

STATE OF MICHIGAN
COURT OF APPEALS

In re FABBRO, Minors.

UNPUBLISHED
July 22, 2021

No. 355663
Newaygo Circuit Court
Family Division
LC No. 19-009168-NA

Before: RONAYNE KRAUSE, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to three minor children, NF, KF, and TF, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and MCL 712A.19b(3)(j) (reasonable likelihood of harm to child if returned to the parent).¹ Father argues that the trial court clearly erred when it found by clear and convincing evidence that there was a statutory ground sufficient to terminate his parental rights and that it was in the children’s best interests to terminate his rights. We disagree.

I. BASIC FACTS AND PROCEDURAL HISTORY

In February 2019, petitioner, the Department of Health and Human Services (DHHS), petitioned the trial court to remove NF and KF from father’s care, alleging that father was unable to provide proper care and custody for the children given his housing instability, substance abuse, mental health issues, and his being physically abusive toward the mother and her daughter, TM. DHHS sought the children’s removal because father was in jail, which left the children in the sole care of their mother, who suffered from mental health issues and did not have a source of income. NF and KF were removed from father’s custody and placed with separate foster families. After NF and KF’s placement, TF was born and placed in a guardianship with the maternal grandparents due to similar issues. Father pleaded no contest to the allegations in the respective petitions and

¹ The trial court also terminated respondent-mother’s parental rights to the three children, however she is not a party to this appeal.

the trial court found that at least some of the allegations in the petitions were true; it assumed jurisdiction over the children and ordered father to participate in services.

The DHHS provided father with numerous services, including parenting classes, treatment for his substance use, assistance with poverty, work services, and random drug and alcohol screenings. However, father did not consistently participate in the services that the DHHS provided him, nor did he consistently attend parenting-time visits with the children. Additionally, father tested positive for drugs throughout his service plan and was involved in an incident in which his brother overdosed and died. In June 2020, the trial court suspended father's parenting visits as a result of his continued drug use. The DHHS filed a supplemental petition seeking the termination of father's parental rights in August 2020.

The trial court held a termination hearing on September 25, 2020, and October 27, 2020. Tonja Carter, the foster-care worker assigned to this case, testified that father's initial barriers to reunification consisted of housing instability, mental health issues, employment instability, substance abuse, domestic violence, and parenting issues. She testified that although father had been offered every service that was available over a period of 1½ years, he continued to abuse substances and commit domestic violence. Moreover, father failed to provide proof of stable employment or housing. Carter believed that termination was in the children's best interests on the basis of the length of time that the children had been in foster care and the improbability that father would be able to provide proper care and custody within a reasonable time.

Ultimately, at the end of the hearing, the trial court terminated father's parental rights to the children. He now appeals.

II. ANALYSIS

A. STATUTORY GROUNDS

Father first argues that the trial court erred by finding statutory grounds for termination. We disagree.

At a termination hearing, the petitioner bears the burden of establishing by clear and convincing evidence a statutory ground for termination of parental rights under MCL 712A.19b(3). See *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). When applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); see also MCR 2.613(C).

The trial court terminated father's parental rights to the children pursuant to MCL 712A.19b(3)(c)(i) and (j). Because we conclude that the trial court did not clearly err as to

subsection (c)(i), we need not address subsection (j). *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

MCL 712A.19b(3)(c)(i) provides:

(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:

* * *

(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.

Termination under MCL 712A.19b(3)(c)(i) is appropriate “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 at 710 (quotation marks and citation omitted).

The dispositional order governing NF and KF was entered on May 15, 2019. The dispositional order governing TF was entered on January 15, 2020. The termination hearing began on September 25, 2020. The time between each child’s dispositional review and the beginning of the termination hearing is more than 182 days, and each satisfies the first part of MCL 712A.19b(3)(c).

The conditions listed in the petition regarding father’s barriers to reunification with the children included housing instability, unemployment, committing domestic violence, and engaging in substance abuse. Although petitioner referred father to poverty solution centers, alcoholics and narcotics anonymous, individual counseling, parenting classes, and home safety management classes, the caseworkers consistently testified that father was not engaging in those services, or was not consistently attending those services, and, as a result, did not benefit from those services. Father’s caseworkers consistently testified that he did not comply with his parenting service plan, he was never able to provide information to substantiate that he ever maintained stable housing, he left the children unsupervised, he was physically aggressive with mother, and he was emotionally abusive toward mother.

Furthermore, the record evidence demonstrated that father continued to have problems with substance abuse. He tested positive for marijuana, oxycodone, morphine, amphetamine, methamphetamine, cocaine, and he admitted to heroin use throughout the case. On one occasion, this resulted in the overdose, and death, of his brother. Father did not call medical services when his brother was unresponsive because he was afraid that he would be arrested on his outstanding warrants. Father’s actions surrounding the overdose of his brother demonstrate that another’s

physical well-being may be a secondary consideration to him when he considers his own potential legal trouble.

Given father's inconsistent attendance with the services he was provided, as well as his continued substance abuse problems including his own admission that he was doing heroin, we are not left with a definite and firm conviction that a mistake has been made. See *In re Ellis*, 294 Mich App at 33. "[T]he totality of evidence amply" supports that father "had not accomplished any meaningful change" in the conditions that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Moreover, considering father's failure to rectify a single barrier in the 1½ years that this case was open indicates that there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the children's ages—who were approximately 5, 2, and 1 years old at the time of termination. Therefore, the record supports that the trial court did not clearly err when it found by clear and convincing evidence that termination was proper pursuant to MCL 712A.19b(3)(c)(i).

B. BEST INTERESTS

Lastly, father argues that the termination of his parental rights was not in the best interests of the children. We disagree.

"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 Minors*, 297 Mich App at 40. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. The trial court's ruling regarding best interests is reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016).

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. With respect to the children's best interests, this Court places its focus on the children rather than the parent. *In re Moss*, 301 Mich App at 87. "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 at 41-42 (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 714.

The trial court was presented with evidence that father had engaged in parental neglect, committed domestic violence, and continued to abuse drugs, and thus, it found by a preponderance of evidence that termination of his parental rights was in the children's best interests. Furthermore, the caseworkers testified that NF had become more bonded with his foster family, KF's medical needs were being addressed by her foster family, and TF was reunited with his brother for foster care in a clean, safe, environment. This was in contrast to the living conditions the children experienced while under the care of father. It was reported that while the children were in father's care, KF was constantly covered in dirt, with unchanged soiled diapers, and unclean bottles; NF

was left alone when father went to “visit a friend,” and father admitted to hospital staff that he had used heroin shortly before watching and caring for TF.

The children’s well-being while in the care of their foster families, as contrasted to their well-being while in the care of father, demonstrates that termination and adoption were in their best interests. See *id.* Furthermore, father’s lack of parenting ability and his unwillingness to take consistent steps to overcome his substance abuse issues, lack of suitable housing and employment, and problems with domestic violence, also demonstrate that termination was in the children’s best interests. See *In re Olive/Metts Minors*, 297 Mich App at 41-42.

Given the evidence presented in this case, we are not left with a definite and firm conviction that a mistake has been made. See *In re Ellis*, 294 Mich App at 33. Therefore, the record supports that the trial court did not clearly err when it found by a preponderance of evidence that termination and adoption were in the children’s best interests.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Jane M. Beckering
/s/ Mark T. Boonstra