

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* DEGLOPPER, Minors.

UNPUBLISHED  
March 16, 2017

Nos. 334421; 334422  
Kalamazoo Circuit Court  
Family Division  
LC No. 2014-000370-NA

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Before: STEPHENS, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

In Docket No. 334421, respondent-father appeals as of right the order terminating his parental rights to his minor children, JD, HD, and ED, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (failure to rectify other conditions), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). In Docket No. 334422, respondent-mother appeals as of right the same order, which also terminated her parental rights to the three minor children under the same statutory grounds. We affirm.

I. BACKGROUND

In April 2014, the Department of Health and Human Services (DHHS) received a complaint indicating that respondents were using marijuana and methamphetamine in the children's presence. DHHS provided respondents with services, and the trial court agreed not to immediately remove the children from respondents' custody. However, in October 2014, DHHS filed a petition asking the trial court to remove the children, alleging that respondents tested positive for methamphetamine in August and September 2014, and that respondent-mother tested positive for marijuana in September 2014. A few days later, the trial court removed the children from respondents' custody and placed them with their maternal grandmother. Later that month, respondents entered pleas agreeing that they tested positive for illegal drugs, and the trial court took jurisdiction over the children. Thereafter, DHHS provided respondents with numerous services including counseling, treatment for their substance abuse, and random drug screens. The maternal grandmother was available to supervise visits. However, neither respondent consistently participated in services or visits. Although respondents began to comply with their case service plans in May 2016, the trial court terminated their rights to the minor children.

II. RESPONDENT-FATHER'S APPEAL

On appeal, respondent-father argues that the trial court erred by finding that clear and convincing evidence established any statutory ground for termination. "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 a trial court’s findings regarding the statutory grounds for clear error. *Id.* If the trial court did not clearly err by finding one statutory ground for termination, we need not address any additional grounds relied on by the trial court. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Termination of parental rights is proper under MCL 712A.19b(3)(g) if “[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.”

Evidence reveals that during the course of the proceedings, respondent-father made almost no effort to address his substance abuse, despite DHHS offering him numerous services to rectify that issue for approximately two years. He almost never participated in random drug screens. At the termination hearing, a caseworker testified that respondent-father’s participation in drug screens was poor until May 2016. Respondent-father testified that he stopped using illegal drugs in April 2016, thus implicitly admitting that he had been using drugs before that time. Respondent-father also failed to maintain proper housing or employment. He admitted to DHHS that he and respondent-mother were homeless and living on friends’ couches. Respondent-father never obtained employment at any point during the proceedings. He failed to take advantage of available parenting time, often going for several consecutive months without visiting the children. Respondent-father argues that he could not visit the children because there was a no-contact order that prevented him from interacting with respondent-mother. This argument lacks merit, however, because the no-contact order did not prevent him from visiting the children, and he lived with respondent-mother in violation of the order anyway. Further, the evidence shows that there was no reasonable likelihood that respondent-father would rectify these issues within a reasonable time, considering his persistent failure to participate in services. He admitted to a caseworker that he was purposefully avoiding contact with DHHS. Although respondent-father argues on appeal that he began to participate shortly before the court terminated his parental rights, his inconsistency lasted approximately two years before that time. Under the circumstances, the trial court did not clearly err by finding that there was no reasonable likelihood that respondent-father would rectify the barriers to reunification within a reasonable time.

Respondent-father next argues that the trial court clearly erred by finding that termination of his parental rights was in the children’s best interests. We review a trial court’s best-interest determination for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). “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.” *Id.*, citing MCL 712A.19b(5). When considering best interests, the focus is on the child rather than the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). “The trial court should weigh all the evidence available to determine the children’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The court may consider factors such 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*, 297 Mich App at 41-42 (citations omitted). Other relevant factors include the length of time the child was in protective custody and the likelihood that the child could be returned to the parent’s care in the foreseeable future, if at all. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The trial court found that the grandmother was a good caregiver for the children, the children were placed together, and the grandmother was willing to offer them a permanent home. There is no dispute that the grandmother provided the children with proper care, and she testified that she was willing to adopt all of the children. This evidence weighed in favor of the trial court's finding that termination was in the children's best interests. *In re Olive/Metts*, 297 Mich App at 41-42. Although there is some evidence that JD and HD shared a bond with respondent-father, his failure to visit the children for several months at a time demonstrates a lack of a bond. Further, respondent-father's failure to participate in services indicated that termination of his rights was in the children's best interests.

Respondent-father argues that the trial court's best-interest findings were erroneous because the children were placed with a relative, yet the trial court failed to address the relative placement. Our Supreme Court has stated that "a child's placement with relatives weighs against termination . . ." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). The fact that a child is living with relatives when a case proceeds to termination must be considered when assessing a child's best interests. *In re Olive/Metts*, 297 Mich App at 43. Even if a child is placed with relatives, however, the trial court may still terminate parental rights if it concludes that termination is nonetheless in the child's best interests. *Id.*

Contrary to respondent-father's assertions on appeal, the trial court explicitly noted that the children were placed with their maternal grandmother when it issued its best-interest determination. Because the trial court explicitly addressed the children's best interests in the context of their relative placement, the fact that the children were placed with a relative does not require reversal. For the reasons already discussed, the trial court did not clearly err by finding that termination of respondent-father's parental rights was in the children's best interests.

### III. RESPONDENT-MOTHER'S APPEAL

On appeal, respondent-mother argues that DHHS failed to make reasonable efforts to reunify her with her children. We review this unpreserved issue for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). As a preliminary matter, although respondent-mother does not explicitly argue that the trial court clearly erred by finding that sufficient evidence supported terminating her parental rights, the facts amply support the trial court's findings under MCL 712A.19b(3)(g). "When a child is removed from a parent's custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). Generally, a trial court "is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child's home." *In re Rood*, 483 Mich 73, 105; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.) (quotation marks and citation omitted). Although DHHS must expend reasonable efforts to provide reunification services, "there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248.

DHHS offered respondent-mother numerous services including drug screens through Forensic Fluids, trauma-focused parenting classes, a psychological evaluation, substance abuse treatment, and bus passes. Respondent-mother was referred for intensive outpatient therapy for

substance abuse, but she missed several sessions and was discharged from the program. Respondent-mother repeatedly failed to complete drug treatment, and she persistently missed drug screens. She failed to attend trauma-focused parenting classes. She was referred for domestic violence counseling at the YWCA, but never participated. Respondent-mother told her counselor that she was testing negative for drugs when in fact she tested positive for methamphetamine and marijuana. As shown, DHHS provided respondent-mother with numerous services throughout the proceedings, but she largely failed to participate in or benefit from those services.

Respondent-mother argues that DHHS failed to make reasonable reunification efforts because four different caseworkers managed the case throughout its history. Having different caseworkers does not in and of itself render DHHS's efforts unreasonable, especially considering respondent-mother's failure to attend scheduled meetings with caseworkers and her failure to participate in services. In fact, respondent-father told a caseworker that he and respondent-mother were purposefully avoiding caseworkers. Respondent-mother argues that DHHS failed to refer her to a trauma-focused parenting class, but evidence shows that respondent-mother was offered ample opportunities to complete such a class, yet failed to take advantage of those opportunities.

Respondent-mother further argues that DHHS failed to make reasonable efforts because caseworker Kassandra Gmitter testified that DHHS did not implement Dr. Randall Haugen's recommendations, which he made after performing a psychological evaluation on respondent-mother. Specifically, Haugen recommended that respondent-mother engage in a consultation regarding medication for her mental health, intensive cognitive behavioral therapy, and substance abuse treatment. It is true that Gmitter testified at the March 14, 2016 hearing that she was unsure whether respondent-mother was referred to a consultation regarding medication for her mental health, and Gmitter testified that respondent-mother was not referred for substance abuse treatment. Gmitter testified at the termination hearing, however, that Haugen's recommendations were implemented and that her previous contrary testimony was mistaken. As discussed above, respondent-mother was referred to outpatient therapy for substance abuse, but she missed several sessions and was discharged from the program. In sum, respondent-mother was offered numerous services, but she failed to consistently participate in those services, and there is no indication that she benefited from them. Therefore, respondent-mother has not established plain error with regard to the reasonableness of DHHS's reunification efforts.

Finally, respondent-mother argues that the trial court violated her due process rights when it terminated her parental rights to the minor children. The Due Process Clause of the Fourteenth Amendment of the United States Constitution protects "the interest of parents in the care, custody, and control of their children . . . ." *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000). The Due Process Clause of the Michigan Constitution "is coextensive with its federal counterpart." *Cummins v Robinson Twp*, 283 Mich App 677, 701; 770 NW2d 421 (2009). "In Michigan, procedures to ensure due process to a parent facing removal of his child from the home or termination of his parental rights are set forth by statute, court rule, [DHHS] policies and procedures, and various federal laws . . . ." *In re Rood*, 483 Mich at 93 (opinion by CORRIGAN, J.). Once a statutory ground for termination is established by clear and convincing evidence, "the liberty interest of the parent no longer includes the right to custody and control of the children." *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000),

abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App at 83. The trial court did not clearly err by finding that termination of respondent-mother's parental rights was proper under MCL 712A.19b(3)(g). Therefore, respondent-mother's liberty interest no longer included the right to control the care and custody of her children, and she has not established any plain error regarding her constitutional right to parent.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Douglas B. Shapiro

/s/ Michael F. Gadola