

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 20, 2011

In the Matter of D. D. MCKINNEY, C. BOOKER,
and T. D. MCKINNEY, Minors.

No. 304053
Berrien Circuit Court
Family Division
LC No. 2010-000056-NA

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the order of the trial court terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(a)(ii), (b)(i), (g), and (l). Because we find that the trial court did not clearly err in concluding that termination was in the best interests of the children, we affirm.

The children in this case, along with their four siblings not involved in this proceeding, were removed from the care of their mother after petitioner became aware that the children were living in inadequate conditions and being subjected to inappropriate discipline. Respondent had not lived in the home with the children for the five preceding years and had had very limited contact with the children. Respondent was homeless for the first two years after leaving the children's home. Thereafter, he found housing and self-employment, but only visited the children once or twice a year.

The children were placed in foster care for approximately nine months before eventually being returned to the care of their mother. While the children were in foster care, respondent failed to visit the children or otherwise inquire about them. He specifically rejected the services offered by petitioner. While the children were in foster care, the minor half-sister of the three children involved in this proceeding revealed that respondent sexually assaulted her multiple times. Respondent was arrested and thereafter pleaded guilty to fourth-degree criminal sexual conduct in connection with the allegations. At the time of the termination hearing before the trial court, respondent was facing additional misdemeanor charges for indecent exposure. Though respondent was anticipating being released from incarceration, he conceded that he was homeless and could not care for the children at that time. Respondent admitted that previously his parental rights to two other children were terminated after one of the children alleged that he sexually assaulted her.

On appeal, respondent argues only that the trial court erred in determining that termination was in the best interests of the children. Respondent argues that the trial court

should have found a solution less drastic than the termination of his parental rights because the children were being returned to their mother. We disagree.

Once the petitioner in a case seeking termination of parental rights has, by clear and convincing evidence, established a statutory ground for termination, the trial court is required to affirmatively find that termination is in a child's best interests before ordering termination. MCL 712A.19b(5); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). The trial court should consider the whole record when determining the best interests of the children. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). There is no burden of proof in regard to the best interests of the children placed on either party, and the trial court should weigh all available evidence when making its determination. *Id.* at 353.

We review a trial court's determination regarding whether termination is in the best interests of a child for clear error. *In re Jones*, 286 Mich App at 129. A finding is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Trejo*, 462 Mich at 373.

The Legislature has not defined the criteria for determining the best interests of a child in the context of a termination proceeding, but case law indicates that a trial court may consider a variety of factors including the parent's past history, the age of the children, any inappropriate parenting techniques, and any continued involvement in domestic violence. See *In re Jones*, 286 Mich App at 131. A trial court may also consider the strength of the bond between the parent and child, the visitation history, and the parent's compliance with treatment plans. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). Also relevant to the best interests determination is the child's need for permanence and the length of time the child may be required to wait for the parent to rectify problematic conditions; this inquiry includes consideration of the child's age and particular needs. See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

A review of the record demonstrates that the trial court engaged in the type of analysis suggested by this Court and that its conclusion was supported by the evidence. Specifically, in finding that termination was in the best interests of the children, the trial court stated that respondent had been largely absent from the children's lives for the five years previous to the termination proceeding, and that there appeared to be a lack of bond between the children and respondent. The trial court also considered the fact that respondent was a convicted sex offender and had pleaded guilty to fourth-degree criminal sexual conduct with the half-sibling of the children involved in this proceeding and that the conduct had caused significant harm to that child. The trial court noted that similar allegations had given rise to the previous termination of respondent's parental rights involving other half-siblings of the children. The trial court considered the fact that at the time of termination respondent had no home and no plan for the care of the children, and that this situation mirrored respondent's situation five years earlier when respondent was homeless for two years. The trial court further found that respondent had not participated in services and had not shown any interest in the children during the months that they were in foster care. The trial court noted that the children needed stable, consistent care and that respondent had not demonstrated that he would be able to provide it. The trial court's observations and findings are supported by the record. Consequently, we find no clear error in

the trial court's determination that termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering