

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* D. D. FIELD, Minor.

UNPUBLISHED  
March 13, 2018

No. 340193  
Kalamazoo Circuit Court  
Family Division  
LC No. 2013-000329-NA

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

PER CURIAM.

Respondent-mother appeals as of right an order terminating her parental rights to her minor child, DF, under MCL 712.A19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (failure to rectify other conditions), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed if returned to parent). We affirm.

I. BACKGROUND

In July 2013, petitioner filed a petition requesting that the trial court assume jurisdiction over DF, who was four years old at the time. The petition alleged that DF tested positive for marijuana at the time of his birth and that petitioner had provided respondent with mental-health and substance-abuse services. According to the petition, DF resided with respondent and her live-in boyfriend, Layne, and, on two occasions in June and July of 2013, respondent provided care for DF while under the influence of methamphetamine and marijuana. The petition alleged that respondent was provided services but had failed to address her mental-health and substance-abuse issues, thereby placing DH at a risk of harm.

The trial court assumed jurisdiction over DF, but did not initially remove DF from respondent's care. Instead, the trial court ordered respondent to participate in substance-abuse and mental-health services and submit for random-drug screening. Respondent was initially compliant with her case-services plan, submitting to a psychological evaluation, participating in counseling, and returning negative drug screens. Respondent's early progress was short-lived, however, as respondent returned three positive drug screens and failed to submit for two other screens between August and October 2013. The trial court removed DF from respondent's care and placed him in the care of his putative father until respondent could return clean drug screens.

DF was returned to respondent's care in January 2014 following a period of respondent's compliance with the case-services plan. During this period, respondent provided clean drug

screens and continued her participation in substance-abuse counseling and parenting classes. All reports indicated that respondent was very open to the services petitioner offered. The trial court returned DF to respondent's care and noted that the jurisdiction of the trial court appeared to be reaching its conclusion.

Respondent relapsed for a second time in April 2014. By this time, respondent's relationship with Layne had ended and respondent had moved in with a friend. DF continued to stay with Layne during the week so that DF could continue in the same school, and respondent had DF in her care over the weekends. Respondent tested positive for methamphetamine and admitted to using methamphetamine one weekend while DF was in her care. At an emergency-removal hearing, the trial court conducted an instant drug screen of respondent, which came back positive for methamphetamine. Respondent's caseworker testified that DF recognized Layne as his father and that DF was doing well in Layne's care. Respondent's caseworker expressed concerns regarding respondent's mental health following the break-up and questioned whether respondent was taking her medication. The trial court removed DF from respondent's care and placed him in Layne's care.

DF's placement with Layne continued until late 2015. Respondent's caseworkers testified that DF had a strong bond with Layne and was doing well in the placement. Mother returned mostly-clean drug screens during this period and was mostly compliant with the other aspects of her case-services plan, although respondent did test positive for marijuana on a couple of occasions and did not participate in counseling for a period of time. Because respondent had begun returning clean drug screens and attending counseling the trial court ordered in October 2015 that DF would be returned to respondent's care once a family-reunification program was available. By early January 2016, DF had been returned to respondent's care and, after a period of adjustment, was doing well in that placement. The trial court again noted that the case was near completion and expressed its intent to conclude its jurisdiction upon completion of the reunification program.

By mid-January 2016, respondent had relapsed for a third time. Although DF remained in her care, respondent tested positive for methamphetamine twice between January and June 2016 and failed to appear for nine drug screens. Accordingly, the trial court removed DF from respondent's care and placed him with Layne in July 2016.

Following the third removal, respondent remained compliant with the case-services plan for a time. Respondent, however, tested positive for methamphetamine in September and October 2016 and had missed three screenings. Moreover, respondent had started to become inconsistent in visiting DF. Additionally, around this time, it came to light that respondent had discontinued her medication without a doctor's approval.

Respondent again tested positive for methamphetamine on three occasions in November and December 2016 and missed several screenings. By April 2017, respondent had stopped participating in all her services and had missed several parenting-time visits. Respondent refused to comply with any drug screens because she did not trust the results and had not attended counseling since November 2016. Accordingly, in April 2017, the trial court changed DF's goal from reunification to adoption.

At the termination hearing in July and August 2017, the trial court received testimony that DF had a bonded and nurturing relationship with both respondent and Layne. Respondent admitted she stopped counseling and taking her medication, but testified that she thought she was doing better and did not need the treatment. Respondent admitted to using methamphetamine for nine years but stated that she had not used any drugs since January 2016. The trial court adjourned the hearing and ordered respondent to participate in drug screening. Respondent was to submit to four drug screens during the adjournment. One drug screen was positive for methamphetamine; another drug screen was negative for all drugs; and respondent did not show for the other two drug screens.

The trial court concluded that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). The trial court noted that respondent's drug-addiction, including use in the custodial home, continued to be an issue after four years of intervention and presented a serious safety concern for DF. The trial court noted that no relative placement was available for DF and concluded that DF's best possible placement would be with Layne, who was willing to adopt DF. Despite DF's bond with respondent, the trial court concluded that DF needed stability that respondent's addiction rendered her unable to provide. Accordingly, the trial court terminated respondent's parental rights to DF.<sup>1</sup> This appeal followed.

## II. ANALYSIS

*Statutory Grounds Support Termination.* Respondent first challenges the trial court's conclusion that clear and convincing evidence existed supporting termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). This Court reviews the trial court's determination of statutory grounds for clear error. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "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).

"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 at 139. Under MCL 712A.19b(3)(c)(i), the trial court may terminate a respondent's parental rights when, after 182 days have passed since the initial dispositional order, 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." Therefore, termination may be proper under MCL 712A.19b(3)(c)(i) where the "totality of the evidence amply supports that [the respondent] had not accomplished any meaningful change in the conditions" that led to the adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

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<sup>1</sup> The trial court also terminated the parental rights of any putative fathers to DF. No putative father has challenged this ruling.

Here, the primary reason for adjudication was respondent's drug addiction. The petition indicated that DF tested marijuana-positive at birth and that respondent had used drugs while caring for DF. There were also concerns regarding respondent's mental health. After four years of services, respondent had yet to address adequately her substance-abuse or mental-health concerns. Respondent achieved periods of sobriety and became close to closing her case on three occasions. On each of these occasions, respondent relapsed and DF was removed from her care. By April 2017, respondent had completely refused to partake in drug-screening. Respondent adamantly denied using any drugs, and the trial court gave respondent one last opportunity to prove her sobriety during her termination trial. Still, respondent tested positive for illegal substances and missed two drug screenings. Additionally, although respondent had fairly consistently addressed her mental-health concerns throughout the case, respondent suddenly stopped attending counseling and taking her medication for many months toward the end of her case. Respondent believed that she did not need any additional treatment, but provided no evidence of any doctor supporting that assertion.

Because respondent's drug-addiction and mental-health concerns persisted after four years of intervention, we conclude that the trial court did not clearly err in finding that the conditions that led to adjudication continue to exist. Moreover, DF was four at the time of adjudication in 2013. Respondent's failure to address her substance-abuse and mental-health issues after four years of services and her refusal to comply with her case-services plan near the end of her case support the trial court's finding that respondent was unlikely to correct the conditions that led to adjudication within a reasonable time considering DF's young age. Clear and convincing evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(c)(i).

Respondent's failure to address her substance-abuse and mental-health issues also supports the trial court's conclusion that termination was appropriate under MCL 712A.19b(3)(j). Under that subsection, the trial court may terminate a respondent's parental rights when "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." *Id.* The harm contemplated by MCL 712A.19b(3)(j) encompasses both physical and emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

Here, respondent used drugs, including methamphetamine, while DF was in her care on at least two occasions. In addition to the obvious physical risk posed to an eight-year-old child left in the care of an intoxicated adult, there existed clear and convincing evidence in this case that respondent's substance abuse created a reasonable likelihood of emotional harm to DF. Caseworkers testified that DF was strongly bonded to respondent. Yet, respondent's repeated relapses caused DF to be removed from her care on three occasions. While DF did settle in to his change in placements after a period of adjustment, continually placing DF with respondent only to remove him each time respondent relapsed carried with it a reasonable potential of future emotional trauma as DF's bond with respondent was continually severed and repaired. Clear and convincing evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(j).

Respondent argues that termination of her parental rights was erroneous because it was based solely on her drug addiction. "[D]rug use alone, in the absence of any connection to abuse

or neglect, cannot justify termination solely through operation of the doctrine of anticipatory neglect.” *In re LaFrance Minors*, 306 Mich App 713, 731; 858 NW2d 143 (2014). Yet, termination may be based on drug use when the “record shows that respondent’s substance abuse affects her ability to provide proper care and custody” for the child. *In re Moss*, 301 Mich App 76, 81; 836 NW2d 182 (2013).

Here, the trial court’s termination was not based upon the doctrine of anticipatory neglect. The doctrine of anticipatory neglect “recognizes that how a parent treats one child is certainly probative of how that parent may treat other children.” *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (internal citation and quotation notation omitted). The doctrine exists to guarantee the protection of a child when there is good reason to believe that the child will be abused or neglected because of the past conduct of the respondent. *Id.* The trial court in this case received no testimony of how respondent treated any other child. Moreover, the trial court did not write-off respondent because she was addicted to drugs. Rather, the trial court gave respondent ample opportunity to address her substance-abuse issues. After four years of services, respondent was still unable to overcome her addiction and had begun refusing substance-abuse services.

This Court has consistently held that a respondent’s failure to address long-standing substance abuse may support termination of a respondent’s parental rights. See, e.g., *In re Gonzales/Martinez*, 310 Mich App 426, 432-433; 871 NW2d 868 (2015); *In re Foster*, 285 Mich App 630, 631-632; 776 NW2d 415 (2009); *In re Fried*, 266 Mich App 525, 541-542; 702 NW2d 192 (2005); *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000). Respondent’s substance abuse is not detached from neglect. Rather, the record indicates that respondent’s substance abuse placed DH in danger of emotional and physical harm and warranted DH’s removal from respondent’s care on three occasions.

Moreover, a respondent’s failure to participate in and benefit from the case-services plan is evidence that the child may be harmed if returned to the parent’s home. *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014). In this case, although respondent was initially compliant with her case-services plan, respondent had issues maintaining clean drug screenings throughout the case, and completely abandoned her case-services plan near the case’s conclusion. The trial court’s termination of respondent’s parental rights was not an anticipatory termination based solely on respondent’s substance-abuse. Rather, the trial court’s termination was supported by clear and convincing evidence that respondent’s substance abuse caused her to neglect DH.

The trial court also concluded that clear and convincing evidence supported termination of respondent’s parental rights under MCL 712A.19b(3)(c)(i) and (g). Whether termination was appropriate under these additional grounds presents a closer question than whether termination was appropriate under the prior grounds. Because we conclude that clear and convincing evidence supports termination of respondent’s parental rights under MCL 712A.19b(3)(c)(i) and (j), we need not determine whether termination was appropriate under an additional ground. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

*Termination Was in DF’s Best Interests.* Finally, respondent argues that termination of her parental rights was not in DF’s best interests. This Court reviews the trial court’s best-

interests determination for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

“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 considering best interests, the focus is on the child rather than on 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 at 713. The trial court may consider such factors as “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 (internal citations omitted). Other factors that the trial court can consider include how long the child lived in foster care or with relatives, and the likelihood 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 considered DF’s placement with relatives, his bond with his mother, and the child’s need for permanency, stability, and finality, and it concluded that termination of mother’s rights was in DF’s best interests because of mother’s substance-abuse issues. The record supports the trial court’s finding. After four years of intervention, respondent had not rectified her issues with substance abuse and had disengaged from services. No appropriate relative placement was available but Layne, DF’s fictive father, was willing to adopt DF. DF was directly placed with Layne for approximately two of the four years that DF was under the jurisdiction of the trial court. Although DF was bonded with respondent, he had just as strong of a bond with Layne, to the extent that DF viewed Layne as his father. Compared to the uncertainty that respondent would ever overcome her addiction to be able to provide DF with a consistent home, the stability afforded by Layne’s adoption of DF offered DF the best chance at succeeding. Because of the lengthy period of DF’s temporary placement with Layne and the young child’s need for permanency, we conclude that the trial court did not err in finding that terminating respondent’s parental rights was in DF’s best interests.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Joel P. Hoekstra  
/s/ Brock A. Swartzle