

STATE OF MICHIGAN
COURT OF APPEALS

In re D. S. ZIMMERMAN, Minor.

UNPUBLISHED
December 12, 2017

No. 338489
Isabella Circuit Court
Juvenile Division
LC No. 2016-000046-NA

Before: O'CONNELL, P.J., and BECKERING and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her minor child, D. S. Z., under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm.

I. BACKGROUND

In March 2016, the Bay Area Narcotics Enforcement Team raided respondent's house because of suspected drug activity and found heroin, marijuana, cocaine, drug paraphernalia, and manufacturing materials. D. Z. was living in the house and present at the time of the raid. Respondent was arrested and later charged with manufacturing and delivering cocaine and heroin, possession of marijuana, and maintaining a drug house.

Petitioner, Department of Health and Human Services (DHHS), removed D. Z. from the home. After a psychological evaluation, DHHS provided respondent with services to address aggression, substance abuse, parenting skills, and other behavioral health concerns.

In August 2016, respondent pleaded guilty to felony drug charges for which she was sentenced to 11 months in the Isabella County Jail. In September 2016, respondent assaulted another inmate, so her sentence was extended by an additional year. In November 2016, respondent again assaulted and threatened other inmates in jail, so she was transferred to the Women's Huron Valley Correctional Facility to serve the remainder of her sentence. Shortly before DHHS petitioned to terminate respondent's parental rights, respondent was denied parole. At the time of the termination hearing in June 2017, respondent's next anticipated parole hearing was scheduled for April 2018.

II. STANDARD OF REVIEW

This Court reviews whether statutory grounds exist to terminate parental rights and whether termination is in a child's best interests for clear error. See *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Even if some evidence supports a trial court's conclusion, that conclusion is clearly erroneous if "the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made." *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012) (quotation marks and citation omitted).

III. ANALYSIS

A. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the trial court erred by finding that statutory grounds for termination existed. We disagree.

To terminate parental rights, the trial court must find clear and convincing evidence of one or more statutory grounds for termination. *In re Olive/Metts Minors*, 297 Mich App at 40. In this case, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(g).

A trial court may terminate parental rights under MCL 712A.19b(3)(c)(i) if it finds by clear and convincing evidence that the conditions that led to adjudication continue to exist at least 182 days after the issuance of the initial dispositional order, "and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Termination is proper under MCL 712A.19b(3)(g) if the trial court finds by clear and convincing evidence that the parent fails to provide the child with proper care or custody, "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."

In this case, the record supports both statutory grounds for termination. First, in the 14 months after issuance of the initial dispositional order, respondent was incarcerated and remained incarcerated, transferred from a short stint in jail to a longer prison sentence, and had no exact prison release date. Instead of rectifying the conditions that led to adjudication, prompted by respondent's arrest and incarceration, respondent assaulted and threatened other inmates in jail, adding time to her sentence. Thus, the trial court did not clearly err by finding grounds for termination under § 19b(3)(c)(i).

Moreover, the trial court concluded that respondent failed to provide proper care and custody for the child and would not be able to do so in a reasonable time because of her continued incarceration. Incarceration does not automatically prevent a respondent from being able to provide proper care and custody to the child if a family member can care for the child during the respondent's incarceration. *In re Mason*, 486 Mich 142, 161; 782 NW2d 747 (2010). However, in this case, DHHS investigated each family member respondent identified as capable of caring for D. Z. and found that no family member could provide proper care and custody because they had criminal or child investigative histories that precluded a child placement. Thus, the trial court did not err by finding grounds for termination under § 19b(3)(g).

Respondent argues that she was benefitting from services and would continue to improve with more time. A respondent's failure to comply with the parent-agency agreement is evidence

of a respondent's failure to rectify conditions and failure to provide proper care and custody. *In re Trejo*, 462 Mich at 362-363. In this case, respondent did not fully comply with her case service plan, even though she did attend counseling and attend some parenting classes. The record contains scant evidence beyond respondent's own statements about conformance with the case service plan that she was making progress. Respondent had ample time to demonstrate improvement, but her aggressive behavior in jail and in prison and the consequent denial of parole and extension of her sentence proved otherwise. For these reasons, the trial court did not clearly err by finding statutory grounds for termination.¹

B. BEST INTERESTS

Respondent argues that the trial court erred by finding termination of respondent's parental rights to be in D. Z.'s best interests. We disagree.

Once the trial court finds statutory grounds for termination, the trial court must determine whether a preponderance of the evidence shows that termination of parental rights is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court may consider the bond between the child and the parent, the respondent's parenting skills, "the child's need for permanency, stability, and finality," and the child's foster home compared with the respondent's home. *In re Olive/Metts*, 297 Mich App at 41-42. In addition, the trial court may consider the child's well-being in foster care "and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

In this case, the trial court properly focused on the child's need for permanency. D. Z. told the caseworker that she wanted a permanent home and wanted to be adopted. Contrary to respondent's argument that she and D. Z. maintained a bond, the caseworker testified that D. Z. asked about her mother frequently at first but stopped asking about her for several months before the termination hearing. The child also stopped sending letters to respondent in prison. Finally, the trial court did not err by considering the 14 months the child spent in foster care, the child's ability to adjust well to foster care and to bond with a new family, and the child's readiness for adoption. For these reasons, the trial court did not clearly err by finding that termination of respondent's parental rights was in the child's best interests.

We affirm.

/s/ Peter D. O'Connell
/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens

¹ Respondent argues that the trial court erred by terminating parental rights under § 19b(3)(j). The trial court found insufficient evidence to support this statutory ground for termination, so we decline to address this issue.