

STATE OF MICHIGAN
COURT OF APPEALS

In re NERIO, Minors.

UNPUBLISHED
November 17, 2016

Nos. 333179, 333265
Hillsdale Circuit Court
Family Division
LC No. 12-000783-NA

Before: SAWYER, P.J., and MARKEY and O'BRIEN, JJ.

PER CURIAM.

In this consolidated appeal, respondent mother (Docket No. 333179) and respondent father (Docket No. 333265) both appeal the order of the trial court terminating their parental rights to the minor children, ZN, TN, JN, and EN, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions continue to exist and where parent has not rectified the conditions), (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.

Father and mother had a long history of domestic violence and substance abuse. DHHS investigated father and mother in 2010 because of domestic violence and substance abuse. Mother and father participated in services, and the case was successfully closed. On November 16, 2012, a petition was filed, alleging that mother tested positive for drugs and father engaged in domestic violence against mother in the presence of the children. The petition was authorized and DHHS took jurisdiction over ZN, TN, and JN. In the following months, father and mother were accepted into Family Treatment Court and consistently participated in services. In June 2013, another incident of domestic violence occurred. Father consumed alcohol and struck ZN in the face. In the month following, father and mother violated the safety plan by having contact with one another and by using drugs and alcohol. On July 17, 2013, the children were removed from mother and father's care.

Throughout September and October 2013, father and mother produced negative drug and alcohol screens and, on November 11, 2013, the children were returned to father's and mother's care. For a period following the children's return, father and mother produced mostly negative screens. However, in April 2014 and the months following, father and mother began producing positive screens consistently. EN was born in April 2014.

On June 25, 2014, an altercation occurred between father and mother in the presence of the children. On September 28, 2014, another altercation occurred between mother and father. Father and mother hit each other, and father threw mother onto a couch where EN was lying. The children attempted to stop their parents from fighting, and father yelled at the children to “shut up.” Father also hit ZN on the back, called her names, and told her that he hated her. Father continued to strike mother with his hands. On September 29, 2014, the children were taken into protective custody. Father was sentenced to 2 to 4 years’ incarceration for domestic assault. After father’s incarceration, mother maintained sobriety and acquired appropriate housing, and the children were returned to her care in December 2014. Mother produced mostly negative drug tests for almost two months. However, mother later admitted that she was falsifying her drug screens so that the tests would produce artificial negative results. Mother admitted that she had been using drugs throughout the duration of this case.

On June 12, 2015, a supplemental petition was filed, alleging that mother abused drugs, had open intoxicants in a vehicle, operated a motor vehicle while impaired, and associated with unapproved individuals. In the months following, mother continued to test positive for drugs and repeatedly failed to appear for screenings. On October 4, 2015, mother was arrested for possession of methamphetamine and driving with a suspended license. Mother was ordered to participate in inpatient substance abuse treatment, but left after only four days. Because mother left her court-ordered program, she was sentenced to 90 days in jail and 90 days in residential treatment.

On April 27, 2016, a petition for termination of parental rights was filed. It was requested that father and mother’s parental rights to the children be terminated. A termination hearing was held on May 20, 2016. The principal concern regarding mother was substance abuse, and the principal concern regarding father was domestic violence. The evidence established that mother was still abusing drugs up until her incarceration and that father was still engaging in domestic abuse up until his incarceration. 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 the children’s best interests.

“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 in finding that the statutory grounds for termination were established by clear and convincing evidence. *VanDalen*, 293 Mich App at 139. 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 conditions that led to adjudication were substance abuse and domestic violence.

Regarding mother, the record supports that, at the time of termination, the condition that led to adjudication continued to exist. Mother repeatedly tested positive for drugs throughout the duration of this case, and her positive tests continued up until she was incarcerated for possession of methamphetamine. As a part of her sentence, mother was required to complete inpatient substance abuse treatment. At the time of the termination hearing, mother was 107 days sober—the same number of days she had been incarcerated and in court-ordered rehabilitation. However, mother had attended numerous substance abuse programs, including both outpatient and inpatient programs during the four-year duration of this case, and she continued to test positive for drugs. Because mother continued to test positive for drugs throughout the duration of this case despite the substance abuse services she received, the record establishes that mother did not accomplish “any meaningful change” regarding substance abuse. *Williams*, 286 Mich App at 272.

Regarding father, the record supports that, at the time of termination, the condition that led to adjudication continued to exist. Father had a long history of domestic violence. During the course of this case, father engaged in multiple incidents of domestic abuse against mother in the presence of the children. He also struck the children and called them obscene names. Because father continued to engage in domestic abuse up until his incarceration, the record establishes that father did not accomplish “any meaningful change” regarding domestic violence. *Williams*, 286 Mich App at 272.

Further, the record does not support that mother or father would be able to rectify their substance abuse and domestic violence issues within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i). When determining what constitutes a reasonable time for the conditions to be rectified, we must focus on how long it will take a respondent to improve and how long the involved children can wait. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). We have held that the Legislature did not intend children to be left in foster care indefinitely. *Id.* at 647.

The record does not support that mother and father would be able to rectify their issues within a reasonable time considering the ages of the children. This case commenced in 2012, and the parents’ rights were not terminated until 2016. Thus, these children had been in and out of foster care for almost four years. Regarding mother, the record supports that mother had a long history of substance abuse. Mother was offered and participated in a variety of inpatient and outpatient substance abuse treatment programs throughout the duration of this case, but did not complete any meaningful progress before her incarceration. Mother admitted that she consistently abused drugs throughout this case, even during periods of time when her drug screens were negative. Regarding father, the record supports that father had issues with domestic violence long before this case began. He participated in a number of domestic violence programs and alcohol treatment services over the four years preceding the termination of his parental rights, but continued to abuse mother and the children until he was ultimately convicted of domestic assault. Because the children had been in and out of foster care for four years,

because mother continued to abuse drugs up until her incarceration, and because father continued to engage in domestic violence up until his incarceration, the record does not support that mother and father would be able to rectify their issues within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i); *VanDalen*, 293 Mich App at 139.¹

Next, the trial court did not clearly err in finding, by a preponderance of the evidence, that termination of mother's and father's parental rights was in the children's 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*, 297 Mich App 35, 40; 823 NW2d 144 (2012). When determining the best interests of the child, the focus should be on the child, not the parent, *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013), 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 at 41-42 (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 mother's and father's rights was in the children's best interests. At the termination hearing, the trial court considered a variety of factors, including the parents' bond with the children, the children's need for permanence and stability, the advantages of adoption over returning to the parents, the children's wishes, and the parents' continued substance abuse and domestic violence, and the parents' failure to comply with their service plans. The record supports that mother and father were unable to provide proper care to the children. Mother had not rectified her issues with substance abuse and was still using drugs up until she was incarcerated for possession of methamphetamine. Father had not rectified his domestic violence issues and continued to abuse mother and the children until his incarceration for domestic abuse. The record supports that the children would not be safe in mother's and father's care. See *In re VanDalen*, 293 Mich App at 141. Accordingly, the

¹ Because we conclude that there was no error in finding grounds for termination of parental rights under subsection (c)(i), we need not consider whether there were alternative grounds under MCL 712A.19b(3)(c)(ii), (g), and (j). *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009) (finding that, where "at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision").

evidence established that termination of mother's and father's parental rights was in the children's best interests. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Colleen A. O'Brien