

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

October 20, 2011

In the Matter of GREEN, Minors.

No. 302791
Macomb Circuit Court
Family Division
LC No. 2009-000340-NA;
2009-000341-NA;
2009-000342-NA

Before: WILDER, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

The trial court did not clearly err when it found sufficient evidence that the conditions leading to adjudication — most significantly substance abuse — were not rectified and were not reasonably likely to be in a reasonable time, considering the children's ages. See MCL 712A.19b(3)(c)(i). Respondent argues that her partial compliance with her parent/agency agreement was evidence in her favor and her failure to comply completely with some components was not sufficient reason to terminate her rights. A respondent's compliance with her treatment plan is relevant, *In re JK*, 468 Mich at 214, but she must benefit from the services she receives. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Respondent's explanation why she did not complete parenting classes, mental health treatment, or substance abuse counseling was not believable, and the trial court was in the best position to judge witness credibility. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, on appeal respondent ignores her own admission that she continued to purchase illegal drugs three days before her termination hearing testimony. Her failure to admit responsibility for her own actions made it less likely she would rectify her substance abuse in a reasonable time.

The same evidence supported the lower court's finding that respondent failed to provide proper care or custody and was not reasonably likely to within a reasonable time, considering the children's ages, MCL 712A.19b(3)(g), and the children were likely to be harmed if returned to her care, MCL 712A.19b(3)(j). Her substance abuse and mental health issues caused her to

make poor choices that demonstrated she did not put her children's needs first, including missing many visits in the months before termination.

Respondent argues that petitioner failed to accommodate her disabilities, which she identifies as substance abuse and mental health. Petitioner was required to accommodate any disabilities while making reasonable efforts to reunite the family. *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). However, although mental health could constitute a disability, respondent did not offer evidence that she was disabled. Further, she was required to raise the issue well before the termination hearing. *Id.* at 26 n 5. Petitioner made reasonable efforts to reunite the family, but respondent did not take advantage of services offered.

Finally, respondent argues that the trial court clearly erred by not making a best interest finding in its oral opinion and, further, that termination of her parental rights was not in the children's best interests. The trial court must find that termination is in the children's best interests before it terminates a respondent's parental rights. MCL 712A.19b(5). The court must "state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1). Similar language in MCR 2.517(A) regarding other proceedings has been interpreted to require findings that demonstrate the court was aware of the issues and correctly applied the law. See *People v Johnson*, 208 Mich App 137, 141; 526 NW2d 617 (1994). In the present case, the court checked the box on its order indicating termination was in the children's best interests. The court's oral findings and the written order together satisfied MCR 3.977(I)(1) and MCL 712A.19b(5).

Further, any error in not making further findings regarding the children's best interests was harmless in this case, MCR 2.613(A); MCR 3.902(A), because termination was clearly in the children's best interests. Although there was evidence of a bond between respondent and the children, she continued to make choices against their best interests and failed to acknowledge responsibility for her own actions. Respondent made no progress while her children were in care for a year and a half, and the children needed permanency. See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Contrary to respondent's argument on appeal, her home was not compared to a foster home and comparison would be appropriate, regardless, when determining the children's best interests. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio