

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* DIAZ, Minors.

UNPUBLISHED  
October 25, 2018

No. 343131; 343132  
Wayne Circuit Court  
Family Division  
LC No. 16-521846-NA

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Before: MURRAY, C.J., and BORRELLO and RONAYNE KRAUSE, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father, E. Diaz, and respondent-mother, R. Nash, appeal as of right the trial court’s order terminating their parental rights to the minor children, ED and AD, pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).<sup>1</sup> Finding no error in either appeal, we affirm.

Respondents were in a relationship between 2008 and 2014. Both children were born during this time. In 2015, respondents’ relationship ended and respondent-father apparently moved for some period to Florida, leaving the children in respondent-mother’s care. In September 2015, respondent-mother left the children with her father and stepmother. Respondent-mother did not have regular contact with the children, nor did she contribute financially for their care. She also refused to execute a guardianship or provide the grandparents with the legal authority to provide for the children’s needs.

In January 2016, Child Protective Services (“CPS”) received a complaint that respondent-mother was homeless, unemployed, and abusing drugs. It was also reported that she had abandoned the children without proper care and custody. The Michigan Department of Health and Human Services (DHHS) promptly filed a temporary custody petition on January 28, 2016 that alleged homelessness, mother’s refusal to sign for guardianship, and unsafe living conditions. At this point, the children had been living with the maternal grandparents for almost

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<sup>1</sup> Although the trial court also cited MCL 712A.19b(3)(a)(ii) and (h) as additional grounds for termination, the court never really discussed termination under these grounds and petitioner concedes that there was not clear and convincing evidence to terminate respondents’ parental rights under these grounds. Accordingly, we will treat the trial court’s order as having been based only on the sections the trial court actually discussed.

five months. Upon further investigation, CPS also learned that respondent-father had never established paternity. It was not until April 26, 2016 when respondent-father did so. In February 2016, petitioner filed a petition requesting that the court take jurisdiction over the children, making them temporary court wards. Both respondents entered pleas of admission, allowing the court to assume jurisdiction over the children. After several preliminary hearings, the petition was authorized. The court ordered both respondents to comply with a treatment plan designed to eliminate the barriers to reunification. After approximately 18 months of services, in August 2017, the court authorized a supplemental petition seeking termination of respondents' parental rights based on respondents' noncompliance with various aspects of their treatment plans. Following hearings held between September 2017 and January 2018, the court terminated respondents' parental rights. These appeals followed.

Respondents argue that the trial court clearly erred in finding that there was clear and convincing evidence to support termination of their parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). 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. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j) permit termination of parental rights when the following conditions are satisfied:

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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(g) The parent, without regard to intent<sup>2</sup>, 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.

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(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.

In addition to being brought into care due to lack of suitable housing and financial conditions, the children were brought in after respondent-mother left them with the maternal grandparents despite not having provided these caregivers the legal authority or financial means to properly attend to the children's needs. Respondent-mother also admitted that her marijuana use impaired her ability to care for the children. Respondents were ordered to comply with a treatment plan that included participation in drug screens, parenting classes, individual therapy (with a substance abuse component), psychological/psychiatric evaluations, and parenting time. Respondents were also ordered to obtain and maintain a legal source of income and suitable housing. Although offered a multitude of services over a two-year period to achieve these goals, respondents failed to consistently participate in and benefit from the treatment plan.

While at the termination hearing, respondent-mother represented that she had suitable housing and was soon to be employed, she then confessed that she was actually living with her boyfriend of six-month's duration, that he was the one financially supporting her, and that she had no independent source of income. More significantly, this was the same boyfriend with whom there was an incident in August 2017 that resulted in respondent-mother being charged with felonious assault and resisting and obstructing a police officer. This posed further barriers to reunification as respondent-mother was incarcerated for six weeks and was unable to participate in the parenting plan. Despite a court order precluding unsupervised contact with the children, respondent-mother permitted this boyfriend to attend parenting time, and she indicated that he would be involved in future plans with her children. Further, after respondent-mother's release from jail, she failed to consistently participate in therapy and she never addressed her domestic violence issues. Respondent-mother's criminal behavior and volatile relationships with yet another man demonstrated that she continued to exercise poor judgment. This, coupled with her lack of suitable housing and a source of income, demonstrated that despite being offered services over a two-year period, respondent-mother had not overcome the barriers to reunification. More significantly, there was clear and convincing evidence that the children would not be safe in respondent-mother's care. Accordingly, the trial court did not clearly err when it terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g) and (j).

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<sup>2</sup> Pursuant to 2018 PA 58, effective June 12, 2018, the language "without regard to intent" was changed to read "although, in the court's discretion, financially able to do so."

Respondent-father failed to make any effort during the two years the children were in care to participate in any meaningful way with the services offered. Indeed, after CPS became involved in January 2016, respondent-father failed to attend multiple court hearings and he did not establish paternity for several months. Then, while offered approximately 60 opportunities to spend time with his children, respondent-father missed more than 30 visits. For two years, respondent-father was essentially homeless, despite assistance that was offered to not be so. At the time of the termination hearing, he claimed that he was now able to financially support his family given that he had acquired housing choice vouchers and earned around \$300 a month working periodic plumbing jobs. However, this was insufficient to meet the needs of two growing children. Respondent-father also admitted to a 20-year addiction to marijuana that he was clearly unmotivated and unwilling to address. Although respondent-father was provided a multitude of services, he refused to address many barriers to reunification.

Admittedly, in the two months before the beginning of the termination hearing, respondent-father had taken some initiative. He was attending parenting time, counseling, and he had obtained Section 8 housing. Considering the timing, however, his actions appear to be motivated more by the filing of the permanent custody petition than the sudden desire to be reunited with his children. In any event, according to the caseworker, the Section 8 housing was in jeopardy because of respondent-father's continued marijuana use. Consequently, it is difficult to conclude that respondent-father had actually achieved housing stability. Moreover, there is little evidence that respondent-father's two-month compliance with the treatment plan represented a forward trend. This is particularly true considering the frequency within which respondent-father vacillated between rejecting services and requesting re-referrals during the preceding two years.

At the time of termination, the evidence clearly established that although respondent-father had been given more than two years to work on a treatment plan, he still had not overcome the barriers to reunification. Moreover, there was no indication that he would be able to do so within a reasonable time considering the children's ages and the length of time they had been in care. The children had waited more than two years for respondent-father to provide them with a safe and stable environment. Respondent-father's delay and lack of effort and attention to his treatment plan was suggestive of his unwillingness to commit to parenting. Based on the evidence, it was doubtful that any additional time to comply with services would have yielded a different result. A parent's failure to comply with the court-ordered treatment plan is indicative of neglect and constitutes evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. *In re Trejo*, 462 Mich at 346 n 3; *In re BZ*, 264 Mich App 286, 300; 690 NW2d 505 (2004). Accordingly, the trial court did not clearly err when it terminated respondent-father's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).

There was also clear and convincing evidence to support termination of respondent-mother's parental rights on the same grounds. Similar to respondent-father, respondent-mother was required to participate in several services, including, drug screens, substance abuse treatment, parenting classes, and individual therapy. She was also required to obtain and maintain suitable housing and a legal source of income. For several months, respondent-mother was in partial compliance with her treatment plan. She briefly acquired suitable housing, occasionally found employment, inconsistently attended therapy, and regularly visited her

children. However, she failed to demonstrate that she could sustain any forward momentum. At the end of the day, respondent-mother had not substantially complied with her treatment plan or demonstrated the stability necessary to parent two children. She did not complete substance abuse therapy and she never obtained suitable housing and a legal source of income. Respondent-mother admitted at the termination hearing that she had not completed her treatment plan and that she was not yet in a position to provide for her children.

Next, respondents challenge the trial court's finding that termination of their parental rights was in the children's best interests. Again, we find no error in the court's ruling. Once a statutory ground for termination has been established, the trial court must find that termination of parental rights 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). Whether termination of parental rights is in the child's best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews for clear error a trial court's finding that termination of parental rights is in the child's best interests. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

"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 the parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The court may consider several factors when deciding if termination of parental rights is in a child's best interests, including 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 42. The court may also consider psychological evaluations, the child's age, continued involvement in domestic violence, and a parent's history. *In re Jones*, 286 Mich App at 131.

The trial court did not clearly err when it found that termination of respondents' parental rights was in the best interests of the minor children. At the time of the termination hearing, ED and AD had been in care for more than two years. During the time the children were court wards, neither respondent completed his or her treatment plan. To the extent that they did participate in treatment, they did not benefit from the services offered. Neither respondent demonstrated any stability nor did they show that they could properly parent their children. ED would be particularly vulnerable in respondents' care considering his special mental health needs. During the course of these proceedings, five-year-old ED exhibited severe behavioral issues, expressed suicidal ideation, and required anti-psychotic medication. He clearly required a stable and secure home environment. Respondents failed to demonstrate that they could provide such an environment; by contrast, the maternal grandparents were providing the stable and nurturing home that the children, especially ED, required.

Respondents argue that termination of their parental rights was not appropriate considering that the children were placed with their maternal grandparents. They further contend that the trial court should have considered a guardianship with the grandparents in lieu of terminating parental rights. Although placement with a relative weighs against termination, and the fact that a child is living with relatives must be considered, a trial court may terminate parental rights in lieu of placement with a relative if it finds that termination is in the child's best interests. *In re Olive/Metts*, 297 Mich App at 43. Similarly, a trial court is not required to

establish a guardianship if it is not in the child's best interests to do so. *In re Mason*, 486 Mich 142, 168-169; 782 NW2d 747 (2010). In this case, the children were still very young, five and eight years old at the time of the termination hearing. The maternal grandparents, while open to a guardianship, expressed a desired to adopt the children. However, as the foster care worker explained, and the court agreed, guardianship was not a viable option because it would not provide the permanency and finality that the children required. Based on this finding, the trial court did not err in declining to implement a guardianship and did consider that the children were placed with relatives. Termination of parental rights, which would pave the way for adoption, was a preferable permanency path for both children. Under these circumstances, the trial court did not clearly err when it rejected guardianship and determined that termination of respondents' parental rights was in the children's best interests.

After having been in care for more than two years, the children were entitled to stability, permanency, and finality in order to foster their continued growth and development. Accordingly, the trial court did not clearly err when it held that termination of respondents' parental rights was in the children's best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ Stephen L. Borrello

/s/ Amy Ronayne Krause