

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

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*In re* MARTINEZ, Minors.

UNPUBLISHED  
February 18, 2020

No. 349499  
Kent Circuit Court  
Family Division  
LC Nos. 18-050946-NA;  
18-050947-NA

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Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the two minor children under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and MCL 712A.19b(3)(c)(j) (reasonable risk of harm). We affirm the trial court’s order.

This case arose as a result of a domestic violence altercation between mother and the biological father. Because of this incident, the Department of Health and Human Services (DHHS) discovered that mother was regularly using marijuana and cocaine, that her home was in “intolerable” conditions, and that domestic violence and unmet mental health needs were an ongoing issue in the home. Because of these issues, the trial court approved an order removing the minor children from mother’s care.

The DHHS provided a variety of services to mother for over a year. These services included classes on parenting, counseling for both domestic violence and mental health, drug screens, and attempts to put mother in contact with organizations to assist with housing. Mother failed to participate fully in any of these programs and failed all 11 drug screens that she took. In May 2019, the trial court conducted a termination hearing and ultimately terminated mother’s parental rights. Mother now appeals the trial court’s termination of her parental rights and argues that the trial court erred in its best-interest analysis.

We review for clear error a trial court’s best-interest determination. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence on the whole record. *In re Moss*, 301 Mich App 76, 83-84, 90; 836 NW2d 182 (2013). A preponderance of the evidence is that

which, when weighed with the evidence that opposes it, has “more convincing force and the greater probability of truth.” *People v Cross*, 281 Mich App 737, 740; 760 NW2d 314 (2008).

Mother alleges that the trial court erred by finding that it was in the best interests of the minor children to terminate her parental rights.<sup>1</sup> Mother points to testimony indicating both strong bonds and love between her and the minor children. Moreover, mother argues that she did not medically neglect the minor children and that the selected foster home was not a positive adoptive home. In mother’s view, this swings the trial court’s best-interest analysis in her favor. However, we hold that the trial court did not err in finding that termination of mother’s parental rights was in the minor children’s best interests.

“In deciding whether termination is in the child’s best interests, the 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.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). “The trial court may also consider 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.” *In re White*, 303 Mich App at 713-714 (quotation marks and citation omitted). Furthermore, the trial court may also consider how long the child has lived in the present home and the likelihood that the child “could be returned to [the] parent’s home within the foreseeable future, if at all.” *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). “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).

The trial court did not err in weighing these factors. At the onset of this case, mother admitted to using both cocaine and crack cocaine. In response, the DHHS provided mother with drug screening and programs intended to mitigate mother’s substance abuse. However, mother failed to consistently attend these programs or participate. Over the course of this case, mother only completed 11 drug screens. Each of these drug screens was positive for marijuana or cocaine. Mother missed or refused to participate in 107 drug screens. This ongoing drug use and refusal to mitigate her substance abuse was indicative of mother’s pervasive failure to participate in services. See *In re White*, 303 Mich App at 713-714 (noting that the trial court may consider a respondent’s compliance or lack of compliance with a case service plan). Moreover, although mother argues that she neither neglected nor harmed the minor children, the record reflects that both of the minor children were medically obese upon entering the care of the trial court. The DHHS attempted to address this by referring mother to a parenting class intended to remedy her parenting skills, and the trial court put in place a “no sugar rule” to assist the minor children in improving their health. However, mother violated this rule by bringing brownies to the minor children during parenting

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<sup>1</sup> Mother does not challenge the statutory grounds for termination. As such, we presume that the trial court did not clearly err in finding that the unchallenged statutory grounds were established by clear and convincing evidence. *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000).

time. When the DHHS confronted mother about this, mother became extremely upset and refused to address the issue. Therefore, contrary to mother's contention that mother appropriately cared for and provided stability to the minor children, the record supports the trial court's finding that mother's parenting skills negatively impacted the health of the minor children.

Moreover, mother's contention that foster care was inappropriate or harmful for the minor children is also without support. The minor children were each behaviorally and cognitively deficient when brought into foster care, but improved significantly while in foster care because of therapy and counseling. It is true that the minor children were bonded with mother and loved her. The trial court explicitly recognized this. However, the trial court appropriately weighed this single factor favoring the maintenance of mother's parental rights against the emotional, mental, and physical well-being of the minor children. The trial court did not clearly err by finding that the minor children's need for permanency and stability in this case weighed in favor of termination. See *In re Olive/Metts Minors*, 297 Mich App at 41-42.

Affirmed.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Cynthia Diane Stephens