

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 13, 2013

In the Matter of K L STOCKFISCH, Minor.

No. 314701
Ingham Circuit Court
Family Division
LC No. 12-001541-NA

Before: SAAD, P.J., and K. F. KELLY and GLEICHER, JJ.

MEMORANDUM.

Respondent mother appeals as of right the trial court's termination of her parental rights to her minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody), (j) (likelihood that child would be harmed if returned to the parent), and (l) (prior terminations). We affirm.

I. BASIC FACTS

Respondent's parental rights to two other children were previously terminated because of her problems with substance abuse. At the time the child in the instant case was born, respondent tested positive for cocaine, THC, and methadone, and the child tested positive for cocaine. Due to complications resulting from respondent's drug use during pregnancy, the child was placed on a Gavage feeding tube and suffered symptoms of withdrawal. Shortly after birth, the child was removed from respondent-mother and placed in temporary foster care with the child's siblings. The trial court terminated respondent's parental rights at the initial disposition.

II. ANALYSIS

Respondent concedes that a statutory basis for terminating her parental rights was proven under subsection 19b(3)(l); therefore, even if respondent's claim that the alternate statutory bases were not proven by clear and convincing evidence, an erroneous termination of parental rights under one statutory basis is harmless error if the court properly terminated rights under another statutory ground. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent further argues that the trial court erred in finding that termination of her parental rights was in the child's best interests. A trial court's decision that termination is in the child's best interests must be proven by a preponderance of the evidence. MCL 712A.19(b)(5); *In re Moss*, ___ Mich App ___, ___ NW2d ___ (2013) (Docket No. 311610, released May 9, 2013), slip op at 6. In making that determination, the lower court must examine the record as a

whole, and should consider a respondent's parenting ability, as well as the child's need for permanency, stability, and finality. *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012). Respondent's long-standing drug problem previously resulted in the termination of her parental rights to two other children. Respondent used cocaine, THC, and methadone when pregnant with the child in issue. The child tested positive for cocaine at birth and has had significant medical issues because of respondent's drug use. Although respondent was apparently actively participating in rehabilitation programs, she had not demonstrated an ability to break free from her addictions and stay sober. Even during the pendency of these proceedings, she tested positive for cocaine and alcohol and missed a scheduled drug/alcohol test.

Finally, we reject respondent's claim that petitioner failed to meet its statutory obligation to investigate relative placement, as required by MCL 722.954a(2). The statute applies to cases in which an initial service plan is offered. Here, because petitioner was seeking termination at original disposition, no such plan was in effect. Additionally, the statute is for the benefit of the child, not the parent. Petitioner was statutorily required to place the child in the most family-like setting available consistent with the *child's* best interests and needs. Petitioner fails to acknowledge that the child was placed in a home with the child's siblings, promoting petitioner's preference to keep siblings together.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Elizabeth L. Gleicher