

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 18, 2018

In re K.L. THOMPSON, Minor.

No. 339374
Kent Circuit Court
Family Division
LC No. 16-050402-NA

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

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to his minor child, KT, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and MCL 712A.19b(3)(g) (failure to provide proper care or custody). We affirm.

KT was removed from her parents' care on February 5, 2016 after she was found wandering alone outdoors though only two years old. Both parents¹ were found in the home asleep and both parents tested positive for cocaine. Respondent had a history with Children's Protective Services (CPS) before the onset of the case. In the two years leading to KT's removal, police had been called to the home multiple times for incidents of domestic violence. A safety plan had been put in place by CPS prohibiting respondent from returning to the home, but KT's mother and respondent both repeatedly violated the plan, resulting in additional domestic violence incidents. Respondent also had a criminal history, primarily consisting of domestic violence convictions, and at the time KT was removed from the home he was serving probation for a domestic violence conviction. After KT was removed from the home, CPS referred respondent to Families First services, but he was unable to participate as he was by then incarcerated for a probation violation. The agency's caseworker identified respondent's barriers to reunification as being substance abuse, domestic violence, lack of parenting skills, lack of adequate housing, and lack of employment.

¹ KT's mother named respondent as the biological father of KT at the onset of the case, and respondent became the legal father of KT in March 2016, after signing an affidavit of parentage. KT's mother did not contest the termination of her parental rights to KT and is not a party to this appeal.

In July 2016, respondent was released from incarceration and began to make progress on the parent-agency agreement with the goal of reunification with KT. He met weekly with a supervisor at the YWCA and attended meetings with a Men's Alternatives to Violence group there to address his issues with domestic violence. He completed two parenting classes. He resumed his relationship with KT's mother, and KT showed a bond to her parents during their joint parenting times. Although respondent was living with his own mother in a one-bedroom apartment that was not suitable for KT, he reported searching for suitable housing.

In January 2017, respondent tested positive for cocaine, and thereafter missed several counseling appointments. In March 2017, he called the police, alleging that KT's mother had tried to run over him with a car. In April 2017, KT's mother reported to police² that respondent had beaten her up in the parking lot in front of her workplace. Respondent's bond with KT began to deteriorate after he missed several parenting times. After 15 months without making progress on the plan, the trial court terminated respondent's parental rights finding that the statutory grounds for termination had been demonstrated, and that termination was in the best interests of KT. This appeal followed.

As a threshold matter, although respondent does not raise the issue on appeal, we observe that the trial court did not clearly err in finding that a statutory ground for termination of respondent's parental rights had been demonstrated. To terminate parental rights, the trial court must find, by clear and convincing evidence, that one or more 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 the trial court's ruling that a statutory ground for termination has been established, as well as its ruling that termination is in a child's best interests, for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "A finding is 'clearly erroneous' if 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 Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (some quotation marks, citation, and alterations omitted).

The provisions under which the trial court in this case terminated respondent's parental rights, MCL 712A.19b(3)(c)(i) and (g), state, in relevant part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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:

² While reporting the incident to police, however, she was arrested on a separate charge and respondent posted her bail.

(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.

The statutory ground for termination is established under subsection (c)(i) when the conditions that brought the child into foster care continue to exist "despite time to make changes and the opportunity to take advantage of a variety of services." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (quotation marks and citation omitted). The statutory ground for termination under subsection (g) may be established by a parent's failure to participate in and benefit from services, which is evidence that the parent will not be able to provide the child with proper care and custody. *Id.* Additionally, "[a] lack of cooperation with reunification services, or other court-ordered conditions, can bear on a termination decision, if that lack of cooperation relates to issues of abuse or neglect." *In re LaFrance*, 306 Mich App 713, 729; 858 NW2d 143 (2014).

In this case, 15 months had elapsed since KT's removal from the home, and the caseworker testified that respondent was still abusing substances, engaging in domestic violence, had failed to improve his parenting ability, and still lacked suitable housing. Respondent had missed several parenting times in the months leading up to the termination hearing, and had not followed through with counseling to deal with his emotional and substance abuse issues. Thus, the trial court did not clearly err in finding that the conditions that led to adjudication continued to exist, and further, that respondent had failed to provide proper care and custody for KT and there was no reasonable expectation that he would be able to do so within a reasonable time considering the child's age. See MCL 712A.19b(3)(c)(i) and (g).

On appeal, respondent argues that termination of his parental rights was not in KT's best interests. We disagree. "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." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5); MCR 3.977(E)(4). "The trial court must find by a preponderance of the evidence that termination is in the best interests of a child." *In re Jones*, 316 Mich App 110, 119; 894 NW2d 54 (2016).

"In deciding whether termination is in 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*, 297 Mich App at 41-42 (citations omitted). "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 714; and "whether it is likely that the

child could be returned to her parents' home within the foreseeable future, if at all," *In re Jones*, 316 Mich App at 120 (quotation marks and citation omitted).

In this case, the trial court found that KT "desperately need[ed] permanence, stability, and finality," and that she should not have to wait longer for respondent to overcome his barriers to reunification. At the time of termination, KT was about to turn four years old, and she had been removed from her parents' care more than 15 months earlier. Although KT had been in three placements during the pendency of the case, the trial court found that her current placement in a licensed foster-care home held numerous advantages over placement with respondent; furthermore, the foster-care home was providing everything KT needed, while respondent still lacked adequate housing.

There was ample evidence to support the trial court's determination. Respondent had not addressed his continuing domestic violence; as recently as March and April 2017, both respondent and KT's mother were reporting to police incidents of domestic violence with each other. Respondent had tested positive for substance use in the months leading to termination, continued to lack adequate housing, and continued to miss scheduled parenting time with KT. Reunification with respondent, if at all, would not occur in the near future in light of his failure to progress on his parent-agency agreement. The trial court did not err in determining that ample evidence demonstrated that termination of respondent's parental rights was in KT's best interests. See *In re Jones*, 316 Mich App at 119-120.

Affirmed.

/s/ Jane E. Markey
/s/ Douglas B. Shapiro
/s/ Michael F. Gadola