

STATE OF MICHIGAN
COURT OF APPEALS

In re G. DANIELS, Minor.

UNPUBLISHED
January 17, 2017

No. 333863
Hillsdale Circuit Court
Family Division
LC No. 14-000046-NA

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

PER CURIAM.

Respondent mother appeals as of right an order terminating her parental rights to a minor child under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (children likely to be harmed if returned to parent). We affirm.

The trial court assumed jurisdiction over the child in January 2014. The petition alleged that respondent was currently incarcerated and that the father was unable to care for the child due to substance-abuse issues. The petition further alleged that the child had lived with five family members during respondent's incarceration; the petition stated that the child "bounced" among them "because no one is able to manage [the child's] behaviors." Respondent was ordered to comply with a treatment plan and the child was placed with her paternal grandmother. Eventually, due to oppositional behavior, the child was moved to two different foster homes.

From January 2014 to August 2015, while respondent was incarcerated, respondent followed the treatment plan. However, beginning in October 2015 after her release, respondent began failing to comply with the treatment plan. Respondent tested positive for marijuana on October 27, 2015; for morphine on January 14, 2016; and for cocaine metabolite on February 23, 2016. Further, respondent missed one parental visitation, fell asleep during another, and was consistently late to visitations. Respondent also lived in home environments inappropriate for respondent's potential reunification with the child. On February 29, 2016, respondent was arrested for possession of cocaine and possession of marijuana; she was on parole at the time. Respondent is once again imprisoned, with an earliest release date of August 28, 2017. Father voluntarily relinquished his parental rights to the child on April 27, 2016, and the trial court entered an order terminating respondent's parental rights on June 24, 2016.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.

In re McIntyre, Minors, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the trial court finds a statutory ground for termination by clear and convincing evidence and finds that termination is in the best interests of the child, the trial court shall order termination of parental rights. MCL 712A.19b(5); *In re Trejo, Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000), abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). The trial court’s decision is reviewed for clear error. *In re Trejo, Minors*, 462 Mich at 356-357. A finding is “clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made.” *In re Terry, Minors*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Respondent’s parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(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.

* * *

(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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

The primary conditions of adjudication were the parents’ involvement with illegal substances,¹ respondent’s incarceration, and the parents’ failure to provide proper care and custody for the child. For termination to be proper under MCL 712A.19b(3)(c)(i), the conditions

¹ Respondent’s initial incarceration was related to illegal substances.

that led to adjudication must continue to exist. Where “the totality of the evidence” demonstrates that the parent did not accomplish “any meaningful change in the conditions” that led to adjudication, termination is proper under MCL 712A.19b(3)(c)(i). *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

The trial court found that termination was proper under (c)(i) because, during the proceedings, respondent failed to rectify her issues despite significant resources provided to her and lacked the ability to provide a safe and stable home environment. The record supports that, at the time of termination, the conditions that led to adjudication continued to exist. Respondent was initially incarcerated for delivering and manufacturing narcotics, but showed a willingness to complete substance-abuse counseling while she was incarcerated. However, after respondent’s release, she failed to remain free of illegal substances. In the six months—August 2015 to February 2016—that respondent was not incarcerated, respondent tested positive for illegal substances three times. During one parental visitation, the child confronted respondent because respondent smelled like marijuana. On February 29, 2016, respondent was arrested for possession of marijuana and possession of cocaine; she was on parole at the time. Eventually, she was sentenced to 16 to 24 months in prison, with an earliest release date of August 2017. Respondent’s continued involvement with illegal substances demonstrates that respondent did not accomplish any “meaningful change” regarding substance abuse. See *In re Williams*, 286 Mich App at 272.

With respect to respondent’s failure to provide proper care and custody, the original petition was filed because respondent was incarcerated and neither parent had provided proper custody for the child. The child had moved back and forth among different family members, none of whom were able to provide long-term care. The child was placed into foster care. After her initial release, respondent remained unable to provide proper care and custody for the child. In the six months respondent was not in prison, she failed to progress even to unsupervised visits with the child. Further, respondent lived with persons deemed inappropriate for contact with the child and did not establish a home setting appropriate for reunification. Because respondent is again incarcerated and has not displayed any ability to provide proper care and custody for the child, the conditions that led to adjudication continue to exist.

MCL 712A.19b(3)(c)(i), to warrant termination, also requires the trial court to find that respondent would be unable to rectify the pertinent conditions within a reasonable time. The determination of what constitutes a reasonable time for the conditions to be rectified includes both how long it would take the parent to improve the conditions and how long the child could wait for such an improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991) (stating that “the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time”).

The trial court found that it was unlikely for respondent to rectify the conditions within a reasonable time because, during her six months outside of prison, respondent did not make significant progress and because the child would have been in foster care for 42 months at the time of respondent’s latest release from prison. The record supports the trial court’s determination. The child is currently 13 years old, and proceedings began when the child was 10 years old. By August 2017, the child would have been in foster care for 42 months. Considering

that respondent did not make significant progress during the proceedings, it is likely that a significant period would pass before respondent could display progress sufficient for reunification with the child after release. The child cannot wait indefinitely for respondent to be released from prison and to attempt to follow the treatment plan once again in the hopes that, this time, respondent might be successful. See *id.*

Respondent's argument that the trial court's decision to terminate violated *In re Mason, Minors*, 486 Mich 142; 782 NW2d 747 (2010), has no merit. In that case, the Michigan Supreme Court determined that incarceration alone was not sufficient evidence of an inability to provide proper care or custody of a child because a respondent could still provide proper care and custody through assigning the child's care to a relative. *Id.* at 163-165. In the present case, however, the trial court did not terminate respondent's parental rights solely because of her incarceration. Respondent had previously attempted to place the child with relatives during her first incarceration, which resulted in the child being moved to five different, inadequate homes. By the time of termination, no relatives existed that were willing and capable of providing adequate care for the child. Moreover, the trial court also found that respondent failed to provide proper care and custody for the child—or to demonstrate sufficient progress toward this goal—when respondent was initially released from prison before her second incarceration. Respondent was not able to personally care for the child during her incarceration, *id.* at 160, but she also failed to provide any appropriate alternate care, such as placement with capable and adequate family members. Because the trial court did not terminate respondent's rights *solely* due to her incarceration, but instead properly considered her incarceration with other evidence, the trial court did not commit clear error. See *In re Hudson*, 294 Mich App 261, 267; 817 NW2d 115 (2011).

The trial court did not clearly err in finding that the conditions that led to adjudication continued to exist and that there was no reasonable likelihood that respondent would rectify them within a reasonable time. See MCL 712A.19b(3)(c)(i). Because the trial court did not clearly err in finding one statutory ground for termination, we need not address the additional statutory grounds on which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

“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). The trial may consider the record as a whole in determining whether termination is in the child's best interests. *In re Trejo, Minors*, 462 Mich at 354. The trial court must “state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated.” MCL 712A.19b(1). When deciding whether termination is in the child's best interests, 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 (citations omitted). It is also proper to consider evidence concerning the length of time the child has been in foster care and whether the child could be returned to the parent “within the foreseeable future, if at all.” *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). “The primary beneficiary” of the best-interests determination “is intended to be the child.” *In re Trejo, Minors*, 462 Mich at 356.

We find that the trial court did not clearly err in its best-interests determination. While there was evidence of a bond between respondent and the child, respondent had ongoing issues with continued criminality and substance abuse. Moreover, evidence demonstrated that contact between the child and respondent was hindering the child's progress in therapy and causing the child distress. The foster-care worker felt that the child needed stability and that termination was in the child's best interests. Given all the circumstances, the trial court did not clearly err in concluding that termination was in the child's best interests.

Affirmed.

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