

STATE OF MICHIGAN
COURT OF APPEALS

In re TAYLOR, Minors.

UNPUBLISHED
April 18, 2017

No. 334629
Wayne Circuit Court
Family Division
LC No. 14-516314-NA

Before: SAWYER, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court order terminating his parental rights to his minor children, MET, MST, and MWT, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to parent).¹ We affirm the portion of the trial court’s order finding that statutory grounds for termination had been established, vacate the trial court’s best-interest analysis, and remand for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

In March 2014, respondent-mother was arrested for a variety of offenses primarily related to driving while intoxicated, driving with a suspended license, and child endangerment. At the time of her arrest, MET and MST were improperly secured in the vehicle. In April 2014, petitioner, the Department of Health and Human Services (“DHHS”), filed an initial petition requesting the removal of MET and MST from respondent-mother’s care. In May 2014, the petition was amended to include respondent. Specifically, it alleged that respondent is the legal father of MET and MST, and that he had drug-related convictions from 1998 and several criminal charges from 2013. After holding a preliminary hearing, the trial court authorized the petition.

A bench trial was held in June 2014. After hearing testimony from Randall Martin, a DHHS caseworker, and Gloria Ware, a DHHS foster care worker, the trial court found that petitioner had proven, by a preponderance of evidence, statutory grounds for the court to exercise

¹ The trial court also terminated the parental rights of the children’s mother in the same order, but she is not a party to this appeal. Thus, we will refer to respondent-father as “respondent” in this opinion. Where relevant, we will refer to the children’s mother as “respondent-mother” and both parents jointly as “respondents.”

jurisdiction over the children. Specifically, the trial court found that (1) respondent failed to establish paternity until after the petition in this case was filed; (2) the evidence showed that respondent was aware of respondent-mother's alcohol abuse, but failed to intervene or otherwise protect the children; (3) respondent failed to financially provide for the children; and (4) respondent's home was unsuitable for the children. The trial court held the initial dispositional hearing immediately after the adjudication. Consistent with petitioner's recommendations, the trial court ordered respondent to comply with and benefit from his case service plan, which included participating in parenting classes, participating in individual therapy, completing a psychological evaluation and following any recommendations, securing suitable housing and income, maintaining contact with the caseworker, and participating in supervised parenting time.

Between June 2014 and December 2014, respondent failed to substantially comply with his case service plan. He failed to secure suitable housing, lacked a legal source of income, attended less than half of his parenting time visits, and was incarcerated for an unknown reason. Services were terminated on two occasions because of respondent's failure to participate. He also failed to maintain contact with the foster care specialist.

However, between December 2014 and March 2014, respondent made significant progress. He obtained employment and demonstrated a strong bond with his children. On this basis, the trial court entered an order granting petitioner the discretion to allow supervised or unsupervised visits with the children. At that time, respondent's main barrier to reunification was his inability to obtain suitable housing for his children.

Respondent failed to rectify that barrier and began to regress in other areas of his case service plan. Between June and October 2015, respondent continued to lack suitable housing. Additionally, in July 2015, respondent-mother gave birth to a third child, MTW, who was fathered by respondent. In August 2015, petitioner filed a petition for MWT's removal. The petition alleged that respondent was planning for the children separately and lacked suitable housing. It also included allegations regarding respondent's criminal history. The petition alleged that respondent had completed parenting classes and was currently employed. The trial court authorized the petition following a preliminary hearing.

Respondent was briefly incarcerated in October 2015. The trial court held an adjudication hearing concerning MWT also during that month. Respondent attested to parentage and expressed an interest in planning for MWT, but he continued to lack suitable housing and income. Further, respondent and respondent-mother engaged in domestic altercations in the presence of their children, and respondent refused to provide DHHS with information that it could use to assist him in applying for housing assistance. The trial court again ordered respondent to complete a psychological evaluation and participate in individual therapy with domestic violence and anger management components. The court also limited respondent's parenting time to supervised visits only due to his behavior.

Respondent did not progress over the next several months. He was still noncompliant with the service plan due to his homelessness, lack of contact with DHHS and service providers, failure to complete a psychological evaluation, and failure to participate in anger management and domestic violence therapy. He also continued to engage in confrontational and aggressive behavior. Moreover, respondent's parenting time was suspended due to allegations that he

sexually abused MST in November 2015 during an unauthorized overnight visit at his home, which violated the court's order of supervised parenting time.

In April 2016, petitioner filed a supplemental petition seeking termination of respondent's parental rights. Later that month, petitioner filed an amended petition. Specifically, the petition requested termination of respondent's parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), and (j). The petition alleged that while respondent had completed parenting classes, he failed to demonstrate an ability to discipline his children during parenting time visits, laughing instead of imposing discipline when appropriate. The petition also alleged that he tended to become frustrated while parenting and denied his children's special needs. Petitioner also alleged that respondent failed to complete individual therapy, domestic violence counseling, and a psychological evaluation. Although he completed an anger management course, respondent's emotional outbursts continued, which inhibited his ability to make decisions and care for his children. Petitioner alleged that he displayed impulsive and verbally aggressive behaviors in court, in the community, at the agency, and at caregivers' homes. He also was frequently involved in domestic disputes. The petition alleged that respondent still lacked suitable housing and consistent income. It also alleged that respondent violated the court's order of supervised parenting time by taking MST to his home for an overnight visit in November 2015 and sexually abusing her.

In August 2016, the trial court held a termination hearing. In addition to taking judicial notice of the file, the trial court heard testimony from Ware and respondent-mother. After hearing the testimony presented and considering the evidence admitted, the trial court found that petitioner had established, by clear and convincing evidence, a statutory basis for termination under MCL 712A.19b(3)(c)(i), (g), and (j). It also found, by a preponderance of the evidence, that termination was in the children's best interests. Accordingly, it entered an order terminating respondent's parental rights to the three children.

II. STATUTORY GROUNDS

Respondent contends that the trial court erred in concluding that termination of his parental rights was proper under MCL 712A.19b(3). We disagree.

A. STANDARD OF REVIEW

"This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "A decision qualifies as clearly erroneous when, 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.'" *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009), quoting *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A clearly erroneous decision must be "more than just maybe or probably wrong." *In re Williams*, 286 Mich App at 271. We must give due regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

B. ANALYSIS

In order to terminate parental rights, the trial court must find that a statutory basis for termination under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Here, the trial court found that respondent's parental rights should be terminated under MCL 712A.19b(3)(c)(i), (g), and (j). In relevant part, MCL 712A.19b(3) authorizes a court to terminate parental rights if it finds by clear and convincing evidence that any one of the following circumstances exist:

(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.

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 32 (citation omitted).

As an initial matter, contrary to respondent's argument, the trial court's findings of fact were based on evidence admitted at the termination hearing. At the hearing, evidence about respondent's other children, his domestic violence involvement, and the allegations of sexual abuse was presented. Even assuming, arguendo, that this evidence was not admitted at the termination hearing itself, the trial court took judicial notice of its file, which is permissible. See *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009) (stating that a court may take judicial notice of its own files and records). Notably, the trial court paid special attention to both adjudications, where sufficient evidence was admitted regarding respondent's domestic violence and aggression toward others. The record also shows that the trial court did not rely on the allegations of sexual abuse in considering whether a statutory ground for termination had been proven.

Regardless, the trial court's finding that termination was appropriate under MCL 712A.19b(3) was supported by ample evidence.

1. MCL 712A.19b(3)(c)(i)

First, with respect to subsection (3)(c)(i), clear and convincing evidence was presented that more than 182 days had elapsed between the trial court's initial dispositional order and the close of the termination hearing, and that the conditions that led to the adjudication continued to exist and would likely continue to exist.

More than two years had elapsed since the initial dispositional order concerning MET and MST, and approximately nine months had elapsed since the initial dispositional order as to MWT. The conditions that led to the adjudication included respondent's failure to protect his children, failure to obtain suitable housing, and failure to obtain a legal source of income in order to financially provide for his children. While respondent demonstrated partial compliance with his service plan, obtaining a suitable home for his children was respondent's biggest obstacle throughout the child protective proceedings. Respondent remained homeless for a large part of the reunification process except for a period of time that he resided in an unfit home that needed significant repairs. Likewise, at the time of the termination hearing, respondent still lacked suitable housing. Respondent's emphasis in his brief on appeal on the relatively recent addition of substance abuse services to his case service plan before the termination hearing ignores the significant evidence in the record regarding the conditions that *continued* to exist throughout the proceedings.

Respondent's claim that he received "no assistance with housing" is unsupported by the record. It shows that he refused to participate in or take advantage of the low-income housing services that were made available to him. Foster care specialists Gloria Ware and Marie Parker provided several referrals for low-income housing. Ware explained that when she referred respondent to several housing agencies, she informed respondent that he would have to apply online. Parker offered respondent the use of a computer, but that offer was rescinded after he chased after another agency worker and respondent-mother on foot following a parenting time visit, prompting the Homes for Black Children agency to request that respondent no longer enter the building. Respondent could have used a computer at his local library to access the internet, but he never took advantage of that resource either. Parker also testified that she offered to assist respondent with an application for the Helping Hands Foundation, but respondent refused to give her his information. "While [petitioner] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Petitioner was not required to fill out the housing application for him, as it was respondent's responsibility to take advantage of the housing information given to him.

Additionally, throughout the proceedings, respondent held several different jobs, all of which ultimately resulted in recurring periods of unemployment. Although he made efforts to obtain employment, he failed to rectify the condition by the termination hearing despite having two years to do so.

At the time of the termination hearing, the children were young and could not wait indefinitely for respondent. MET was seven years old, MST was four years old, and MWT was approximately 13 months old. In light of this evidence, the trial court did not clearly err when it found that "[t]he 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[ren]'s age[s]." MCL 712A.19b(3)(c)(i).

2. MCL 712A.19b(3)(g)

With respect to subsection (3)(g), the trial court did not clearly err when it concluded that respondent was unable to provide proper care and custody for his children, and that there was no reasonable expectation that he would be able to do so within a reasonable time.

“[A] parent’s failure to comply with the parent-agency agreement is evidence of a parent’s failure to provide proper care and custody for the child.” *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). To comply with his service plan, respondent was required to attend parenting classes, individual therapy, and parenting time visits. Additionally, the trial court ordered respondent to undergo a psychological evaluation, obtain suitable housing, and obtain suitable income. Although respondent completed his parenting classes and consistently visited with his children, he failed to complete the psychological evaluation until after the petition for termination already had been filed. As discussed, respondent failed to maintain suitable housing and income during the two-year pendency of these child protective proceedings, despite periods of employment and the provision of numerous services. Moreover, respondent did not actively participate in individual therapy until after the termination petition was filed, and he had not completed his therapy when the termination hearing was held. Respondent’s failure to comply with the parent-agency agreement is evidence of his failure to provide proper care and custody of his children. See *id.*

Respondent claims that his substantial participation in services at the time of the termination hearing demonstrates that he would be able to provide proper care and custody within a short period of time. However, given his sporadic participation overall during the two-year duration of these proceedings, including times when he significantly regressed after making progress earlier in the proceedings, “there is no reasonable expectation that [he] will be able to provide proper care and custody within a reasonable time considering the child[ren]’s age[s].”

Thus, the trial court did not clearly err when it found clear and convincing evidence to terminate respondent’s parental rights under MCL 712A.19b(3)(g).

3. MCL 712A.19b(3)(j)

Lastly, with respect to subsection (3)(j), the trial court did not clearly err when it found that returning the children to respondent may result in a reasonable likelihood of harm.

For purposes of MCL 712A.19b(3)(j), “harm” includes both physical and emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Emotional harm may include the deprivation of a normal childhood home. See *id.* Additionally, evidence of a parent’s failure to protect his or her child from injury is sufficient to satisfy MCL 712A.19b(3)(j). See *In re VanDalen*, 293 Mich App 120, 140-141; 809 NW2d 412 (2011). And “a parent’s failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent’s home.” *In re White*, 303 Mich App at 711.

As discussed, respondent failed to comply with his service plan. He failed to obtain suitable housing, thereby depriving his children of a normal childhood home. Moreover, all three children require special medical attention. MET has ADHD and a heart murmur, and he

was exhibiting emotionally unstable and impulsive behavior that required therapy. MST was born with drugs in her system, which continued to affect her; she has ADHD; and she was exhibiting extreme, emotionally unstable behavior requiring individualized therapy. MWT also was born with drugs in her system, and she has severe asthma, which has left her hospitalized on several occasions, even while in the care of a licensed foster caregiver. In light of respondent's failure to address his own mental health needs and failure to secure stable housing and income, the record confirms that it is very likely that the children will experience physical or emotional harm if returned to respondent.

Evidence also showed respondent's explosive attitude and history of domestic violence. Ware testified that respondent and respondent-mother engaged in several domestic disputes in the presence of their children during parenting time visits. Respondent also displayed a hostile attitude in court and toward agency workers on several occasions. Given respondent's unpredictable behavior and history of physical and verbal abuse, it is likely that the children will be harmed if returned to respondent. See *In re Gonzales/Martinez*, 310 Mich App 426, 433-434; 871 NW2d 868 (2015). Thus, the trial court's conclusion that the children would be harmed if returned to respondent was not clearly erroneous.

There is no evidence of an apparent mistake from the record, and the evidence supports the trial court's finding that termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(i), (g), and (j). See *In re White*, 303 Mich App at 709; *In re Williams*, 286 Mich App at 271.

III. BEST-INTEREST DETERMINATION

Respondent contends that the trial court erred in finding that termination was in the children's best interests. We agree, but only to the extent that the trial court failed to explicitly address MET's and MST's placement with relatives.

A. STANDARD OF REVIEW AND APPLICABLE LAW

Pursuant to MCL 712A.19b(5), "[t]he trial court must order the parent's rights terminated if the [petitioner] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the child[']s best interests." *In re White*, 303 Mich App at 713 (footnotes omitted). We review for clear error a trial court's best-interest determination. *Id.*, citing MCR 3.977(K).

When it makes a best-interest determination, the trial court should weigh all available evidence, *id.*, and the trial court's focus should be on the child rather than the parent, *In re Moss*, 301 Mich App 76, 86-87; 836 NW2d 182 (2013).

To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "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." The trial court may also consider 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 at 713-714 (footnotes omitted); see also *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).]

Other considerations include the length of time the child has been in foster care or placed with relatives, and the likelihood that “the child could be returned to her parents’ home within the foreseeable future, if at all.” See *In re Frey*, 297 Mich App at 248-249.

B. ANALYSIS

We are not persuaded by our review of the record that the trial court clearly erred when it found that termination of respondent’s parental rights was in the best interests of the children. Although evidence indicated that respondent shared a strong bond with the children, he had a history of domestic violence and failed to comply with his service plan. Respondent failed to obtain suitable housing and income, failed to complete his individualized therapy, and failed to undergo a psychological evaluation until after the termination petition already had been filed. Moreover, each child has special needs that require medication or therapy.

Although respondent argues that the trial court erred by failing to make a best-interest determination with regard to each child individually, the court was not required to do so because the best interests of the individual children did not differ significantly. See *In re White*, 303 Mich App at 715-716. The trial court found that while respondent shared a strong bond with all the children, his failure to comply with the service plan and adequately provide for his children affected all of the children equally. When addressing the special needs of the children, the trial court did distinguish between each child’s needs. Thus, the trial court did not clearly err by failing to separately address the best interests of each child.

However, respondent is correct that the trial court failed to explicitly address MET’s and MST’s placement with relatives. “[A] child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a)” *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Thus, if a child is living with a relative when the case proceeds to termination, the trial court must “explicitly address whether termination is appropriate in light of the children’s placement with relatives.” *In re Olive/Metts Minors*, 297 Mich App at 43 (citations omitted). The trial court’s failure to do so will render “the factual record inadequate to make a best-interest determination and requires reversal.” *Id.* (citations omitted).

The record reveals that MET was placed with a maternal aunt and uncle and MST was placed with maternal cousins at the time of the termination hearing, but the trial court did not explicitly address whether termination was appropriate in light of their placement with relatives. This error renders the factual record inadequate to make a best-interest determination. See *In re Mason*, 486 Mich at 164; *In re Olive/Metts*, 297 Mich App at 43. Accordingly, because the trial court failed to explicitly address MET’s and MST’s placement with relatives and whether termination still was in their best interests despite those placements, we must vacate the trial court’s best-interest determination and remand the case for the trial court to further analyze this issue. *In re Olive/Metts*, 297 Mich App at 44.

IV. CONCLUSION

Respondent has failed to demonstrate that the trial court clearly erred in finding that petitioner proved a statutory basis for termination by clear and convincing evidence. However, for the reasons stated in this opinion, we vacate the trial court's best-interest determination and remand for further analysis of this issue.

Affirmed in part, vacated in part, and remanded for further consideration of the children's placement with relatives. We retain jurisdiction.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Michael J. Riordan

Court of Appeals, State of Michigan

ORDER

In re Taylor, Minors.

Docket No. 334629

LC No. 14-516314-NA

David H. Sawyer
Presiding Judge

Henry W. Saad

Michael J. Riordan
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 35 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, we remand to the trial court to consider the effect of the children's placement with relatives as it related to its best-interests analysis. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

/s/ David H. Sawyer



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 18, 2017

Date


Chief Clerk