

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* HODGES/SIPES/GIPSON, Minors.

UNPUBLISHED  
June 20, 2017

No. 336041  
Calhoun Circuit Court  
Family Division  
LC No. 2008-002752-NA

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Before: SWARTZLE, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Respondent-mother appeals the trial court's order that terminated her parental rights to the minor children AH, DS, BG, and EG, under MCL 712A.19b(3)(g) (failure to provide proper care and custody), (i) (parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse), (j) (reasonable likelihood that child will be harmed if returned to the parent), and (l) (parent's rights to another child were terminated). For the reasons provided below, we affirm.

On May 17, 2016, mother reported to the Department of Health and Human Services (DHHS) that she was mentally unstable and overwhelmed. She stated that she needed to admit herself to the Fieldstone Center for help. Mother reported that she had no support system and no place for her children to go if she was admitted into Fieldstone. She further reported that she was "unstable," "needed help," and that she was self-cutting with razor blades.

On May 18, 2016, AH was observed at school with multiple broken blood vessels on her face and around her eyes. She also had a scratch on her cheek. Mother told a CPS worker that her husband and the children had been over at the neighbor's house playing on the evening of May 17. When mother went to the neighbor's house, she was told that her husband had to "discipline" AH. AH was physically examined by a doctor on May 18. The doctor concluded that the injury on AH's face was consistent with being hit in the face. If the injury was caused by one hit, it would have been "impressively violent." Otherwise, the injury would have required several "hits." The doctor concluded that the injury would also have been consistent with a "friction injury from [mother's husband] pushing very hard" on AH's face and her attempting to get free. AH also reported that she had witnessed "significant domestic violence in the home between" mother and her husband.

Based on the events that occurred on May 17 and 18, the DHHS filed a complaint that requested that AH, DS, BG, and EG be removed from mother's care, which the trial court granted. On July 1, 2016, the DHHS filed a petition that sought to terminate mother's parental

rights to the children pursuant to MCL 712A.19b(3)(g), (i), (j), and (l). On August 3, the trial court ordered that mother would have 90 days to participate in the services offered by the DHHS before the next hearing. The trial court terminated mother's parental rights on November 15, 2016.

Mother argues that the trial court erred when it found that there were statutory grounds to support the termination of her parental rights. We disagree.

"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). This Court reviews "the trial court's findings of fact under the clearly erroneous standard." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009); see also MCR 3.977(K). "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).

Termination is proper pursuant to MCL 712A.19b(3)(g) 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." Additionally, termination under MCL 712A.19b(3)(j) is appropriate when "[t]here 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."

There was testimony provided at the termination hearing that despite the completion of one parenting class and participation in mental health services, mother failed to properly benefit from those services. Two foster-care supervisors testified that they were concerned about mother's anger issues and overall mental health. Specifically, mother had several angry outbursts in which she walked out of meetings swearing and yelling. Mother also had angry confrontations with visit supervisors and other staff members at the DHHS. Furthermore, mother was "overly rigid" with the children and unnecessarily raised her voice during parenting time. In one foster-care supervisor's opinion, mother's overall behavior was cause for concern for the children's safety. Mother also admitted that she had anger management issues that she still needed to address. In addition, mother refused to participate in the domestic violence program as required by the parent-agency agreement. She also declined to participate in the required intensive supportive visitation parenting program. Finally, mother failed to obtain stable housing. Based on this evidence, the trial court did not clearly err when it concluded that termination was proper under MCL 712A.19b(3)(g). See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003) (stating that "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 addition, the record does not establish that mother would have been "able to provide proper care and custody within a reasonable time considering the [children's] age[s]." MCL 712A.19b(3)(g). Mother argues that she should be given more time to participate in services. However, she refused to participate in services that were required by the parent-agency agreement. At the time of termination, AH was 6 years old, DS was 5 years old, BG was 4 years old, and EG was 2 years old. Mother's refusal to participate in services, her continued struggle

with mental health and anger issues, and her failure to maintain stable housing for her children shows that she would be unable “to provide proper care and custody within a reasonable time considering” her children’s ages and that there was a risk of harm if they were returned to her care. See *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012) (concluding that “the trial court could properly find that the children were reasonably likely to be harmed if returned to [the] respondent’s home” because “she was unable to control her anger”). Therefore, the trial court did not clearly err by concluding that termination was proper under MCL 712A.19b(3)(g) and (j).

Furthermore, termination of parental rights is proper under MCL 712A.19b(3)(i) where “[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.” According to the record, mother’s parental rights to another child, AHL, were terminated in 2009 due to “physical neglect and improper supervision.” Mother was offered services, including parenting time and counseling. The case was open for almost two years before mother’s rights were terminated. In addition, AH, DS, and BG were removed from mother’s care for a period in 2012 “due to physical neglect, domestic violence, and threatened harm.”

In May 2016, mother reported to the DHHS that she was unstable and overwhelmed. Moreover, mother reported that her children had nowhere to go if she were admitted for treatment because she had no support system. AH suffered injuries to her face when she was disciplined by mother’s husband at a neighbor’s house while mother was at home. There was also evidence presented that mother continued to struggle with anger issues, she did not participate in the domestic violence class despite her history of domestic violence, and she did not have permanent housing. As a result, the evidence presented at the termination hearing supports a finding that, despite the prior termination and removals, mother continued to fail to properly care for and supervise her children. Accordingly, the trial court did not clearly err when it terminated mother’s parental rights under MCL 712A.19b(3)(i).

Termination under MCL 712A.19b(3)(l), however, was improper. This Court held that MCL 712A.19b(3)(l) is unconstitutional because it “fails to comport with due process in light of the fundamental liberty interest at stake.” *In re Gach*, 315 Mich App 83, 101; 889 NW2d 707 (2016). However, based on the foregoing, termination was nonetheless proper pursuant to MCL 712.19b(3)(i), (g), and (j). See *In re HRC*, 286 Mich App at 461 (stating that only one ground is necessary to support the termination of parental rights).

Mother further contends that the trial court clearly erred when it found that termination of her parental rights was in the children’s best interests. We disagree.

“[W]hether 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 76, 90; 836 NW2d 182 (2013). This Court reviews the trial court’s decision regarding the child’s best interests for clear error. *In re Olive/Metts*, 297 Mich App at 40.

“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.* When the

trial court considers a child's best interests, the focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "The trial court should weigh all the evidence available to determine the child's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "In deciding whether termination is in the child's best interest, the 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). A trial court can also consider the length of time the child "was in foster care or placed with relatives," and whether it was likely that "the child could be returned to [the parent's] home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The trial court found that each of the four children were doing well in their respective placements, that each child was receiving appropriate medical care, and that each child was properly cared for. See *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009) (concluding that the trial court may consider a child's placement when determining whether termination is in the child's best interests). The trial court's findings are supported by the record. Moreover, mother continued to struggle with her anger and mental health issues. Mother also lacked stable housing. Finally, mother refused to participate in the recommended domestic violence class or the intensive supervised parenting class. Therefore, the trial court did not clearly err when it determined that termination was in the children's best interests.

Affirmed.

/s/ Brock A. Swartzle  
/s/ Henry William Saad  
/s/ Peter D. O'Connell