

STATE OF MICHIGAN
COURT OF APPEALS

In re GARCIA JIMENEZ/CASTILLO JIMENEZ,
Minors.

UNPUBLISHED
February 18, 2020

No. 348342
Kent Circuit Court
Family Division
LC No. 15-051438-NA;
15-051441-NA;
18-050287-NA;
18-050288-NA

Before: MARKEY, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (i), and (j). For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

In 2015, respondent had six children: AG, AJ, JJ, BJ, TG, LM. Because of concerns regarding domestic violence, improper supervision, physical abuse by respondent, and sexual abuse by AG against some of her siblings, petitioner filed a petition asking the court to assume jurisdiction over the children. Respondent entered a plea of admission to the allegations in the petition, and the court assumed jurisdiction over the six children. Initially, the children remained in respondent’s care. However, after respondent violated a safety plan by allowing AG unsupervised contact with her siblings, JJ, BJ, TG, and LM were removed from the home, and AJ was placed in a residential treatment facility. AG remained with respondent.

In 2016, respondent gave birth to a seventh child, JC, and in May 2016, petitioner filed a petition requesting her removal from respondent’s care and asking the court to assume jurisdiction over her. The petition alleged that the six older children had been removed in 2015, that respondent had made minimal progress since their removal, and that respondent’s parenting skills remained a concern. In July 2016, the court assumed jurisdiction over JC after respondent entered a plea of admission to the allegations in the petition. JC was then returned to respondent’s care.

In August 2017, petitioner filed a supplemental petition seeking termination of respondent's parental rights to JJ and BJ. In September 2017, following a termination hearing, the court terminated her parental rights to both children under MCL 712A.19b(3)(c)(i).¹

In the meantime, respondent gave birth to an eighth child, KC, in September 2017, and in December 2017, TG was returned to respondent's home. In February 2018, TG disclosed that she was being physically abused by respondent, who would hit her, pinch her, and strike her with a charging cord and a shoe, and that she was being sexually abused by respondent's husband. As a result of TG's disclosure, TG, JC, and KC were removed from the home. In addition, petitioner filed another petition, asking the court to assume jurisdiction over KC, and requesting termination of respondent's parental rights to JC and KC. In June 2018, respondent entered a plea of admission to the allegations in the petition in exchange for petitioner not seeking termination of her parental rights to TG, AJ, JC, and KC. On the basis of respondent's plea of admission, the court assumed jurisdiction over KC. Further, the court ordered that TG, JC, and KC be placed in suitable foster or relative care, and continued AJ at the residential care facility.

In August 2018, a review hearing was held. The caseworker testified that she believed that the children would be at substantial risk of harm to their safety, mental health, and well-being should they be returned to respondent and that it would be in the children's best interests to terminate respondent's parental rights. The court, however, determined that although it would continue the children as temporary wards of the court and continue with an out-of-home placement, reunification was still the appropriate goal. Subsequently, following a November 2018 review hearing, the caseworker again recommended termination on the basis of respondent's lack of progress toward reunification. Noting the length of time that the children had been in the court's care, the court adopted the termination recommendation. A supplemental petition was filed seeking termination of respondent's parental rights to AJ, TG, JC, and KC.

The termination hearing was held on February 27, 2019. Generally, respondent argued that she had made progress toward removing the barriers to reunification, and she testified that she had a fulltime, flexible job, that she was attempting to meet with caseworkers, that she was only late to parenting time when the weather was bad or there was an accident, that she had completed all necessary parenting classes, and that because the visits with the children were going well she had not had an opportunity to implement the techniques she had learned.

Petitioner, however, argued that respondent's improvement was minimal and had only began since the termination of parental rights was threatened. The caseworker testified that respondent was chronically late to parenting time, that she brought unhealthy food to the visits, that she inappropriately used food to redirect the children when they were upset, and that she used her telephone to "babysit" the children during the visits. In addition, the caseworker

¹ Respondent appealed that decision to this Court, which affirmed the court's termination decision. *In re Garcia-Jimenez*, unpublished per curiam opinion of the Court of Appeals, issued June 14, 2018 (Docket No. 340669).

testified that respondent was “wishy washy” on whether she believed TG had been sexually abused by her husband. The caseworker added that respondent had recently told her therapist that she believed TG was lying and that it was a foster father who had sexually abused TG.

The caseworker also testified that respondent’s emotional stability was a barrier to reunification. She explained that respondent was dishonest with service providers and was closed out of therapy for her emotional stability two times for lack of participation. Respondent was also reported to have been sleeping during classes and would not engage with the service providers. It was not until January 2019, one month before the termination hearing in this case that respondent reenrolled in a treatment class and that she began taking the classes seriously.

There were also concerns regarding domestic violence. The caseworker testified that respondent had a history of domestic violence with her partners and that she had a history of leaving her children home alone so she could go out with her partners. Respondent consistently chose her partners over her children, as evidenced by her inability to protect the children from the two instances of sexual abuse as well as believing her partner over her children. Additionally, respondent’s psychological evaluation indicated that she was susceptible to relationships in which she was coerced and easily manipulated. The caseworker believed that relationship choices were an ongoing concern, that respondent’s decisions put the children at risk, and the exposure to that type of mother-father relationship was not healthy for the children.

The caseworker also testified about respondent’s interactions with the children and the service providers. She explained that respondent was often very aggressive to the aides who were monitoring her children, yelling at them and telling them that they did not have the children’s best interests in mind. At trial, respondent blamed the receptionist at the YWCA for not returning her calls, and she told the caseworkers that she had done nothing wrong and would have her children returned to her soon. However, the caseworker testified that there was no indication that respondent had actually called the YWCA and left messages. In addition, there was testimony that respondent made inappropriate comments in front of the children about the foster parents, including stating that the children smelled like dog urine. And, although the caseworker testified that respondent’s habit of speaking negatively about the foster parents had improved as of late, she noted that any progress that had been made was less significant because respondent had only started to attend the meetings and treatment in the month before termination.

Following the hearing, the court found that there were statutory grounds under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (i), and (j), to terminate respondent’s parental rights to JC, KC, AJ, and TG, and the court found that termination was in the children’s best interests. The trial court held that respondent failed to rectify her barriers to reunification and noted that between the issues with parenting, classes, speaking appropriately, sexual abuse, and all the other barriers, there were many things that needed to be rectified, many of which were the cause of respondent having her parental rights terminated to JJ and BJ. With the length of time it would take to rectify these issues, the trial court concluded that it would be unfair to the children to have to continue waiting.

This appeal follows.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent argues that the trial court erred by finding clear and convincing evidence that there were statutory grounds to terminate her parental rights to AJ, TG, JC, and KC. “This Court reviews for clear error the trial court’s ruling that a statutory ground for termination has been established” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). An appellate court must defer to a trial court’s factual findings at a termination proceeding if those findings are not clearly erroneous. *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009) (opinion by CORRIGAN, J). “A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made.” *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014). “When reviewing the trial court’s findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses.” *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

B. ANALYSIS

The court terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (i), and (j).² Termination is proper under MCL 712A.19b(c) if:

(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.

Respondent does not dispute that more than 182 days had lapsed since the initial dispositional order was entered. Instead, she argues that the trial court clearly erred by finding that the conditions leading to adjudication continue to exist and that there was no reasonable likelihood that they would be rectified within a reasonable time considering the children’s ages.

² On appeal, respondent asserts that the court also relied on MCL 712A.19b(3)(a); however, based on our review of the record, the court only found clear and convincing evidence to terminate the respondent-father’s parental rights under subdivision (a). He has not appealed.

She contends that she was making significant progress toward rectifying the conditions leading to adjudication.

Grounds for termination under MCL 712A.19b(3)(c)(i) exist “when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services[.]” *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (quotation marks and citation omitted). In this case, respondent’s barriers leading to adjudication consisted of a lack of parenting skills, physical and sexual abuse, domestic violence, and emotional instability. Over the course of 3½ years, the goal between respondent and her children was reunification, and respondent received services to help her with each identified barrier. Between May 2015 and February 2019, respondent was offered numerous services, including parenting classes, trauma informed parenting classes, counseling, sexual abuse classes, and domestic violence classes. During that lengthy period, respondent completed only a few classes. She was discharged from others for failure to engage and failure to attend. It was only after the current termination petition was filed that respondent began to take her classes more seriously.³ But even then, her caseworker testified that respondent’s progress was minimal. In particular, the caseworker testified that although respondent completed some recommended classes, the most recent of which was her trauma class in January 2019, respondent had been discharged from the same class two times for falling asleep and failing to engage. The caseworker added that respondent has not benefited from these classes. Instead, respondent continued to bring unhealthy food to parenting-time visits, used the food to redirect the children when they get upset, was very “wishy washy” about whether TG was sexually abused, used her phone “kind of as a babysitter” and had, until recently, failed to complete a class designed to aid her in her knowledge of child development and childcare practices. Respondent’s failure to benefit from the services supports the court’s finding that termination is proper under MCL 712A.19b(3)(c). See *In re White*, 303 Mich App at 710. Moreover, with the length of time it would take to rectify these issues, it would be unfair to the children to have to wait, especially given the time they have already done so.

In sum, although there is some evidence that respondent attempted to make progress toward the end of the case, she failed to accomplish “any meaningful change” in the conditions that led to adjudication, and given her failure to do so in 3½ years, the evidence supports that there is no reasonable likelihood that she will be able to rectify these conditions within a reasonable time considering the children’s ages. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Therefore, the trial court did not clearly err by finding clear and

³ We note that this was not the first time that respondent faced a request to terminate her parental rights to all or some of her children. At various times throughout the case, petitioner sought termination of respondent’s parental rights. On occasion, the request for termination was withdrawn as part of a plea of admission during the adjudicatory phase of the case. At others, the court declined to change the goal from reunification to termination. Further, at one point, respondent’s parental rights were, in fact, terminated to two of her children based on her lack of progress.

convincing evidence supported terminating respondent's parental rights under MCL 712A.19b(3)(c)(i).⁴

III. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent next argues that the trial court erred by finding that termination of parental rights was in the best interests of the children. Once a statutory ground has been established, petitioner must prove, "by a preponderance of the evidence that termination [is] in the children's best interests." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings regarding a child's best interests are reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

B. ANALYSIS

"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). "[T]he focus at the best-interest stage" is on the child, not the parent. *In re Moss*, 301 Mich App at 87. In balancing all the evidence available to determine the child's best interests, the court may look to "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 41-42 (citations omitted). The trial court may also consider the length of time the child was in foster care, the likelihood that "the child could be returned to her parent's home within the foreseeable future, if at all," and compliance with the case service plan. *In re Frey*, 297 Mich App at 248-249. Additionally, "the parent's history of domestic violence" is also taken into consideration. *In re White*, 303 Mich App at 714. In cases involving multiple children, the trial court should consider each child's needs individually to the extent that their needs significantly differ "when determining whether termination of parental rights is in the child's best interests." *In re Olive/Metts*, 297 Mich App at 42.

Here, the court found that TG, JC, and KC had a minimal bond with respondent. In addition, the court found that respondent had made poor progress with regard to parenting classes, had a lack of participation during parenting time visits, and that she was chronically late to parenting time with her children. In looking at respondent's compliance with the case service plan, the trial court found that she only minimally complied and did not begin doing so until termination was imminent. After review of these issues and the minimal compliance with the case service plan, the trial court weighed these as factors in favor of termination. As for the children's need for permanency, the trial court found that the children have a definite need for permanency, stability, and finality. JC was under three years of age, and KC was under two

⁴ In light of our conclusion that the trial court did not clearly err by finding one statutory ground for termination, we need not address the additional grounds. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

years of age. Both had been in foster care for at least one year. In addition, AJ had been in residential care for over three years. In light of the ages and the length of time placed outside respondent's care, the court weighed the children's need for permanency, stability, and finality in favor of termination.

While evaluating the advantages of foster homes for TG, JC, and KC, the trial court discussed how these children have been in the same foster home since May and, by relying on the testimony of the caseworker, concluded that these children consider their foster home their "home." Further, the caseworker testified that the children's well-being while in care was up to par, and the foster parents had taken good care of the children. On the basis of this evaluation, accompanied by the lack of respondent's progress with the parent-agency treatment plan, the trial court found that there was a clear advantage to the foster home over respondent's home. Additionally, because TG, JC, and KC are all currently in a preadoptive home, there was a possibility of adoption that weighed in favor of termination. The trial court separately addressed AJ regarding foster care and found that because she was in an institution caring for her special needs and there had been no testimony to believe otherwise, the trial court found that she was getting the adequate care she needed. Furthermore, the possibility of adoption did not apply to AJ because of her placement in a specialized institution.

Next, the trial court looked at the respondent's history with regard to domestic violence as well as her questionable relationships. The trial court found that the testimony showed that respondent's history of questionable relationships was a factor weighing in favor of termination. The trial court discussed the length of time that it would take respondent to rectify the conditions. The court found that the children had been in care for years, that respondent has already had parental rights terminated with other children on the same or a similar basis, noting that many of the same issues leading to termination of respondent's parental rights to JJ and BJ still existed over a year after the termination of her rights to them. The court then reiterated the issues regarding parenting, classes, speaking appropriately in front of the children, and the sexual abuse. The court found that the length of time the children would have to wait for all the issues to be rectified would be unfair to the children. We conclude that the court's findings are supported by the record. After over 3 ½ years, respondent's parenting skills are still deficient. She continues to demonstrate poor parenting during meetings, and is not in a position to ensure the children's safety. The children need permanence and stability, and they are doing well in their current placements. Accordingly, the trial court did not clearly err by finding it was in the children's best interests to terminate respondent's parental rights.

Affirmed.

/s/ Jane E. Markey
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly