

STATE OF MICHIGAN
COURT OF APPEALS

In re A. M. VERRILL, Minor.

UNPUBLISHED
January 19, 2017

No. 333614
St. Joseph Circuit Court
Family Division
LC No. 13-001072-NA

Before: MURPHY, P.J., and METER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother and respondent father appeal as of right the trial court order terminating their parental rights to the minor child, AM, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that the child will be harmed if returned to the parent). We affirm.

In August 2013, while she was pregnant, mother used methamphetamine and marijuana. AM was born to mother and father in October 2013, and, at birth, she tested positive for marijuana. In December 2013, mother was incarcerated, and AM was placed in foster care.¹

On December 6, 2013, a petition was filed, alleging that the parents' home, by reason of neglect, cruelty, drunkenness, criminality, or depravity, was an unfit place for the child to live. Specifically, it was alleged that AM tested positive for marijuana at birth, that mother used drugs during her pregnancy, and that father had a volatile temper and refused to cooperate with the Department of Health and Human Services (DHHS). AM was placed in relative care. Throughout 2014, mother and father participated in some services and had some periods of sobriety. However, the periods of sobriety were punctuated by relapses and positive drug screens. Mother and father also maintained periods of sobriety through part of 2015, but both tested positive for methamphetamine and amphetamine use in October 2015 when there was a lapse in their regular drug screening service and unannounced testing was done. Then, in January 2016, both parents failed to attend a drug screen and failed to communicate with their caseworker for several days afterward. A termination hearing was held on May 18, 2016. At the time, AM was around two and a half years old and had been in foster care for about 30 months. The principal concerns at the time of the hearing were mother's and father's substance abuse and

¹ At the time, father had not yet been declared AM's legal father.

lack of parenting skills and father's anger issues. The evidence established that both parents sporadically tested positive for drugs throughout the duration of the case, that neither had gained adequate parenting skills to care for AM's complex needs, and that father had not rectified his anger problem. Following the termination hearing, the trial court found that grounds for termination were established under MCL 712A.19b(3)(c)(i), (g), and (j). The court also found that termination was in AM's best interests.

On appeal, father first argues that, at his adjudication, petitioner failed to prove by a preponderance of the evidence that father was unfit. "Ordinarily, an adjudication cannot be collaterally attacked following an order terminating parental rights," unless the termination occurred "at the initial disposition as a result of a request for termination contained in the original, or amended, petition for jurisdiction." *In re SLH, AJH, and VAH*, 277 Mich App 662, 668; 747 NW2d 547 (2008).² Here, the termination did not occur at the initial disposition. Father's initial disposition was held on May 7, 2015, and his termination hearing was held on May 18, 2016. Thus, father's adjudication cannot be collaterally attacked now, after an order was entered terminating his parental rights. *Id.*; *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993) (severing a party's ability to challenge a probate court decision years later in a collateral attack where a direct appeal was available). Moreover, even on substantive review, father's extensive drug use, which he denied despite positive drug tests, the legitimacy of which he questioned without valid reason, served to establish a preponderance of evidence supporting the adjudication and the exercise of the trial court's jurisdiction; there was no clear error. MCL 712A.2(b); *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004) (jurisdiction under MCL 712A.2 must be established by a preponderance of the evidence, and we review the trial court's jurisdictional ruling for clear error).

Mother and father next argue that petitioner did not prove by clear and convincing evidence that termination was proper under the grounds alleged, where respondents showed late progress with services, and where reunification was progressing with another child who was subject to protective proceedings in another county. Respondents also challenge the trial court's best-interest determination, although chiefly on the basis of a legal argument that a clear and convincing standard should apply given the important, constitutionally-protected nature of parental rights, and not a mere preponderance of the evidence standard.

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 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."

² "[A]n order of disposition placing a minor under the supervision of the court" is appealable to this Court by right. MCR 3.993(A)(1). Father elected not to appeal his order of adjudication when it was entered.

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).

We hold that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCL 712A.19b(3)(g) provides that a trial court may terminate parental rights 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.” There was sufficient evidence to support the trial court’s reliance on MCL 712A.19b(3)(g). The record reflects that both parents had a long history of drug use, and they exhibited a pattern of periodical relapses despite their participation in services. In April 2014, father tested positive for methamphetamine and amphetamine use, but denied that he was using drugs. He also repeatedly tested positive for methamphetamine use in June 2014 and missed so many drug screens during July and August 2014 that he was removed from the testing program. Mother missed two drug screens in June 2014, had a period of sobriety, and later tested positive for marijuana in December 2014. Mother and father had a period of sobriety until October 2015, when they both tested positive for methamphetamine and amphetamine use. Their caseworker was concerned about the parents’ October 2015 relapses, because it occurred during an interruption in their normal drug screen schedule and as a result of unannounced tests. The caseworker testified that she was concerned that mother and father began using drugs “as soon as there was not consistent testing.” Mother and father maintained a period of sobriety until mid-January 2016, when the DHHS received a complaint that they were using methamphetamine. The DHHS went to mother and father’s house to perform a drug screen, but the parents did not answer the door. They also did not respond to the caseworker’s telephone calls, did not go to the DHHS to produce a drug screen when asked, and did not communicate with the DHHS for several days. Afterward, the parents maintained a period of sobriety up until the termination hearing. However, the caseworker testified that, based on their pattern of relapsing, she did not believe that the parents could maintain their sobriety. The record belies respondents’ claim that they showed late progress with services, considering their inability to stop their drug use.

The record also reflects that respondents could not provide proper care and custody of AM because they lacked the necessary parenting skills. First, the record reveals that the parents did not consistently participate in parenting time throughout the case. Mother and father were offered full weekend parenting time but often did not take advantage of the entire weekend. Instead, the parents sometimes missed participating in parenting time on Fridays and participated on Saturday and Sunday only, often arriving late and leaving early. The record indicates that, when the parents did attend parenting time, AM was not given the supervision or care that she needed. Further, after spending a weekend unsupervised with mother and father, AM was very upset when she returned to her foster home. The relative with whom AM was placed reported that AM was inconsolable and that she kicked, screamed, and cried until she vomited and eventually fell asleep. The caseworker also reported that AM had worse behavior and “extreme highs and lows” during and after visits with respondents.

Moreover, the record reflects that father had issues with anger throughout this case. He was very hostile and threatening to the caseworkers at the outset of this case, and his caseworker testified that he still had trouble controlling his anger even after completing an anger management class. As recently as a month before the termination hearing, father became very angry with his caseworker and put his hands in her face. According to the caseworker, she was afraid that father would hit her. Therefore, there was no clear error by the trial court in finding that respondents could not provide proper care and custody because of both parents' substance abuse and parenting issues and because of father's anger issues.

Further, the trial court also did not clearly err in finding that there was no reasonable expectation that the parents would be able to provide proper care and custody within a reasonable time. Father only began consistently participating in substance abuse services at the end of the case, and his caseworker testified that she did not believe that father benefitted from services even when he did attend. Father never admitted that he had a substance abuse problem or that he was using drugs throughout the duration of the case, despite his numerous positive drug screens. Both parents exhibited a pattern of sobriety followed by relapses, and the caseworker testified that, based on this pattern, she did not believe that the parents could maintain their sobriety. Moreover, the caseworker testified that AM had significant needs, and mother and father had not yet begun to understand or acknowledge AM's issues. Mother admitted that she was unaware of the extent of AM's issues and estimated that it would take "more than months" for her to gain the necessary parenting skills. The caseworker testified that she did not believe that the parents had enough parenting skills to handle taking care of AM full-time. Given the length of this case and the parents' failure to benefit from services, there is nothing to support a conclusion that there was a reasonable expectation that mother or father could provide proper care and custody within a reasonable time considering AM's age.

Further, with respect to respondents' argument about their purported progress in regard to another child subject to protective proceedings in other county, we fail to see how that claim in any way negates their shortcomings in this case. See *In re Kantola*, 139 Mich App 23, 29; 361 NW2d 20 (1984). Next, because we conclude that there was no error in finding grounds for termination of parental rights under subsection (g), it is unnecessary to consider the grounds under MCL 712A.19b(3)(c)(i) and (j). Nevertheless, the evidence recited above also provides ample support for termination under MCL 712A.19b(3)(j) as to both respondents and under MCL 712A.19b(3)(c)(i) as to respondent father; there was no clear error with respect to these findings.

With respect to the child's best interests, we initially reject respondents' argument that a clear and convincing standard should apply. This Court held, after an exhaustive analysis, that "whether 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 at 90. We are required to follow this binding precedent, MCR 7.215(J)(1), and we see no reason to call the opinion into question. Therefore, the argument is meritless.

On the issue of child's best interests under the preponderance of the evidence standard, respondents simply make a cursory statement that siblings have a right to grow up together, which is apparently predicated on the belief that their other child will ultimately remain in their care and custody. This argument is speculative and, regardless, it fails to acknowledge the

history of this case. With respect to a trial court's best-interest 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). In light of respondents' extensive drug histories, the lack of adequate parenting skills, father's anger issues, the absence of a significant bond with the child, the unused parenting time, the child's need for permanency after more than two years in care, and the child's progress while in foster care, we hold that the trial court did not clearly err in finding that termination of respondents' parental rights was in the best interests of the child.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Amy Ronayne Krause