

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 20, 2011

In the Matter of MANUELL-PERALEZ, Minors.

No. 303938
Eaton Circuit Court
Family Division
LC No. 08-016964-NA

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

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

Respondent argues that the trial court erred in finding that the evidence supported each of the statutory grounds for termination. We disagree. "The proof supporting a court's termination decision must qualify at least as clear and convincing." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). The trial court's findings of fact are reviewed for clear error. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* at 209-210. Deference is given to the trial court's special opportunity to judge the weight of evidence and the credibility of witnesses who appear before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

With respect to § 19b(3)(c)(i), the trial court did not clearly err in finding that respondent's deficient parenting skills and emotional instability, factors that contributed to the adjudication, had not been rectified. Further, considering respondent's inability to benefit from the services that were offered, those conditions were not reasonably likely to be rectified within a reasonable time considering the ages of the children.

A trial court may appraise itself of all relevant circumstances when evaluating the conditions that led to the adjudication. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Here, services were provided to respondent even before the initial petition was filed, and services continued for more than 2-1/2 years thereafter while the children were in foster care. While respondent made some progress, her psychological evaluations and other evidence indicated that her deficiencies were chronic in nature, that her prognosis was poor, that she required an appropriate support system to care for the children, and that she continued to demonstrate inconsistent parenting. The weight given by the court to respondent's failure to take advantage of opportunities for extended parenting time does not demonstrate that the court erred

in finding that § 19b(3)(c)(i) was established. Examining the evidence as a whole, we find no clear error in the trial court's assessment of respondent's inability to rectify the conditions that led to the adjudication.

The evidence also supports the trial court's determination that §§ 19b(3)(g) and (j) were established. The evidence did not show that respondent sufficiently benefitted from services to be able to provide a home for the children where there would no longer be a risk of harm. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005). Respondent's failure to demonstrate that she would be able to improve her parenting skills in light of the limitations reflected in her psychological evaluations supports the trial court's determination that § 19b(3)(g) was proven. This evidence also establishes a reasonable likelihood that, given respondent's capacity, the children would be harmed, emotionally or otherwise, if they were returned to her home, thereby supporting termination under § 19b(3)(j).

Respondent also argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. We disagree. It was not improper for the court to consider the best-interest factors in the Child Custody Act, MCL 722.23, when evaluating the children's best interests under MCL 712A.19b(5). *In re JS & SM*, 231 Mich App 92, 102; 585 NW2d 326 (1998). But because those factors are merely tools to be used for guidance in a child protection proceeding, it is immaterial whether the court applied them in the manner intended for custody disputes between parents. Further, an analysis of the children's best interests is not determined solely by mathematically looking at how many factors favor respondent. Even where MCL 722.23 applies, a trial court need not give equal weight to each factor. *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006).

Here, the trial court's consideration of the children's stability and well-being in foster care was appropriate, but was not the principal basis for its decision. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). Rather, the trial court found that the overriding consideration was that respondent lacked the capacity to do what was necessary to care for the children and provide them with a safe and secure home. Considering the circumstances of this case, we find no clear error in the trial court's determination that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Mark J. Cavanagh

/s/ David H. Sawyer

/s/ Patrick M. Meter