

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 27, 2012

In the Matter of K.J. BONOITE, Minor.

No. 305075
Montcalm Circuit Court
Family Division
LC No. 2010-000434-NA

Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions of the adjudication continue to exist) and (c)(ii) (other conditions exist that cause the child to come within the court's jurisdiction). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000), see also MCL 712A.19b(5). We review for clear error a trial court's factual findings, which include its best-interests determinations. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Respondent does not challenge the court's finding that the statutory grounds for termination were established by clear and convincing evidence. Instead, respondent argues that the trial court clearly erred when it found that termination of respondent's parental rights was in the best interests of the child. Although the trial court went beyond the required statutory best-interest inquiry to conclude that termination was in the child's best interest,¹ nevertheless, the

¹ As noted, *supra*, MCL 712A.19b(5) does not require that the court affirmatively find that termination is in the child's best interests. *In re Trejo*, 462 Mich at 357. Instead, it only "allows

trial court did not clearly err in its best-interest determination.

The minor child was removed from respondent's care following significant allegations of abuse and neglect. A hair follicle test revealed that the child had not only been exposed to second-hand marijuana smoke but had actually inhaled the drug. The barriers to reunification included respondent's emotional instability, substance abuse, anger management issues, and housing and employment instability. Respondent was offered a multitude of services designed to remove the barriers to reunification. For nearly a year, respondent made little to no effort to comply with the treatment plan, and her conduct confirmed that she did not benefit from the services offered. For example, immediately after completing an intensive outpatient program, respondent stated that using marijuana probably made her a better parent as she had more energy and was more playful. The only negative impact respondent could articulate from her drug use was related to the amount of money she spent on drugs. Respondent also continued to maintain relationships with undesirable individuals with their own substance-abuse issues. Only after the permanency planning hearing, where the trial court ordered the filing of a permanent custody petition, did respondent begin to fully participate in services. However, at the time of the termination hearing, there was no evidence that respondent's parenting skills had improved to the extent that she could properly and safely care for her child. Even though the child had been removed from her care over a year earlier, respondent had not sufficiently addressed any of the barriers to reunification and was in no better position to provide a stable and nurturing environment for the child. Therefore, after a review of the record, we are not left with a definite and firm conviction that the trial court erred when it determined that termination affirmatively was in the best interests of the child.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray

the court to find that termination is 'clearly not in the child's best interests' despite the establishment of one or more grounds for termination." *Id.* Since the court's finding went *beyond* what was required, it still meets the statutory requirement. *Id.* at 364.