

STATE OF MICHIGAN
COURT OF APPEALS

In re DYKEMA/HOMRICH, Minors.

UNPUBLISHED
July 19, 2018

No. 341792
Kent Circuit Court
Family Division
LC Nos. 16-052840-NA;
16-052841-NA;
16-052842-NA

Before: RONAYNE KRAUSE, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

Respondent appeals by right the trial court’s order terminating his parental rights to his three minor children, KAD, KLD, and JJH, under MCL 712A.19b(3)(c)(i) and (g).¹ We affirm.

The Department of Health and Human Services (DHHS) obtained an ex parte order for protective custody and removal of the children from respondent’s care. Respondent admitted to several allegations, including that he had “a lengthy criminal history,” that he had previous involvement with Child Protective Services because he allowed mother to continue to reside in the home and parent the children after her parental rights were terminated, that he did not currently have appropriate housing for the children, that he used marijuana, that he recently tested positive for methamphetamine, and that KAD and KLD had not been regularly attending school. Within months of the initiation of these proceedings, respondent was incarcerated for two larceny charges and two charges of failure to register under the Sex Offender Registration Act. Before his incarceration, respondent tested positive for amphetamines, methamphetamine, marijuana, and opiates.

Respondent first argues on appeal that the trial court clearly erred in finding that statutory grounds for termination of his parental rights were proven by clear and convincing evidence. We disagree.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. See

¹ The mother’s parental rights were previously terminated. She is not a party to this appeal.

MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). The trial court's determination regarding the statutory grounds is reviewed for clear error. *In re VanDalen*, 293 Mich App at 139. "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g), which, at the time of the termination,² stated:

(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:

(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.^[3]

Termination of parental rights is 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 conditions" that led to the adjudication and would not be able to rectify those conditions within a reasonable time. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Respondent does not contest that he was a respondent to the case or that more than

² MCL 712A.19b(3)(g) has since been substantively amended, effective June 12, 2018. See 2018 PA 58.

³ As amended, MCL 712A.19b(3)(g) now provides for termination of parental rights if "[t]he parent, *although, in the court's discretion, financially able to do so*, 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." (Emphasis added).

182 days had elapsed between the issuance of an initial dispositional order and the later termination of his parental rights. He only contests the trial court's conclusion that the conditions that led to adjudication continued to exist and that he would not be able to rectify those conditions within a reasonable time.

The conditions that led to adjudication included improper housing, substance abuse, lack of parenting skills, and improper money management. At the time of termination, respondent was housed in prison. He stated that he intended to obtain housing upon his release from prison, either independently or with a friend, but he did not provide any evidence to substantiate his plan. During his incarceration, respondent spoke with KAD on the telephone, and he instructed her to find methamphetamine hidden in his truck and hide it elsewhere. To his credit, respondent remained sober while incarcerated. However, the Michigan Department of Corrections recommended that respondent continue with outpatient rehabilitation after his release from prison. Respondent knew that he was not supposed to have unsupervised contact with the children, but still had unsupervised telephone calls with them from prison. During those calls, he not only instructed his children to engage in criminal activities, but he also condoned their drinking alcohol and smoking cigarettes. And despite being employed full-time before his incarceration, respondent needed his children and family friends to put money on his commissary account. Respondent anticipated being employed after his incarceration using his experience as a brick mason, but again he did not provide any evidence to substantiate that plan.

The DHHS caseworker who handled this matter for the majority of the proceedings testified that respondent's purported progress with his case service plan, particularly in terms of parenting skills, was disingenuous. That is, while his responses to various homework assignments suggested that he recognized the areas he needed to improve in, his actual behavior with the children demonstrated a lack of meaningful progress toward overcoming the barriers to reunification. Another caseworker similarly opined that the topics respondent discussed with his children reflected questionable parenting skills. The caseworkers also testified that, even if respondent was paroled on his earliest release date, it would still take a year to two years after his release for him to complete a treatment plan and demonstrate sustained employment, housing, and sobriety. At that point, the children would have been in foster care for two to three years.

We conclude that there was clear and convincing evidence that the conditions that led to adjudication continued to exist and that respondent would not be able to rectify those conditions within a reasonable time. Therefore, we hold that the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence.

We note that only one statutory ground needs to be proven by clear and convincing evidence in order to terminate respondent's parental rights. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). However, we still conclude that the trial court did not clearly err in finding that MCL 712A.19b(3)(g) was proven by clear and convincing evidence.

The version of MCL 712A.19b(3)(g) in effect at the time provided grounds for termination when "[t]he parent, without regard to intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to" do so within a reasonable time. "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).

In this case, respondent allowed the children’s mother, whose parental rights were already terminated, to reside with them and solely watch over the children while he was at work. There was evidence that respondent used marijuana and methamphetamine around the children. While incarcerated, he encouraged his children to commit crimes, and he supported their use of alcohol and cigarettes. Respondent’s earliest release from prison was June 2018,⁴ and his maximum release from prison is December 2026. As already noted, the caseworkers testified that when respondent was released from prison, they would still need to see him successfully complete a treatment plan for a year to two years and demonstrate sustained employment, housing, and sobriety before they would feel comfortable reunifying him with his children. The caseworkers’ testimony also suggests that respondent failed to make any meaningful progress or sustain any real benefit from his participation in services and programs while incarcerated. Accordingly, we conclude that respondent failed to provide proper care and custody of the children and there is no reasonable expectation that he would be able to do so within a reasonable time. Therefore, we hold that the trial court did not clearly err in finding that MCL 712A.19b(3)(g) was proven by clear and convincing evidence.

Respondent next argues that the trial court clearly erred in finding that termination of his parental rights was in the children’s best interests. We disagree.

Before ordering the termination of parental rights, the trial court must find by a preponderance of the evidence that termination is in the child’s best interests. See *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court’s findings of fact are reviewed for clear error. See *In re HRC*, 286 Mich App at 459. “A finding is ‘clearly erroneous’ if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *Id.*

“If 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.” MCL 712A.19b(5). At the best interest phase, “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 35, 41-42; 823 NW2d 144 (2012) (citations omitted). “The trial court may also consider . . . 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. A parent’s substance abuse problems and willingness to participate in counseling are also relevant considerations. See *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

⁴ However, it does not appear that respondent was in fact released from prison in June 2018.

The trial court considered the bond between respondent and the children, recognizing that respondent and the children loved each other. However, the trial court also recognized that love alone does not allow for strong parenting where a loving respondent still fails to prioritize the children's actual needs. The trial court considered respondent's parenting ability and found it to be poor, citing respondent's lack of benefit from services and his inappropriate communications with the children. The trial court also discussed that the children were in preadoptive foster homes, which were stable, loving, and appropriate. The trial court determined that the children could not wait another year to two years to have permanency, stability, and finality. These findings are supported by the record, and we are not "left with a definite and firm conviction that a mistake has been made," *In re HRC*, 286 Mich App at 459, with respect to the trial court's findings or decision. Accordingly, we hold that the trial court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Anica Letica