

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
August 13, 2013

In the Matter of S. M. SWIFT, Minor.

Nos. 313521; 313522  
Ionia Circuit Court  
Family Division  
LC No. 2010-000482-NA

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Before: WHITBECK, P.J., and OWENS and M.J. KELLY, JJ.

PER CURIAM.

In this consolidated appeal, respondent-mother and respondent-father appeal as of right the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

On July 21, 2010, the child was born prematurely and had to be fed through a feeding tube and required a tracheotomy tube in order to breathe. Following her birth, the child lived with respondents, who were instructed to keep her feeding and tracheotomy tubes clean and to protect her from exposure to secondhand cigarette smoke. On November 23, 2010, the child was removed from respondents' home after a Child Protective Services (CPS) investigation determined that the child was malnourished, that her feeding tube was dirty, and that respondents smoked cigarettes inside the family home. Thereafter, the trial court took jurisdiction over the child based on respondents' failure to provide the care necessary to meet the child's medical needs.

On November 2, 2011, the trial court returned the child to respondents' care but retained jurisdiction. Approximately six weeks later, the child was admitted to the emergency room with pneumonia and an upper respiratory tract infection. The record supports that at the time of the child's admission, she suffered from poor hygiene, she had ulcers on her feet caused by improper care, and her tracheotomy tube was dirty and had not been properly maintained. On December 21, 2011, the trial court removed the child from respondents' home for a second time. In September 2012, petitioner filed a termination petition. Thereafter, on October 2, 2012, the child's foster care worker made an unannounced visit to the home in which respondent-mother was living in order to observe the child's overnight visit. The worker observed that the home was very dusty, that the child was visibly dirty, and that the child's feeding and tracheotomy tubes were both dirty. The trial court terminated respondents' overnight visits, and the case

proceeded to a termination hearing about one month later, where the trial court terminated respondents' parental rights to the child.

On appeal, respondents argue that the trial court erred by finding a statutory basis for termination and by finding that termination was in the child's best interests. We review for clear error the trial court's finding that a statutory ground for termination has been established. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Hudson*, 294 Mich App at 264. Additionally, we apply the preponderance of the evidence standard when reviewing the trial court's finding that termination was in the child's best interests. *In re Moss*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2013), slip op at 6.

MCL 712A.19b(3)(c)(i), provides for termination of parental rights if:

(c) The 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 either of the following:

(i) The 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.

Respondents received training and instructions regarding the child's necessary medical care before her November 23, 2010 removal and throughout the duration of the case. However, the record supports that throughout the almost two-year duration of the case, respondents failed to consistently meet the child's medical needs. Specifically, the record supports that respondents failed to consistently keep the child's feeding and tracheotomy tubes clean, protect her from exposure to secondhand cigarette smoke and dust, and maintain her personal hygiene. Respondents' failure to meet the child's medical needs was the condition that led to adjudication; and the child's foster care workers testified, and the record supported, that respondents failed to rectify this condition. The child's caseworkers and her in-home nurse each testified that although respondents demonstrated short periods of progress during the case, they would soon regress and ultimately failed to demonstrate consistent progress. The trial court concluded that although respondents had shown progress during the month preceding the termination hearing, "the entire history of the case" demonstrated that they were still unable to meet the child's significant medical needs and that it was not reasonably likely that they would be able to do so within a reasonable time. On the record before us, the trial court's determination that respondents had not rectified the condition that led to adjudication and there was no reasonable likelihood that either of them would do so within a reasonable time, MCL 712A.19b(3)(c)(i), does not leave us with "a definite and firm conviction that a mistake has been made." *Hudson*, 294 Mich App at 264.

Having concluded that the trial court did not clearly err by finding a statutory ground for termination under MCL 712A.19b(3)(c)(i), we do not need to address the trial court's additional grounds for termination. See *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000)

(noting that only one statutory ground for termination is needed). Nevertheless, we also find that the record supported the trial court's finding that MCL 712A.19b(3)(c)(ii) (other conditions exist that cause the child to come within the court's jurisdiction), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent) constituted additional grounds for termination.

Furthermore, we do not find that the trial court erred by determining that termination of respondents' parental rights was in the child's best interests. At the time of termination, the case had been pending for almost two years and the child had been in foster care for approximately 22 months. As discussed above, the record supported that respondents failed to consistently meet the child's medical needs during the duration of the case. The record also supported that for almost the entire case respondents did not have appropriate housing for the child. Although respondents obtained appropriate housing during the final month of the case, respondent-mother testified that they had already missed their second month's rent and were "having trouble coming up with it." In determining that termination was in the child's best interests, the trial court found that the child had an obvious need for permanence and finality. The trial court also found that there was "no doubt that the needs of this child have been met while in foster care" and there was "certainly a high possibility of adoption of this child." Accordingly, given the preponderance of the evidence, the trial court did not err in determining that termination was in the child's best interests. *Hudson*, 294 Mich App at 264. See *In re Trejo Minors*, 462 Mich 341, 364; 612 NW2d 407 (2000) (stating that "[t]he court did not clearly err by refusing to further delay permanency for the children, given the uncertain potential for success and extended duration of respondent's reunification plan"); *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (stating that "[t]he evidence clearly supported the trial court's finding that termination was in the children's best interests" where "[t]he children had been placed in a stable home where they were thriving and progressing and that could provide them continued stability and permanency given the foster parents' desire to adopt them"). In reaching our conclusion, we reject respondent-mother's arguments that the trial court's findings were clearly erroneous because the three witnesses currently working with the family at the time of termination did not testify that termination was in the child's best interests. Two of the witnesses did not offer any opinion on the issue and one qualified her answer, stating that medical concerns aside, she did not believe terminating respondent-mother's rights was in the child's best interests. Clearly, medical concerns were at the forefront of this case. We also reject respondent-mother's argument that the trial court relied on the testimony of biased witnesses in making its findings. We give "deference to the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009).

Finally, respondent-father also argues that petitioner failed to make reasonable reunification efforts. "Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *HRC*, 286 Mich App at 462. However, respondent-father's appellate brief merely offers the cursory statement that petitioner "failed to work toward reunification back in September," and does not provide any citation to the record or supporting authority. Respondent-father does not explain how the services he received were deficient nor does he indicate what additional services petitioner should have provided. Thus, respondent-father has abandoned any claim that he was denied reasonable reunification efforts and we need not consider this argument. *Hudson*, 294 Mich App at 265; *Ewald v Ewald*, 292 Mich App 706,

726; 810 NW2d 396 (2011). Nevertheless, the record established that respondent-father was offered ample services for the duration of the case, but failed to substantially comply with, or benefit from, those services. We do not find that the trial court erred by finding that petitioner made reasonable reunification efforts.

Affirmed.

/s/ William C. Whitbeck

/s/ Donald S. Owens

/s/ Michael J. Kelly