

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* K. CUBITT, Minor.

UNPUBLISHED  
November 21, 2019

No. 347786  
Wexford Circuit Court  
Family Division  
LC No. 16-027047-NA

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Before: MURRAY, C.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to the minor child, KC, under MCL 712.19b(3)(c)(i) (conditions that led to removal continue to exist), (3)(g) (failure to provide proper care or custody), and (3)(j) (reasonable likelihood of harm if returned).<sup>1</sup> We affirm.

I. BACKGROUND

This action began with respondent's mental health breakdown and hospitalization in November 2016. Respondent's parents were unable to care for KC or respondent's other child, and petitioner filed a petition for removal because, due to her current mental state and hospitalization, respondent was unable to care for the children. Respondent had experienced mental health issues as far back as 2010. In addition to her mental health breakdown, respondent's housing was in jeopardy, and there were allegations of domestic violence in the home. Petitioner sought removal on the basis of respondent's mental health, housing, domestic violence, and parenting ability. The trial court found probable cause for removal, and respondent admitted to the allegations in the petition. The trial court subsequently took jurisdiction over the children. Respondent began receiving services for her mental health, and was permitted supervised visits with the children. By January 2017, respondent had obtained an apartment to remedy the housing barrier to reunification.

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<sup>1</sup> The trial court order terminating the parental rights of KC's father has not been appealed.

The case worker reported that, by August 2017, respondent was progressing well in her mental health treatment, and she had been attending her parenting-time sessions. The trial court, consistent with the case worker's recommendations, gave petitioner discretion to return the children to respondent during the next reporting period if progress continued. The trial court also entered a no-contact order for respondent against KC's father. By the next reporting period in October 2017, the children had been reunited with respondent. The case worker reported that respondent was engaged, was willing to do what was needed to keep the children, and was "on top of everything" regarding the children's needs. The trial court praised respondent's progress, but noted with concern that in September 2017, she had permitted two individuals with arrest warrants (related to illegal drug activity) to stay at her house. The trial court continued the reunification, but retained jurisdiction in order to monitor the children and the ongoing services.

However, in early February 2018, petitioner filed a supplemental petition for removal. Petitioner alleged that respondent had permitted persons involved in illegal drug activity to reside at her house. Petitioner alleged that drug paraphernalia and items used in the production of methamphetamine were found in respondent's basement. Child Protective Services (CPS) had received a complaint concerning methamphetamine production, and, in subsequent searches of respondent's house with police, petitioner allegedly found the house in tremendous disarray, with dirty clothes, old food, and garbage scattered throughout. The alleged drug paraphernalia and items related to methamphetamine production were located in the basement. Respondent's other child told case workers that she had been permitted to smoke marijuana with respondent. After an emergency removal hearing, the trial court ordered that the children were again removed from respondent's care.

Over the coming months, respondent participated sporadically in the case plan, and she was arrested in May 2018 for drunk and disorderly conduct. In July 2018, petitioner filed a petition to terminate respondent's parental rights under MCL 712A.19(b)(3)(c), (3)(g), and (3)(j), citing the length of the case, respondent's lack of progress, and concern for the children's safety if returned. The trial court permitted the termination petition, but also ordered that reunification efforts continued. By September 2018, respondent was progressing well in her mental health. The trial court retained the termination petition, but gave respondent another chance to show compliance and progress in the next reporting period. However, respondent suffered a complete mental breakdown in October 2018 that required extensive hospitalization. Case workers reported to the trial court that respondent informed hospital staff that she had been abusing alcohol and drugs throughout the case's duration, and had not been honest throughout the case. Substance abuse treatment was added to the case plan, and, over the coming months, respondent participated in such treatment.

The trial court held the termination hearing in January 2019, because, despite respondent showing some progress, it was concerned with the pattern of "ups" and "downs" that respondent had displayed. The case had been ongoing for more than two years at that point, and KC had been in foster care for almost half of his life. He had exhibited extensive behavioral issues in his placements, which required frequent moves. In total, he had been in nine different placements by the time of the trial, often with relatives or with respondent's parents. The trial court stated that KC needed stability and permanency. After the termination hearing, the trial court found that termination was appropriate under MCL 712.19b(3)(c)(i), (3)(g), and (3)(j), and that termination was in KC's best interests.

## II. ANALYSIS

Respondent argues that the trial court clearly erred by finding that petitioner had proven the statutory grounds by clear and convincing evidence, and that KC's best interests were not supported by the termination.

### A. STANDARDS OF REVIEW

We review for clear error the trial court's decision on whether termination is in the children's best interests and whether statutory grounds existed to support termination. *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). Clear error occurs when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* at 41 (quotation marks and citation omitted). Under this standard, the trial court's decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). We may not "substitut[e] [our] judgment for that of the trial court," *In re Hall*, 483 Mich 1031, 1031; 765 NW2d 613 (2009), and must consider the trial court's special opportunity to evaluate the credibility of witnesses, MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

### B. STATUTORY GROUNDS

To terminate parental rights, a trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination listed within MCL 712A.19b has been met. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). Under MCL 712A.19b(3), a trial court may terminate parental rights if it determines by clear and convincing evidence that one or more of the following have occurred:

(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.

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(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.

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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.

Under MCL 712A.19b(3)(c)(i), termination is proper when “the totality of the evidence” supports that the respondent did not accomplish “any meaningful change in the conditions” that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Additionally, the conditions must not be able to be rectified within a reasonable time. MCL 712A.19b(3)(c)(i). This includes both how long it will take for the parent to improve conditions, and how long the children can wait for the parent's improvement. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991).

As noted, the conditions that led to removal were mental health, housing, parenting ability, and domestic relations. Sufficient evidence existed to support the trial court's decision, as the evidence showed that respondent had made little progress overall in her mental health since the mental breakdown that led to the children's removal in 2016. Respondent had multiple mental breakdowns in 2016, which included hallucinations, delusions, and suicidal ideations. Nearly two years later, respondent had another set of mental breakdowns beginning in October 2018, in which she presented with hallucinations, suicidal tendencies, and paranoia. After nearly two years of services offered to her, she was still exhibiting the same types of severe mental health issues that she did at the outset. Furthermore, respondent admitted that she was not compliant in taking her medications as late as October 2018.

Additionally, the evidence showed that respondent left the “ACT” program—which was described as being very important for someone wanting stable mental health—and missed psychiatric and counseling appointments. Importantly, this all occurred during a time that respondent had care of the children, and demonstrated that her mental health was not under control. Although there were periods that respondent appeared mentally stable, this was immediately followed by a mental breakdown in October 2018. This breakdown occurred mere months before the termination hearing, helping to show that respondent had not rectified her mental health conditions in the two years that she had been receiving services.

Evidence also supported the conclusion that respondent evidenced a pattern of missing sessions and appointments in her mental health treatment. From January to September 2017, respondent missed 13 dialectical behavioral therapy (DBT) meetings, and attended only seven, and from January to August 2017, respondent missed two out of three scheduled appointments with her psychiatrist. Respondent withdrew from counseling with her therapist in May 2018, because she did not believe that she needed counseling. Although respondent testified that she was capable of handling her panic attacks and had support, her efforts throughout the case paint a strikingly contrary picture. She exhibited a pattern of “ups and downs” throughout the case, and there was no indication that she could sustain any “up” that she may have been riding at the time of the hearing. Furthermore, case workers expressed tremendous doubt over respondent's perceived support system because this same system had failed her on two occasions.

Regarding parenting ability, respondent's older child had severe tardiness issues in school while under respondent's care. She had trouble engaging and bringing back homework, her grades fell, and respondent would not force her to attend school. Although the termination

proceedings related only to KC, respondent's conduct regarding the older child is a relevant and telling sign of her behavior, and what might transpire if KC were returned to her. Additionally, despite family reunification services made available to respondent during the reunification period, respondent did not fully participate in these services, and the final report indicated that the services were ultimately "unsuccessful." During the reunification period, KC had behavioral issues, and missed several infant mental health appointments. As a result, case workers expressed belief that respondent would not be able to handle KC if returned to her.<sup>2</sup>

The record establishes that this case was ongoing for two years without meaningful change or progress. Respondent continued to show signs of severe mental health issues, and that she was unwilling or unable to control them. Moreover, she had shown no ability to effectively parent KC on a daily basis outside of a supervised and structured environment. KC had spent nearly half his life in foster care. The trial court did not clearly err by finding that the original conditions leading to the adjudication continued to exist, and there was no reasonable likelihood of change. MCL 712.19b(3)(c)(i). Because at least one statutory ground for termination existed, we need not address the additional grounds for termination. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

### C. BEST INTERESTS

Once the trial court determines by clear and convincing evidence that one or more statutory grounds provided in MCL 712A.19b(3) have been proven, it "must find that termination is in the child's best interests before it can terminate parental rights." *Olive/Metts*, 297 Mich App at 40. Whether termination is in a 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). When deciding whether termination is in the children's best interests, the trial 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." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). It is also proper to consider evidence that the children are not safe with the parent, that they are thriving in foster care, and that the foster care home can provide stability and permanency. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011).

The trial court based its decision on KC's need for permanency, consistency, and stability; the time KC had spent in foster care and the numerous placements; his need for a family that could handle his behavior; and the need for proper trauma treatment. The trial court determined that respondent could not provide for KC's needs. These findings were not clearly erroneous. By her failure to address her mental health needs and parenting abilities, respondent showed that returning KC to her care would not be in his best interests. There was a risk of harm to KC given the severity of respondent's uncontrolled mental illness symptoms, and given the

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<sup>2</sup> Additionally, evidence showed that the house was in complete disarray when workers and police visited in February 2018. There was evidence of methamphetamine production, and two individuals involved in drug activity had stayed in the same house with the children.

pattern of permitting inappropriate individuals to reside at her house. KC's therapist recommended trauma treatment for KC, but such treatment could not occur until he had a permanent and stable environment. Case workers testified that he had such an environment in his current placement. The foster family, which was willing to adopt KC, had extensive experience with traumatized children. They were capable of providing for KC's needs and addressing his problematic behavior. Finally, the length of this case weighed in favor of termination. KC had spent nearly half of his life in foster care and in nine different placements while waiting for respondent to show sufficient progress.

Although respondent undoubtedly was bonded to KC, this was not enough to foreclose termination. The trial court considered other factors that weighed against respondent, including respondent's parenting ability; KC's need for permanency, stability, and finality; the advantages of KC's current placement over respondent's house; KC's safety; the fact that he was doing very well in his current placement; and the ability of the foster family to provide the needed stability. See *Olive/Metts*, 297 Mich App at 41-42; *VanDalen*, 293 Mich App at 141.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Jane M. Beckering