no contact with her children from the time they were [removed from her care], and that respondent failed to comply with parent agency agreements geared at providing the children with a stable home.” Similarly, here, the evidence shows that respondent-mother attended only a very few visits with the children in the two years this matter was pending. She claimed to have had scheduling problems associated with her employment, but she never provided documentation that she was employed. And although the record indicates that respondent-mother had periodically conversed with HML and SPL by telephone, she did not maintain telephone contact with the other children.

Further, foster-care workers testified that respondent-mother had been noncompliant with her treatment plan and respondent-mother admitted as much at trial. Although the record indicates that respondent-mother may not have received proper notice for one or two of the hearings, she failed to appear at many hearings without providing a documented excuse. Moreover, respondent-mother regularly ceased all contact with her caseworkers and her attorney, which meant that she cut herself off from services and any information about the proceedings that her counsel could have provided.

Considering the record evidence and deferring to the trial court’s credibility determinations, we are not left with a definite and firm conviction that a mistake has been made. Thus, the trial court’s finding that termination was warranted under MCL 712A.19b(a)(ii) is affirmed.

Because termination was proper under MCL 712A.19b(a)(ii), we need not consider whether termination was also proper under MCL 712A.19b(c)(i) and (g); nevertheless, we conclude that the trial court did not clearly err. Respondent-mother’s failure to comply with the parent-agency agreement is evidence of her failure to provide proper care and custody for SPL, JCL, HML, and EJL. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). She failed to show up for scheduled court hearings and did not provide petitioner’s agents or the trial court with any documentation that her absences were the result of conflicts with her employment, as she claimed. Indeed, when one caseworker visited one of respondent-mother’s purported employers, no one at the business knew who respondent-mother was. And she had failed to provide any financial support for the children since their removal from her care. Respondent-mother had also moved frequently without providing her addresses to petitioner and, although she claimed to be living in a home at the time of trial, she testified that the children were not welcome to live with her at that location.

Respondent-mother argues that the underlying cause of her inability to properly parent SPL, JCL, HML, and EJL was her substance abuse, which she is effectively treating. However, she provided only minimal documentation to petitioner’s agents and questionable documentation to the trial court about the extent of her treatment and the progress she made. Even assuming the veracity of her documentation, the documents show that she still required daily methadone treatment two years after the children’s removal. She was also arrested for drug possession in August 2015, well over a year after the children were removed from her home, and failed to satisfy her obligation to present herself for drug screening. Given that respondent-mother has tested positive for opiates, cocaine, and THC during the time her children have been in

petitioner's care and custody, the trial court's conclusion that respondent-mother's dependency issues persisted is not clear error.

In summary, the trial court's determinations that clear and convincing evidence supported the termination of respondent-mother's parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), and (g) were not clearly erroneous. See *In re JK*, 468 Mich 209-210.

## 2. DOCKET NO. 333062

The trial court terminated respondent-father's parental rights under the following provisions of MCL 712A.19b(3):

(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.

\* \* \*

(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.

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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.

The trial court did not clearly err in concluding that clear and convincing evidence supported termination of respondent-father's parental rights under MCL 712A.19b(3)(c)(i) and (g). The record reveals that respondent-father maintained some contact with the children while in prison but, as he admitted, he had not provided for the children's care and custody while incarcerated. Further, at the time of trial, respondent-father could provide no details as to his post-release housing or employment, although he did testify to taking employment skills courses while in prison. Respondent-father was unable to provide the trial court with any relative who could care for the children until his post-release obligations were completed, and stated that his plan for the children was to reunite with respondent-mother, whose parental rights were properly terminated. Crediting his assertion that he would put the children's interests above his own and not reunite with respondent-mother, he still had no functional plan for caring for the children. Accordingly, the trial court's determinations that clear and convincing evidence supported the

termination of respondent-father's parental rights under MCL 712A.19b(c)(i) and (g) were not clearly erroneous. See *In re JK*, 468 Mich 209-210.

Because we have concluded that termination was proper under at least one of the cited statutory grounds, we need not consider whether termination was also proper under MCL 712A.19b(3)(h); nevertheless, we conclude that the trial court did clearly err in that regard. In reaching her recommendation of termination on that statutory ground, the hearing referee noted that respondent-father was

in prison for a period of time that your children are deprived of a normal home for a period exceeding two years and there's no expectation that they could have that in a reasonable time considering their tender age. Even if you are paroled when you say you will be paroled, the fact is you will most likely be in a step down. You do not have housing. You do not have income. These are all called what ifs and these children, quite frankly, deserve better than that, so I'm going to recommend to Judge Joseph that both of your parental rights be terminated.

The focus of MCL 712A.19b(h), however, is "whether the imprisonment will deprive a child of a normal home for two years in the future, and not whether past incarceration has already deprived the child of a normal home." *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992) (internal quotation marks and citation omitted). Thus, to the extent the trial court relied on the fact that the children were deprived of a normal home for the previous two years, such reliance was erroneous. However, because termination was proper under MCL 712A.19b(c)(i) and (g), the trial court's error was harmless. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

### C. BEST INTERESTS

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). 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 Minors*, 297 Mich App at 41-42 (internal citations omitted). The court may also consider the parent's compliance with a case service plan, visitation history with the child and the child's well-being while in care, as well as the possibility of adoption. *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

#### 1. DOCKET NO. 333031

Respondent-mother argues that the trial court was required to make explicit findings concerning each child's best interests. While the trial court must consider the best interests of each child individually, *In re Olive/Metts Minors*, 297 Mich App at 42, it is only required to make explicit "factual findings concerning each child's best interests" when "the best interests of the individual children *significantly* differ." *In re White*, 303 Mich App 715-716. There is

nothing in the record, nor does respondent-mother argue to the contrary, that the interests of these children significantly differ.

Respondent-mother also argues that the trial court erred because termination would separate the children from each other. Respondent-mother is correct that “in most cases it will be in the best interests of each child to keep brothers and sisters together.” *In re Olive/Metts Minors*, 297 Mich App at 42 (internal quotation marks and citation omitted). However, the record is clear that respondent-mother cannot care for the children. The record reveals that two years after the children’s removal, respondent-mother was, at best, still dependent on methadone and, at worst, had not made any significant improvement on her substance abuse problems. She had yet to complete any required counseling or parenting classes, and she had not found suitable housing for the children. Respondent-mother also frequently failed to communicate with her caseworkers, as well as the trial court, and provided no documentation of her employment. Further, the record reveals that respondent-mother rarely visited with the children and had ceased telephone contact with the older children almost entirely. The children exhibited behavioral issues throughout the case and these issues appear to have worsened as both the children and this case have matured. The record is thereby clear that the children needed a permanent, stable placement that respondent-mother could not provide within any reasonable time. And there was evidence that the children’s foster parents were interested in adopting the children. For these reasons, the trial court properly concluded that petitioner proved by a preponderance of the evidence that termination of respondent-mother’s parental rights was in the children’s best interests. See *In re Moss*, 301 Mich App at 90.

## 2. DOCKET NO. 333062

Throughout the proceedings, respondent-father maintained some contact with the children and sought out services offered through the prison. However, respondent-father’s release date from prison was uncertain and would likely result in placement in a halfway house for a period of time. He did not provide any testimony regarding his future employment or housing plans. He admitted that he had no place for the children to go and none of respondent-father’s relatives came forward and indicated a willingness to provide for the care and custody of the children. There was also evidence that the children’s foster parents were interested in adopting the children. While respondent-father appears to have taken some positive steps toward reuniting with his children, the children exhibited a very strong need for stability and respondent-father was unable to show that he would be able to provide this stability in the near future. Accordingly, the trial court properly concluded that petitioner proved by a preponderance of the

evidence that termination of respondent-father's parental rights was in the children's best interests. See *In re Moss*, 301 Mich App at 90.

Affirmed.

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