

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 4, 2012

In the Matter of DUNCAN, Minors.

No. 306821
Ingham Circuit Court
Family Division
LC Nos. 10-001069-NA
10-001070-NA
10-001071-NA
11-000430-NA

ON REMAND

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

PER CURIAM.

This case is before this Court on remand from our Supreme Court. Respondent O. Duncan appeals from the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(g), (h), (j), and (n)(ii). In its previous opinion, this Court concluded, in a split decision, that none of the cited statutory bases for termination were established by clear and convincing evidence.¹ Because grounds for termination were not established, this Court did not address respondent's challenge to the trial court's evaluation of the children's best interests under MCL 712A.19b(5). On appeal, the Supreme Court reversed this Court's decision "for the reasons stated in the Court of Appeals dissenting opinion[.]" *In re Duncan*, ___ Mich ___; ___ NW2d ___ (2012). The Supreme Court remanded to this Court "for consideration of the issue raised by the respondent but not addressed by that court during its initial review of this case." *Id.* Pursuant to the Supreme Court's remand order, we address whether termination of respondent's parental rights was in the best interests of the children.

Respondent asserts that termination of his parental rights was not in the children's best interests. He maintains that he and his children had bonded and that the children know and love him. Respondent emphasizes his regular contact with the children through letters and telephone calls. He contends that his poor life choices alone did not cause the children to become

¹ *In re Duncan*, unpublished per curiam opinion of the Court of Appeals, issued May 15, 2012 (Docket No. 306821).

temporary wards and that the trial court erred in assuming that he will continue to make poor choices. Respondent contends that he has family support and that he was participating in services and with the case plan to regain custody of his children.

This Court reviews for clear error a trial court's decision regarding the children's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MC 3.977(K). "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).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "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*, ___ Mich App ___; ___ NW2d ___ (Docket No. 306279, issued June 5, 2012), slip op p 3, quoting *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992).

In this case, the trial court considered the children's bond with respondent. Only the eldest of the four children had any relationship with respondent. Another child was only 2 years old when respondent was arrested, and another child was an infant. Neither child had seen respondent for two years. A fourth child was born while respondent was in prison and had never met him. Respondent never participated in "hands-on parenting" and did not have any "day-to-day hand in bringing up these children" in light of the length of time that he was not in the home, even when he was not incarcerated. Although respondent had maintained contact with the children through letters and telephone calls, no evidence suggested that they had developed a strong bond to him.

The trial court found that respondent is unable to parent the children. *In re Olive/Metts*, ___ Mich App at ___, slip op p 3. Because he is in prison, respondent cannot nurture the children. He is unable to provide a home or financial assistance. Respondent had taken no steps to establish a guardianship for the children with their grandmother as he suggested at the hearing. Also, the court expressed concern that a guardianship would not ensure that the children's financial needs would be met.

The trial court's concern for the children's need for permanency, stability, and finality also militated in favor of termination. *In re Olive/Metts*, ___ Mich App at ___, slip op p 3. At the time of the termination hearing, respondent was at least four years from being able to parent the children. Even if he were to be released on the earliest possible date in July 2014, which the court found unlikely in light of respondent's serious misconduct while in prison, respondent admitted that he would need a year to become ready to assume custody of the children. The court recognized the possibility that respondent might never be able to parent the children if he serves his maximum sentence. The children will have reached the age of majority by then. But even the best-case scenario for respondent's release from prison "is not within a reasonable

time,” and, given the ages of the children, “is just too long for them to reasonably expect to wait.”

We find no error in the trial court’s assessment of the children’s best interests under MCL 712A.19b(5). The evidence of respondent’s current inability to provide for the children, the uncertainty of his future, and the children’s need for stability and permanency, established that termination of respondent’s parental rights was in the children’s best interests and supported the court’s termination decision.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher