

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* H. ST. BERNARD, Minor.

UNPUBLISHED  
December 19, 2017

No. 338209  
Monroe Circuit Court  
Family Division  
LC No. 15-023655-NA

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Before: MURRAY, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights with respect to her child under MCL 712A.19b(3)(c)(i) and (c)(ii) (conditions resulting in adjudication persist, and other conditions exist that cause the child to come within the court's jurisdiction), (3)(g) (failure to provide proper care and custody), and (3)(j) (reasonable likelihood of harm). We affirm.

Respondent's child tested positive for opiates at birth and underwent methadone treatment. Respondent admitted that she had an unresolved addiction to heroin that interfered with her parenting abilities, and that she lacked a legal source of income. The trial court took jurisdiction over the child on September 24, 2015 and respondent was given a case service plan. Months later, a petition to terminate parental rights was authorized. The parties filed trial stipulations that adopted factual allegations in the termination petition, which pertinently state:

Allegation #12, amended as follows: As of the writing of this petition, Respondent Mother does not have a legal source of income.

Allegation #13: Respondent Mother was referred for parenting education classes at Catholic Charities on 12/8/2016. She has not attended any sessions.

Allegation #14, amended as follows: Respondent Mother was required to complete 3 random drug screens a week. As of 6/18/2016, Respondent Mother should have submitted to 102 screens. Respondent Mother acknowledges that she missed some drug screens and tested positive for heroin during the course of these proceedings.

Allegation #15: Although Respondent Mother was ordered to submit to psychological evaluation, it was agreed by the parties that she would not be referred until she was in treatment and free from heroin use. However, this has

never happened as Respondent Mother's longest stay in treatment was approximately 36 hours and she has not shown she is free from heroin use.

Allegation #16: Respondent Mother submitted to a substance abuse assessment and was referred for treatment at Light House. Respondent Mother attended her first session on 12/2/2015 but left the same day stating it was too far from Monroe. The facility is in Dearborn Heights.

Allegation #17: Respondent Mother submitted to a second substance abuse assessment and again was referred to Light House for treatment. She attended treatment from 4/28/2016 to 4/29/2016. Respondent Mother stated that she did not feel well and left the facility. She was not there long enough to make it through the detox process.

Allegation #18, amended as follows: From April of 2016 until December of 2016, Respondent Mother did not receive any other substance abuse treatment. Since her release from incarceration in December of 2016, Respondent Mother reports that she is attending AA/NA meetings and that she has obtained a sponsor. Respondent Mother has not yet provided verification of her AA/NA attendance to DHHS, but she plans on presenting verification of her attendance at the trial.

Allegation #19: Throughout this case, Respondent Mother has been residing with Respondent Father at her mother's home. This was not considered suitable housing as it is a two bedroom apartment and maternal grandmother pays for the rent and utilities. In late June 2016, it was confirmed that Respondent Mother and Respondent Father are being evicted from that apartment.

Allegation #20, amended as follows: Respondent Mother has been offered multiple visits [with the minor child] supervised at either DHHS or Catholic Charities. Respondent Mother acknowledges that she attended some of the visits and that she missed some of the visits.

Allegation #21, amended as follows: Respondent Mother is appropriate with the minor child when she attends visits. However, she has missed some of her visits with the minor child during the pendency of these proceedings.

Allegation #22: On February 26, 2016, Respondent Mother entered a plea to Home Invasion—2nd Degree which occurred on October 14, 2015. The plea agreement is that Respondent Mother would receive probation with no more than 180 days of immediate jail time.

Allegation #23: On April 28, 2016, Respondent Mother failed to appear for her sentencing in the 38th Circuit Court and there is currently a bench warrant out for her arrest.

Allegation #24: On 8/22/2016, Respondent Mother was arrested for her outstanding warrant.

Allegation #25, amended as follows: Respondent Mother was thereafter convicted of Felony Home Invasion—2nd degree, and sentenced to 146 days in jail and 3 years of probation on 09/22/2016. Respondent Mother was released from incarceration in December of 2016. As of today's date[, January 13, 2017], she has not had any formal probation violations. Her current probation officer is Maribel Alvarado.

Allegation #27 amended as follows: Upon her release from incarceration, Respondent Mother will be on Circuit Court probation with various probation conditions including maintaining sobriety, maintaining employment, completing substance abuse counseling, attending AA and abiding by a curfew.

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Since her release from incarceration on or about 12/22/2016, Respondent Mother reports that she has been attending AA/NA and that she has obtained a sponsor. Respondent Mother has not provided verification of same to DHHS, but she reports that she will bring verification to the trial. Respondent mother also reports that she is actively looking for housing and income. As of today's date[, January 13, 2017], Respondent Mother has not violated the terms of her Circuit Court probation.

At the bench trial on February 27, 2017, testimony established that respondent had maintained a period of sobriety since going to jail on August 18, 2016 continuing after her release on December 22, 2016, and that she was on step two of a 12-step program for sobriety. During the course of the proceedings, the minor child had been in the custody of her 22-year-old paternal cousin who was raising the child along with his own biological daughter. The paternal cousin maintained a stable job, owned his own house, and provided for all of the child's needs. Although there was testimony on the second day of trial on March 17, 2017 that respondent had secured a job at a Tim Hortons restaurant in Dundee, Michigan, she did not verify the position with documentation. The only other employment respondent maintained during the course of these proceedings was bartending at a gentleman's club to support her addiction. It was also established that after her release from being incarcerated, respondent began participating in parenting courses, had been working with a mentor, and was attending sobriety classes. Respondent did not, however, provide verification of her attendance at her sobriety classes. Moreover, respondent missed four drug screens between February and March 2017, blaming these absences on transportation issues.

## I. STANDARD OF REVIEW

This Court reviews for clear error the trial court's determination that clear and convincing evidence supports statutory grounds for termination. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). "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) (citation omitted).

A trial court's decision regarding the best interests of the child is also reviewed for clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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 at 271, quoting *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

## II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the trial court clearly erred in determining that the statutory grounds had been established to terminate respondent's parental rights. We disagree.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (citation omitted). Accordingly, "[o]nly one statutory ground for termination need be established." *In re Olive/Metts Minors*, 297 Mich App at 41 (citation omitted).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (c)(ii), which authorize a court to terminate a parent's parental rights if it finds by clear and convincing evidence that:

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The conditions that led to adjudication included respondent's addiction to heroin and her lack of a legal source of income. Respondent did not make any voluntary progress with her heroin addiction until after her release from jail on December 22, 2016, as indicated by her negative drug screen results from January and February of 2017. On the first day of trial, respondent testified that she was 198 days sober. Since her release from incarceration in December of 2016, respondent reported that she had obtained a sponsor and was attending sobriety group meetings. Though she testified that she was following a 12-step program, respondent did not provide written verification. While respondent began to show progress with overcoming her addiction by the time of trial, serious concerns remained regarding whether she

would be able to sustain sobriety outside of a confined setting, particularly where she had missed four drug screenings during the months of February and March 2017.

As noted above, respondent was forced into sobriety on August 18, 2016 while she was incarcerated. Before that, she continuously and repeatedly tested positive for heroin. As indicated in the trial stipulations, her longest stay in sobriety treatment was about 36 hours. When respondent attended her first session at Light House on December 2, 2015, she left the same day because it was too far from Monroe, Michigan. When she went back to Light House between April 28 and 29, 2016, she stated that she did not feel well and left the facility. Respondent did not attend Light House long enough to finish a detoxification process. From April 2016 through December 2016, respondent did not receive any other substance abuse treatment. The trial court found that as of June 18, 2016, respondent should have completed 102 screens, but only completed 20, and tested positive for heroin 16 times.

The stipulations further indicate that as of January 13, 2017, respondent still lacked a legal source of income. Although she testified that she had worked at a gentlemen's club at one point during these proceedings, the work was "under the table" and respondent admitted she worked there to support her heroin addiction. On the first day of trial, February 27, 2017, respondent testified that she was actively following up with employment opportunities. On the second day of trial, March 17, 2017, respondent's mother testified that respondent had obtained a job at Tim Hortons a few weeks earlier. Respondent failed, however, to confirm her employment with documentation.

The additional conditions alleged in the supplemental petition are criminality, incarceration, lack of stable housing, general noncompliance with the October 2015 case service plan, lack of benefit from services, and a lack of involvement in the minor child's life. Respondent failed to avoid criminal activity. She was incarcerated from August 18, 2016 through December 22, 2016 following her conviction for second-degree home invasion. Moreover, the record reflects that respondent failed to appear for her sentencing on April 28, 2016 because she was getting high.

Additionally, as the trial court recognized, respondent demonstrated general noncompliance with the 2015 case service plan. The plan required her to participate in services related to parent education, participate in a psychological evaluation, actively participate in weekly parenting time, and maintain safe and suitable housing for the child. The stipulations state that respondent was referred to Catholic Charities parenting education classes on December 8, 2016, and as of January 13, 2017, she had not attended any sessions. Testimony established that as of February 27, 2017, respondent had not completed any courses beyond an intake assessment. Although the record indicates that respondent attended five or six sessions after January 13, 2017, for over one year during the course of these proceedings, respondent failed to comply with this requirement. Moreover, the record shows that, throughout the course of the proceedings, respondent demonstrated a general lack of any benefit from the services made available to her.

The record further illustrates respondent's general lack of involvement in the child's life. As of June 29, 2016, respondent was missing visits without excuse. The testimony of foster care worker Melanie Stickel established that respondent missed 11 out of 46 visits offered, and only

one was missed with a valid excuse, while others “were just no call, no shows . . . explanations were they couldn’t make it . . . they overslept, their ride didn’t come in time.”<sup>1</sup> Although there was testimony that respondent had not missed visits since her release from jail and was “appropriate” during these 16 visits, these visits appeared to be the only significant involvement that she had had in her daughter’s life. Notably, she failed to adequately prepare for these visits by bringing the appropriate items.

Regarding housing, throughout the course of the proceedings, respondent resided either with her parents before an eviction, or in her own one-bedroom apartment, which her family and friends subsidized. Respondent’s own apartment lacked toddler bedding. Although it might have otherwise been suitable, respondent’s ability to maintain it independently was dubious. Accepting her mother’s testimony that respondent was employed, there was no indication in the record as to her hours or whether her pay would be sufficient to maintain the apartment.

We agree with the trial court that clear and convincing evidence established that respondent generally failed to comply with her case service plan even up to the time of trial, and that she was not significantly involved in the child’s life, even at the time of trial, and that she had not demonstrated that her housing situation was stable. Thus, the conditions that led to the adjudication, and additional conditions, continued to exist. It was not until the trial regarding the termination of her parental rights approached that respondent began to demonstrate a willingness to participate in the case service plan requirements. The record therefore establishes that at least one of the conditions leading to adjudication continued to exist and, based on respondent’s pattern of behavior and reluctance to participate in the required services, that there was no reasonable likelihood of rectification within a reasonable time given the child’s young age.

The trial court also terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(g), which authorizes a trial court to terminate a parent’s parental rights if it finds by clear and convincing evidence that:

[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.

Here, the child was taken from her parents close to birth because as heroin addicts, they were not able to provide proper care and custody for the child, who was born addicted. The child spent her entire life outside of respondent’s care and custody. As the trial court recognized, the record establishes that there is no reasonable expectation respondent will be able to provide proper care and custody within a reasonable time. Respondent’s period of sobriety was not sufficiently prolonged to entrust the child to her care, her housing situation was tenuous, she had not completed the requirements of her case service plan, she was reliant on family and friends

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<sup>1</sup> Stickel was referring to both respondent and the minor child’s father, whose parental rights were also terminated and are not at issue in this appeal.

financially, and it was unclear whether her employment would enable her to provide financially for herself and the child.

Additionally, MCL 712A.19b(3)(j) authorizes a court to terminate a parent's parental rights if it finds by clear and convincing evidence that:

[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.

We acknowledge that at the time of trial in this case, respondent had sustained a period of sobriety and was making some progress with other goals. However, the fact remains that the child tested positive for opiates at her birth and respondent was not able to demonstrate a period of voluntary sobriety until she was forced into involuntary sobriety during her incarceration. Moreover, respondent engaged in criminal activity and regular heroin use during the course of the lower court proceedings after the court took jurisdiction over the child. Further, although respondent had an apartment and apparently had a job, it was not clear that she would be able to maintain the apartment on her income, or that her income would be sufficient to support herself, let alone the child. Given the struggles that respondent continued to face, the trial court did not clearly err in determining that the child would likely be exposed to some form of harm if returned to respondent's custody, either through respondent's inability to provide proper care, or if respondent were to have a relapse with her heroin addiction.

### III. BEST INTERESTS OF THE CHILD DETERMINATION

Respondent next argues that the trial court erred in determining that termination of parental rights was in the child's best interests. We disagree.

Pursuant to MCL 712A.19b(5):

[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

“[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 at 90. In determining the child's best interests, “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 Minors*, 297 Mich App at 41-42 (internal citations omitted).

We note that the record supports an assertion that, in spite of respondent never having custody of the minor child, there was a mother-child bond, particularly where the child expressed affection toward respondent. Conversely, according to Stickel, respondent was not taking advantage of services to assist her with parenting. Moreover, between the date of the child's birth, September 11, 2015 and the time of trial, February 27 and March 17, 2017, respondent had

only had approximately 35 visits with the child. Testimony at trial established that the child was more bonded to her caregiver than respondent and that she had become integrated into his family. He was the only permanent and consistent caretaker in the minor child's life, and she had become very close and bonded with her foster sister. As Dominique Page, a foster care worker, testified at trial, the fact that "respondent is just now showing a little consistency with being able to participate in services . . . [and] had all this other time where she was not consistent[.]" seems to accurately summarize why the child's needs for permanency and stability are best protected outside of respondent's custody. Moreover, the record illustrates the caregiver's capacity to provide the care (e.g., housing, income, absence of criminality and substance abuse) that respondent has been unable to provide. Thus, we conclude that the trial court did not clearly err in determining that termination of respondent's parental rights was in the child's best interests. Since the time of birth, respondent repeatedly failed to show how the child's interests in permanency, stability, and finality would be preserved by returning her to respondent's custody. Respondent had ample time, almost a year and a half, to demonstrate that she was ready to be a parent to her toddler child, and her failure to become fit to do so is confirmation that the child's best interests will not be served if returned to respondent's custody.

Affirmed.

/s/ Christopher M. Murray

/s/ Kirsten Frank Kelly

/s/ Karen M. Fort Hood