

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* WEBB/RANNEY, Minors.

UNPUBLISHED  
February 20, 2018

No. 339401  
St. Joseph Circuit Court  
Family Division  
LC No. 2015-000889-NA

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Before: MURPHY, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court's order terminating his parental rights to his two minor children, ages 5 and 15, under MCL 712A.19b(3)(g) and (3)(j).<sup>1</sup> We affirm.

I. BACKGROUND

The children were removed from respondent's care after a search of his home revealed evidence of methamphetamine use as well as drug paraphernalia within reach of the children. Respondent subsequently participated in the drug court treatment program. However, he was incarcerated during the termination proceedings after a domestic violence incident involving the children's mother. After revocation of his placement in the drug court program, respondent was sentenced to 2 to 20 years' imprisonment for the methamphetamine offense.

II. DISCUSSION

"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." MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id.* A decision is clearly erroneous if we are "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) (quotation marks and citation omitted).

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<sup>1</sup> The children's mother was also in termination proceedings, but the trial court decided not to terminate her parental rights. Therefore, only respondent-father is a party to this appeal.

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(g) and (3)(j), which state:

(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:

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(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.

The Department of Health and Human Services (DHHS) must "report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). The DHHS is not always required to provide services, but it must "justify the decision not to provide services." *Id.* "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). It is also "evidence that the child will be harmed if returned to the parent's home." *Id.* at 711.

In this case, the record supports the trial court's findings that respondent's criminal history, chronic use of methamphetamine, and violation of the requirements of drug court provide clear and convincing evidence of both statutory grounds for termination. Respondent was arrested for manufacture and possession of methamphetamine in his home. Both children were present in the home and could have easily accessed the methamphetamine paraphernalia. Further, one of the children reported seeing respondent huffing household products to get high because huffing did not show up on a drug screen. This testimony defeats the DHHS caseworkers' testimony that respondent was doing well with the services provided to him before he was incarcerated, such as substance abuse classes, and that respondent had negative drug screens throughout the proceedings. It demonstrates that respondent feigned sobriety and compliance rather than actually benefitting from the services as he claimed.

Additionally, the children's mother testified that respondent had been using methamphetamine for several years and that she did not believe the children should be with respondent. The bulk of respondent's arrests and prior convictions related to methamphetamine. The trial court noted that respondent was sentenced as a fourth-offense habitual offender on the methamphetamine conviction. The trial court also stated that respondent's psychological evaluation noted a poor prognosis for change. Given these circumstances, the trial court did not clearly err by finding that respondent would not be able to provide proper care and custody within a reasonable time.

In addition to these reasons, the trial court relied on respondent's arrest for domestic violence against the children's mother to find that returning the children to respondent would likely result in emotional harm. Respondent challenges this finding, but the record undermines respondent's argument. The caseworker testified that the older child knew about the circumstances of respondent's most recent incarceration and that the older child was angry with respondent for ending up in prison. In addition, the domestic violence incident was only one of several reasons why the trial court found that returning the children to respondent's home would likely result in harm. The trial court also properly relied on respondent's criminal history, methamphetamine use, and violation of the drug court treatment program, as previously discussed, to find grounds for termination under both MCL 712A.19b(3)(g) and (3)(j).

Respondent further argues that incarceration alone is not grounds for termination. The trial court considered respondent's criminal history and substance abuse in addition to his incarceration, however, so the trial court did not rely on incarceration alone.

Respondent maintains that the DHHS did not provide services while he was incarcerated. A DHHS caseworker testified that DHHS was not providing services to respondent because he was receiving adequate services through the drug court and in jail. That caseworker also confirmed with respondent's probation officer that the services were adequate to address the respondent's issues. That is, DHHS adequately justified its decision not to provide services. The trial court acknowledged DHHS's justification and instructed respondent to inform the DHHS caseworker of the services that he was receiving to avoid an unnecessary overlap in services. However, the record contains no indication that respondent ever informed the DHHS caseworkers of the services offered to him. Therefore, respondent has not shown that DHHS did not provide adequate services. Because respondent failed to benefit from the services provided, the trial court did not clearly err by finding that clear and convincing evidence supported both statutory grounds for termination.

Once it has found a statutory ground for termination, the trial court must make a best-interest determination before it can terminate parental rights. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 86; 836 NW2d 182 (2013). In this case, after finding statutory grounds for termination, the trial court concluded that termination was in the children's best interests. Respondent raises no challenge to the best-interest determination on appeal. "When an appellant fails to dispute the basis of the trial court's ruling," we do not need to consider the issue. See *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). Nonetheless, the record supports the trial court's reasons for finding that termination of respondent's parental rights was in the children's best interests.

We affirm.

/s/ William B. Murphy

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly