

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 8, 2012

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

No. 310606
Saginaw Circuit Court
Family Division
LC No. 10-032846-NA

Before: WILDER, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her nine-year-old daughter, K, pursuant to MCL 712A.19b(3)(c)(i), (g) and (j), based on respondent's inability to satisfactorily overcome her substance abuse issues within a reasonable time and continued relationship with her husband, an abusive person who acted as a "trigger" for respondent's drug use. Although respondent's efforts at sobriety beginning in February 2012 are commendable, they have come too late to assure K stability in the future. We therefore affirm.

I. BACKGROUND

Respondent has an 18-year history of substance abuse. On October 31, 2010, respondent left K in the care of her brother, K's uncle, and entered an inpatient drug treatment facility. In the preceding month, respondent had been detained by law enforcement officials and found to have illegal prescription drugs in her possession, attempted to pick up K from school while under the influence, and resided with the child in a home without power. Although the Department of Human Services (DHS) had been providing services to the family for some time, the court ultimately assumed jurisdiction over K shortly after respondent relinquished custody. Between October 2010 and February 2012, respondent entered inpatient drug treatment programs on three separate occasions.¹ Respondent prematurely ended her first two treatment programs and failed to consistently attend outpatient therapy sessions. Respondent repeatedly tested positive for controlled substances during this period. She attended visitation and a school function for K while under the influence. On at least two occasions, respondent exhibited signs of controlled-substance intoxication when she met with DHS workers.

¹ Respondent also participated in two inpatient treatment programs earlier in 2010, before these proceedings were initiated.

While outside the drug treatment facility, respondent returned to live with her husband, K's stepfather.² Respondent admitted that her husband was emotionally abusive and an unsafe person for K to be around. Respondent also admitted that her husband was a "trigger," causing her to revert to substance abuse.

During the pendency of the child protective proceedings, respondent's brother could no longer care for K. With respondent's agreement, the court transferred custody to TS, the ex-wife of K's step-uncle. TS testified that respondent was often late for visitation and once failed to attend. K felt uncomfortable visiting respondent at the inpatient drug treatment facility. K was embarrassed about her mother's absence and told school friends that her mother was sick and in the hospital. K appeared to become more withdrawn throughout the proceedings, prompting TS to place her in counseling.

It was not until February 2012, 15 months after she ceded custody of her child, that respondent started to benefit from services. Respondent reentered the inpatient drug treatment program and for the first time showed progress. Respondent's drug screens have been negative since that time. Respondent filed for divorce. She plans to attend college and to reside in "recovery housing" supplied by the drug treatment program for approximately a year following her release. Respondent indicated that K could live with her in such housing. However, the caseworker testified that respondent would need to remain in inpatient care for many more months and would not be able to prove her stability and commitment to sobriety until she remained outside of the treatment setting for several additional months.

Despite respondent's recent success, the circuit court terminated her parental rights. Given her lengthy history of substance abuse, the court posited that respondent still had a substance abuse problem and "no one can indicate whether she will successfully complete this treatment and if she does how long that will take and assuming she does complete residential treatment how stable she will be when she leaves." Accordingly, the circuit court found grounds for termination under MCL 712A.19b(3)(c)(i)—"[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds" that "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." The court also determined that respondent would be unable to provide proper care and custody for her child within a reasonable time given her short history of sobriety and the only recent separation from her abusive husband, thereby supporting termination under MCL 712A.19b(3)(g)—"The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." The court further found clear and convincing evidence that K would be harmed if returned to respondent's care, supporting termination under MCL 712A.19b(3)(j), based on evidence of respondent's intoxication causing her to fall asleep during visitation and that she drove to and from services while under the influence. The court

² K's biological father is deceased.

found that termination of respondent's parental rights was in K's best interests because, although respondent was not "an evil person" or "a bad woman," the court could "no longer let her have legal control over a child who has to wait, betting on the possibility of what is no more certain than the throw of a dice for her mother's recovery."

II. ANALYSIS

Termination of parental rights is appropriate where the petitioner proves at least one statutory ground set forth in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review for clear error the circuit court's findings of fact, "as well as its ultimate determination that a statutory ground for termination of parental rights has been proved." MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Petitioner presented clear and convincing evidence to support termination under factor (c)(i). The primary reason the circuit court assumed jurisdiction over the child was respondent's drug use. By the time of the termination, respondent had been clean for only three months, a relatively short period compared to her 18-year addiction problem. Respondent remained in an inpatient program and required several more months of intensive treatment. Given respondent's pattern of relapsing upon release from inpatient programs, respondent required additional time to prove her ability to remain sober. No one could guarantee that respondent would ever be able to provide a stable environment for K. And respondent had planned no further than bringing K to live with her at the inpatient facility, a place for which K had already stated her dislike. Under these circumstances, the circuit court did not clearly err in finding that respondent would be unable to remedy the conditions leading to adjudication within a reasonable time.

Yet, respondent compares her situation to *Mason*, 486 Mich at 147, in which the subject children were taken into protective custody while the respondent-father was in jail. Upon his release from jail, the respondent was sentenced to prison on a probation violation. *Id.* at 148. In prison, the respondent independently took courses, attended Alcoholics Anonymous meetings and was on a waiting list for parenting classes and counseling. *Id.* at 148-149. Neither the DHS nor the circuit court attempted to involve the respondent in a service plan or in the child protective proceedings. *Id.* at 148-150. By the time of the termination trial, the respondent was due to be paroled in one month and he had already arranged for a job and housing. *Id.* at 150-151. The trial court terminated the respondent's parental rights, finding his incarceration had precluded him from taking advantage of services offered by the DHS and that, even if released within the month, it would take several additional months to comply with a service plan and bond with the children. *Id.*

The Supreme Court reversed the termination decision in *Mason*. *Id.* at 169. It found no record support for the conclusion that it would take six months after release for the respondent to care for his children. *Id.* at 162. The Court noted that the respondent had never been evaluated as a future placement and that the DHS was not relieved of making reasonable efforts at reunification merely because a parent is imprisoned, i.e., incarceration by itself is not a sufficient reason for termination. *Id.* at 160-161, 163-164. Further, the Court found that termination was premature because the parent had not been "afforded a meaningful and adequate opportunity to participate" in the year-long proceeding leading up to the permanency planning hearing, and or

the opportunity to participate in a DHS service plan. *Id.* at 152, 159. The Court also noted that the circuit court failed to consider that the respondent might be able to provide for proper care through placement with a relative. *Id.* at 164.

Unlike the respondent in *Mason*, the current respondent participated in all hearings during the child protective proceedings. The DHS developed a plan specific to this respondent and facilitated treatment and other services during the entire pendency of the matter, and even before the circuit court assumed jurisdiction. Unlike the respondent in *Mason*, the court and DHS considered K's placement with respondent; indeed, reunification was the goal of the proceedings. Despite the extensive services actually provided by the DHS, the current respondent could not demonstrate an ability to provide a safe environment with a sober parent. *Mason* is factually inapposite and does not support the return of K to respondent's custody.

As termination was properly ordered under MCL 712A.19b(c)(i), we need not consider the propriety of the alternative grounds cited by the circuit court. *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

The circuit court also did not clearly err in finding that termination of respondent's parental rights was in K's best interests. See *Trejo*, 462 Mich at 356-357. "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); see also MCR 3.977(E)(4).

In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, *In re BZ*, 264 Mich App [286, 301; 690 NW2d 505 (2004)], the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), the child's "need for permanency, stability, and finality," *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992), and the advantages of a foster home over the parent's home. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009). . . . [*In re Olive/Metts*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 306279, issued June 5, 2012), slip op p 3.]

We note that the circuit court treated TS's custody of K as a "relative placement." Generally, a child's placement with a relative weighs against termination when considering the best interests of the child. *Mason*, 486 Mich at 164, citing MCL 712A.19a(6)(a). The circuit court's and the DHS's interpretation of the definition of "relative" in MCL 712A.13a(j) as including a stepparent's brother's former wife, however, is strained at best. Accordingly, we discern no reason to consider K's particular placement as weighing against termination when gauging the child's best interests.

We further discern no error in the circuit court's best-interests analysis. The court based its decision on the "anxiety" that K must feel from being shuffled around and wondering "is someone gonna come and move her again or does she have to go stay at a treatment facility." The court cited the child's likely concerns about potentially facing her emotionally abusive

stepfather again. Ultimately, the child would have no stability in her mother's care and deserved more after waiting for 15 months.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra