

STATE OF MICHIGAN
COURT OF APPEALS

In re GARVIN, Minors.

UNPUBLISHED
October 15, 2019

No. 347667
Clare Circuit Court
Family Division
LC No. 17-000081-NA

Before: REDFORD, P.J., and JANSEN and LETICA, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to the minor children, AJG, LYRG, and ATG, under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist); (c)(ii) (failure to rectify other conditions); (g) (failure to provide proper care or custody); and (j) (reasonable likelihood of harm if returned to parent).¹ We affirm.

I. PERTINENT FACTS

On November 22, 2017, the Clare County Department of Health and Human Services (DHHS) filed a petition requesting removal of the children from their home² and jurisdiction over the children on the basis of allegations that respondent had been placing drugs in one of his children’s diapers to transport the drugs out of the county. The petition further alleged that respondent was arrested following a search of his home, where “a variety of pills” were located

¹ The same order also terminated the parental rights to the children’s mother; however, she is not a party to this appeal. Accordingly, the term “respondent” as used in this opinion refers only to respondent-father. Additionally, we note that prior to the termination hearings in this case, respondent-father’s other minor child, ABG, was released to her mother’s care and custody and was not subject to the trial court’s order.

² At the time of the removal, respondent and the children resided together in Clare County, Michigan.

along with capped needles and a large sum of money. The petition indicated that the drugs were found in a cardboard box on the bedroom floor where one of the children slept. The allegations also indicated that respondent had a history of domestic violence.

Respondent eventually admitted that he had a history of domestic violence and entered a no-contest plea to the allegations related to his incarceration and the raid on his house. However, he subsequently relocated to Wayne County and did not attend the dispositional hearings in this matter. Furthermore, he failed to provide release of information forms for his service providers, failed to complete the required services outlined in the parent-agency treatment plan (PATP), was inconsistent with attending parenting-time visits, and was unable to secure appropriate housing. Ultimately, following a day and a half of termination hearings, the trial court terminated respondent's parental rights to the children.

II. STATUTORY GROUNDS

Respondent first argues that the trial court clearly erred by finding that termination of respondent's parental rights was proper under any of the statutory grounds pleaded. We disagree.³

“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). The trial court's factual findings and findings that a ground for termination has been established are reviewed for clear error. MCR 3.977(K); *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). “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).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), which provide in relevant part:

(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:

* * *

³ We agree that the trial court erred to the extent it held that termination was appropriate under MCL 712A.19b(3)(g), because the trial court applied the version of that provision that was in effect prior to its amendment in June 2018. See 2018 PA 58. However, because we conclude that the trial court did not err in finding that termination of respondent's parental rights was appropriate under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(c)(ii), this error is not dispositive, because only one statutory ground for termination must be proven. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

(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 . . . 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.

* * *

(g) The 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.

* * *

(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.

Termination of parental rights is proper under MCL 712A.19b(3)(c)(i) when "the totality of the evidence amply supports that [the parent] had not accomplished any meaningful change in the conditions" that led to the court taking jurisdiction over the minor, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), and "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age," MCL 712A.19b(3)(c)(i). Further, under MCL 712A.19b(3)(c)(ii), a trial court may terminate parental rights when "[o]ther 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 . . . and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."

In this case, the children came within the trial court's jurisdiction after respondent's plea, in which he acknowledged a history of domestic violence. Moreover, respondent's no-contest plea acknowledged his arrest based on the possession of drugs and large sums of money found in his home during a police raid. The dispositional order was entered on February 14, 2018. The termination hearings were held on January 25, 2019, and January 31, 2019, thereby satisfying the requirement that 182 or more days elapsed since the issuance of the initial dispositional order. MCL 712A.19b(3)(c).

At the time of the initial disposition, respondent's barriers were identified as "Psychological Evaluation, Domestic Violence Counseling/Mental Health, Housing, Employment, Drug Screens, and Outpatient Substance Abuse Treatment/NA-AA." More specifically, as part of his PATP, respondent was required to complete a psychological evaluation with Dr. Bryon Barnes and follow recommendations, complete an intake with Detroit Community Mental Health (CMH) or other providers in order to obtain a referral for counseling services, if needed, contact the Detroit Housing Commission for assistance in obtaining and maintaining housing, obtain or maintain employment in order to provide for himself and his family, participate in random drugs screens at DHHS or Forensic Fluids, complete an assessment for substance abuse treatment, and "complete and benefit from NA/AA classes" through attendance "at least once weekly." Several hearings were held at which respondent's PATP was ordered by the court, and although respondent missed each of the hearings, he was always represented by counsel.

Respondent argues that at the time of the termination hearing, he had rectified all of the conditions that brought the children into care that were established by his admissions. It is undisputed that respondent had completed domestic violence counseling during these proceedings. However, at the time of the termination hearings, respondent was only in the second stage of five stages of his substance abuse treatment, and his substance abuse counselor estimated it would be June or July of 2019 before respondent was able to complete the program and begin the recovered addict support process. Additionally, in nearly a year, respondent had not allowed DHHS to inspect his housing and was not able to show that he had safe and appropriate housing for the children. Accordingly, respondent had not yet resolved the issues that brought the children into the court's jurisdiction despite having been given a reasonable opportunity to rectify these conditions. Further, the evidence supported a finding that there was no reasonable likelihood that he would rectify those conditions within a reasonable time. Given these circumstances, the trial court did not err in determining that termination of respondent's parental rights was appropriate under MCL 712A.19b(3)(c)(i).

Additionally, respondent had not completed his psychological evaluation, and the trial court concluded that he lacked sufficient income to support himself and the children given his inability to support himself. Likewise, the DHHS caseworker noted that although respondent had completed a parenting class, she did not think respondent benefited from the services because he still struggled with disciplining the children during his supervised parenting time. The caseworker also reported that respondent's parenting-time attendance was inconsistent, and respondent attended only 49 out of 108 visits offered. Although respondent had clearly received recommendations to rectify these conditions throughout several hearings with notice of these items through their inclusion in the PATP, and had been given a reasonable opportunity to rectify these conditions, he failed to do so. Given these circumstances, the trial court did not err in determining that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the minor children's ages. MCL 712A.19b(3)(c)(ii).

Further, because we conclude that the trial court did not clearly err by finding one statutory ground for termination of respondent's parental rights, we need not address the additional grounds. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

III. BEST INTERESTS

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

This Court reviews the trial court's determination of best interests for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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." *BZ*, 264 Mich App at 296-297.

"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." *Olive/Metts*, 297 Mich App at 40. When considering best interests, the focus is on the child, not the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Id.* at 90.

"The trial court should weigh all the evidence available to determine the children's best interests." *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." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Other factors that the trial court may consider include "a parent's history of domestic violence, 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." *White*, 303 Mich App at 714.

Respondent first argues that the trial court erred by considering *only* the adoptability of the children when looking at their best interests. This Court has recognized that "the possibility of adoption" is one of the factors the trial court may consider when addressing the children's best interests. *White*, 303 Mich App at 714. In this case, the trial court did not consider *only* the children's adoptability. The trial court also considered that the children were placed together, remained bonded to each other, and expressed a desire for consistency and stability. The trial court further indicated that the children felt cared for and loved in their foster home, where they could stay together. Undoubtedly, "the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home" are also appropriate considerations for the trial court when assessing the children's best interests. *Olive/Metts*, 297 Mich App at 41-42.

The trial court also concluded that there was a limited bond between the children and respondent, and respondent's limited attendance at parenting time was a consideration for the court. Although respondent argues this conclusion was not supported by the testimony presented at the hearing, that assertion is unfounded. The testimony presented supports the conclusion respondent was inconsistent in attending parenting time, and at the time of the termination hearing, he had not seen the children for a month. Further, the supplemental petition filed by DHHS identified two additional periods of time when respondent was unavailable for parenting time due to his incarceration. Moreover, the caseworker's testimony at the termination hearing suggested that the children were excited to have snacks provided by respondent during

parenting-time visits, but they had clearly expressed to her their fear of respondent and desire to remain in their current placement. Respondent himself recognizes within his brief that the parent-child relationship was harmed by the distance between himself and the children. Accordingly, the trial court did not clearly err when it concluded that termination of respondent's parental rights was in the children's best interests.

IV. DUE PROCESS

Respondent finally argues that his due-process rights were violated by the trial court when it allowed DHHS to place the children in Clare County and allowed the caseworker to do "her best to make attendance at parenting time difficult." We disagree.

Examination of the record establishes that the trial court properly inquired at the first preliminary hearing proceeding pursuant to MCR 3.965(6) whether respondent desired to obtain counsel or have counsel appointed for him, and it notified him that it would adjourn the proceedings and continue later when respondent had counsel. The record reflects further that, pursuant to MCR 3.965(11), the trial court inquired regarding the placement of the minor children because of the necessity to immediately provide for their safety, pending the resumption of the preliminary hearing. When the preliminary hearing resumed within the 14 day period prescribed by MCR 3.965(11), the record reflects that respondent had counsel present and he waived his right to have a preliminary hearing.

The record also does not support respondent's claim that his due-process rights were violated by the DHHS's management of parenting time. The record reflects that appropriate services were provided to respondent to enable him to obtain return of the children but he failed to rectify the conditions that led to their removal. Accordingly, we find no merit to respondent's argument that his due-process rights were violated.

Affirmed.

/s/ James Robert Redford

/s/ Kathleen Jansen

/s/ Anica Letica