

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 18, 2013

In the Matter of TICHELAAR/HASTINGS,
Minors.

No. 311590
Calhoun Circuit Court
Family Division
LC No. 2010-002943-NA

Before: BECKERING, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

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

I. FACTUAL BACKGROUND

The minor children were removed from respondent's care on September 15, 2010, upon allegations that her boyfriend, Robert Mattingly, abused at least one of the children. The older child reported that respondent and Mattingly physically abused him and that the other child had also been abused. The trial court authorized the petition to be filed and took jurisdiction over the minor children, who were placed in foster care homes for the duration of the proceedings.

While Mattingly was offered services, he declined to participate. Respondent, in contrast, complied with the case service plan and attended counseling and parenting time. Initially her progress was marginal, as her drug tests were positive for marijuana, but her compliance improved over the course of the next several months. At a reviewing hearing on April 28, 2011, the lawyer-guardian ad litem informed the court that respondent had shown progress and was benefitting from the case service plan. Respondent's attorney also informed the court that he had spoken with respondent and she understood that if Mattingly was not participating in services, he could not be in her home. Because respondent was progressing so well, the court eventually ordered that the minor children be returned to her care in March 2012.

Two weeks after the minor children were returned to her care, respondent left the children alone with Mattingly for several hours, which was discovered when a Children Protective Services (CPS) worker visited the residence. Mattingly informed the CPS worker that he had stayed at respondent's home a number of times since the children had been returned to her care. At the emergency removal hearing on March 26, 2012, a CPS worker testified that respondent confessed that she had never stopped having contact with Mattingly throughout the pendency of the case, he had been paying her rent, and that she was not self-sufficient as she had

been reporting to foster care staff. Respondent also admitted that she did not think Mattingly was a threat to the minor children. In addition to concerns about respondent's inability to recognize that Mattingly was a threat to the children, the CPS worker was concerned about statements from the older child that he wished he was dead because if not for him, respondent would be allowed to be with Mattingly.

A termination hearing was conducted and a foster care specialist testified that respondent lied about her continued relationship with Mattingly and her employment status. The specialist also noted concerns regarding the health of the children, especially the older child who had lost five pounds in the brief two week period he was returned to respondent's care. The specialist testified that the older child had been in many foster care homes and had behavioral problems. According to a foster care worker involved in the case, while there was a bond between respondent and the younger child, such a bond did not exist between respondent and the older child. The worker also testified that termination was in the best interest of both minor children because of serious concerns that the children would be abused or neglected if returned to respondent's care. Ultimately, the trial court found that there was clear and convincing evidence that the statutory grounds for termination, MCL 712A.19b(3)(c)(i), (g), and (j), existed and that termination was in the best interests of the children. Respondent now appeals.

II. STATUTORY GROUNDS

A. Standard of Review

We review for clear error a trial court's finding that the statutory grounds for termination were proven by clear and convincing. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

B. Analysis

The trial court did not clearly err in finding the statutory grounds for termination were established by clear and convincing evidence.¹

Pursuant to MCL 712A.19b(3)(c)(i), a trial court may terminate parental rights if it finds by clear and convincing evidence 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." In the instant case, the children were removed from respondent's care because of allegations that respondent's boyfriend, Mattingly, physically abused at least one of the children. This condition continued to exist. Not only did Mattingly

¹ In order to affirm the trial court's finding, only one statutory ground for termination needs to be established by clear and convincing evidence. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Thus, respondent's arguments are precluded if the trial court correctly terminated her parental rights based on MCL 712A.19b(3)(c)(i), (g), or (j).

decline to participate in services, respondent maintained contact with him and also left the children alone with him despite being told that he could not have contact with the children. Thus, the protracted history of the case, respondent's refusal to recognize that Mattingly posed a danger to the minor children, and her dishonest representations about her continuing relationship with Mattingly constituted sufficient evidence to support the trial court's finding that the conditions leading to adjudication continued to exist and would not be rectified within a reasonable time. Because we are not left with a definite and firm conviction that a mistake has been made, we find that the trial court's ruling is not clearly erroneous. *In re HRC*, 286 Mich App at 459.

With respect to MCL 712A.19b(3)(g), a trial court may terminate parental rights if it finds by clear and convincing evidence that "[t]he 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." This evidentiary threshold was met in the instant case. In the two week span that the minor children were returned to respondent's care, there was evidence that they were not being provided with adequate nutrition, as one of the children had lost five pounds. Moreover, despite being ordered that Mattingly could not have contact with the minor children because he had physically abused at least one of them, respondent left the minor children alone with him. Because respondent refused to recognize Mattingly as a threat to the children, there also was no reasonable expectation that she would be able to provide proper care and custody of the children within a reasonable time considering the ages of the children. MCL 712A.19b(3)(g). Therefore, we are not left with the definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App at 459.

Lastly, the trial court properly found that termination was justified pursuant to MCL 712A.19b(3)(j), as "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Respondent was told that Mattingly could not have contact with the children because he had physically abused at least one of them and he was not participating in the services offered. Despite her assurances to the contrary, she eventually revealed that she did not believe Mattingly was a threat to the children and that she had been maintaining contact with him throughout the litigation. She even left the minor children alone with him almost immediately after they were returned to her care. Considering this evidence, we are not left with the definite and firm conviction that the trial court erred in finding that there was a reasonable likelihood that, based on respondent's conduct or capacity, the children would be harmed if returned to her home. MCL 712A.19b(3)(j).

Respondent, however, contends that there was no evidence that she would be unable to rectify these problems within a reasonable time. This argument is meritless. Respondent participated in services for approximately 16 months. She appeared to be progressing and it appeared that Mattingly was no longer a part of her life. Despite this apparent progress, within two weeks of having her children returned to her, she left them alone with Mattingly in flagrant disregard of the trial court's orders. It also was revealed that she had been maintaining contact with him throughout the proceedings, despite her representations to the contrary. She did not recognize Mattingly as a threat and did not have independent housing or steady employment. This evidence supports the trial court's finding that there was not a reasonable expectation that

respondent would rectify the conditions within a reasonable time, especially considering that both of the minor children were under the age of 10.

III. BEST INTERESTS

A. Standard of Review

Lastly, respondent contends that the trial court erred in finding that termination was in the best interests of the children, as such a finding was premature. We review for clear error the trial court's determination that termination was in the best interests of the child. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Clear error occurs when we are left with the definite and firm conviction that an error has been made. *In re HRC*, 286 Mich App at 459.

B. Analysis

The evidence at the termination hearing established that the children, especially the older child, had ongoing behavior issues. In light of the instability in the children's lives, the trial court found that they needed stability and permanence and that termination was therefore in their best interests. This finding was not in error. See *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) ([i]n deciding whether termination is in the child's best interests, the court may consider . . . the child's need for permanency, stability, and finality[.]). Furthermore, even if there was a bond between respondent and the children, that does not negate the very real possibility that harm could befall them if returned to respondent. Thus, we again are not left with the definite and firm conviction that the trial court erred in finding that termination was in the children's best interest.

IV. CONCLUSION

Respondent failed to establish any error in the trial court's findings that there was clear and convincing evidence of the statutory grounds for termination and that termination was in the best interests of the children. We affirm.

/s/ Jane M. Beckering
/s/ Patrick M. Meter
/s/ Michael J. Riordan