

STATE OF MICHIGAN
COURT OF APPEALS

In re RUSSELL, Minors.

UNPUBLISHED
December 20, 2018

No. 345040
Berrien Circuit Court
Family Division
LC No. 2016-000047-NA

Before: SWARTZLE, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication) and (g) (failure to provide proper care and custody).¹ We affirm.

Children’s Protective Services (CPS) received a referral alleging that respondent hit her oldest child and that the child had various injuries. A CPS specialist met with the child and observed that she had cuts on her lip, a cut on her head, a swollen cheek, and a hemorrhage in her left eye. In addition, the specialist observed that the child’s mouth was actively bleeding and smelled of a rotting odor. The Department of Health and Human Services (DHHS) petitioned the trial court to remove this child and respondent’s two other children, alleging that respondent medically neglected the children; failed to appreciate the children’s medical and behavioral needs; lacked parenting skills; and failed to address her substance use and mental health issues. The trial court removed the children from respondent’s custody and placed the children in foster care. Respondent pleaded no contest to the petition, and the trial court took jurisdiction over this matter. The DHHS provided respondent with multiple services, including parenting classes, individual counseling, and random drug screens. Respondent participated in supervised and some unsupervised visits and generally interacted with her children appropriately. Although the trial court found that respondent demonstrated some benefit from the services and made some progress toward alleviating the conditions that led to the children’s removal, the trial court found that respondent did not make consistent progress. Ultimately, the trial court terminated her parental rights to her minor children.

¹ The trial court also terminated the parental rights of the children’s legal and putative fathers. The legal and putative fathers did not appeal the trial court’s decision and are not parties to this appeal.

On appeal, respondent argues that the trial court clearly erred in finding clear and convincing evidence to support the statutory grounds for termination. We disagree.

“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 120, 139; 809 NW2d 412 (2011). “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). This Court reviews the trial court’s findings and factual determinations for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). “Appellate courts are obliged to defer to a trial court’s factual findings at termination proceedings if those findings do not constitute clear error.” *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). “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) (citations omitted).

Termination under MCL 712A.19b(3)(c)(i) is proper when “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.” Additionally, termination is proper when the totality of the evidence supports the conclusion that the respondent-parent did not accomplish “any meaningful change in the conditions” that led to the adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

The trial court entered the initial disposition order on May 31, 2016. The trial court terminated mother’s parental rights on June 29, 2018. Therefore, “182 or more days” had “elapsed since the issuance of an initial disposition order.” See MCL 712A.19b(3)(c).

We cannot conclude that the trial court clearly erred in finding that there was clear and convincing evidence to support termination of respondent’s parental rights under MCL 712A.19b(3)(c)(i). With respect to the medical neglect issue, respondent did not consistently attend or participate in the children’s various medical appointments. The DHHS provided respondent with reminders and a calendar to record appointments. The DHHS also offered to help respondent arrange transportation to the appointments, but respondent did not utilize these services. Respondent attended some of the two oldest children’s medical appointments and gained a general understanding of the oldest child’s blood disorder and behavioral issues and the middle child’s autism and epilepsy diagnoses. However, respondent failed to consistently attend all appointments or make alternative arrangements, failed to engage in the children’s treatment plans, and failed to initiate communication or seek updates regarding the children’s treatments from their doctors and therapists.

With respect to the remaining identified issues, the trial court found that respondent did not rectify her substance abuse, emotional and mental health, and parenting issues. Although respondent demonstrated some ability to engage with her children during parenting time and showed some benefit from individual counseling, respondent did not demonstrate that she was able to consistently handle all three of her children during parenting time. Additionally, respondent chose to continue using drugs, despite recognizing that it was a barrier to her ability

to provide a stable, nurturing home for the children and to develop positive coping skills. We conclude that the trial court did not err in finding that respondent failed to accomplish “any meaningful change” with respect to the conditions that led to adjudication. See *In re Williams*, 286 Mich App at 272.

Respondent next argues that there was no basis for the termination of her parental rights to the middle child and the youngest child even if the medical neglect issue was sufficient to support termination of her parental rights to the oldest child. However, respondent’s failure to attend the two oldest children’s medical appointments raised a genuine concern that respondent would fail to appreciate the medical concerns of all of her children. Additionally, respondent’s failure to engage the children during parenting time and her inconsistent ability to handle the children’s behavioral issues affected each child. Finally, respondent’s continued drug use impacted her ability to care for all the children. We conclude that the trial court did not clearly err in finding that the conditions that led to adjudication continued to exist and continued to affect the well-being and proper care of all the children.

Additionally, the record supported the trial court’s finding that there was no reasonable expectation that respondent was able to rectify the conditions that led to adjudication within a reasonable time. The trial court presided over this matter for 27 months during which time respondent showed minimal improvement. Beginning in October 2017, respondent’s progress ceased and respondent failed to demonstrate how she intended to provide for her children, particularly the two oldest children who had special needs and required consistency and patience. We conclude that the trial court did not clearly err in finding clear and convincing evidence to support termination of respondent’s parental rights under MCL 712A.19b(3)(c)(i). See *In re Trejo*, 462 Mich 341, 359-360.²

Finally, respondent argued that the trial court improperly treated the children’s long period in foster care as a reason for termination of parental rights. “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); see also MCL 712A.19b(5); MCR 3.977(E)(4). A court may consider the advantages of foster home or another alternative placement when making a best-interest determination. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

In this case, the trial court found that the DHHS made every reasonable effort for the children’s reunification with respondent but that respondent was not able to put the children’s needs ahead of her own. The trial court considered the children’s special medical, behavioral,

² The trial court may order termination of parental rights if it finds that at least one of the statutory grounds was established by clear and convincing evidence. MCL 712A.19b(3); *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). Because we conclude that the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) supported the termination of respondent’s parental rights, we need not address whether there was evidence to support termination under MCL 712A.19b(3)(g).

and mental health needs; the children's express wish that they not return to respondent's care; the children's need for permanency and consistency; respondent's lack of benefit from various therapy and parenting skills services; and respondent's continued recreational drug use. Contrary to respondent's argument on appeal, the trial court only considered the children's time in foster care, the children's bond with their foster families, and evidence of the children's minimal bond with respondent when deciding whether termination of respondent's parental rights was in the children's best interests. We conclude that the trial court appropriately considered these factors, and the trial court did not clearly err in its determination that termination of respondent's parental rights was in the children's best interests. See *In re Olive/Metts*, 297 Mich App at 41-42.

Affirmed.

/s/ Brock A. Swartzle
/s/ David H. Sawyer
/s/ Amy Ronayne Krause