

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
August 20, 2013

In the Matter of A. N. ANTHONY, Minor.

No. 314881  
Washtenaw Circuit Court  
Family Division  
LC No. 2011-000131-NA

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

PER CURIAM.

Respondent mother appeals the trial court's order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (c)(ii). For the reasons set forth below, we affirm.

Respondent argues that the trial court clearly erred in finding that petitioner established statutory grounds for termination. We review this issue for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

In a termination proceeding, a trial court must find that clear and convincing evidence establishes a statutory ground for termination under MCL 712A.19b. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Pursuant to MCL 712A.19b(3)(c)(i), the first dispositional order was entered on January 17, 2012. At the time of adjudication, the trial court found grounds for jurisdiction under MCL 712A.2(b) because the child received a "lack of proper custody or guardianship" and because respondent's home was "an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity." The trial court's findings in assuming jurisdiction over the child were based on respondent's admission that she used drugs while pregnant with the child. The court held the termination hearing on January 23 and 25, 2013, well over 182 days after the first dispositional order.

At the termination hearing, respondent admitted that she had not successfully completed the drug treatment services provided to her, that she was not attending the group sessions or individual sessions required by her methadone clinic, and that she tested positive for heroin and marijuana just weeks earlier, in December 2012. Testimony also established that, since August 2012, respondent failed to provide documentation that she was participating in Alcoholics Anonymous. Evidence established that respondent continued to struggle with addiction at the time of the termination hearing and that she was not complying with the services designed to address that addiction. Accordingly, the trial court ruled that respondent could not parent the child because of her ongoing addiction to drugs.

The trial court also relied on *In re Fried*, 266 Mich App 535, 540; 702 NW2d 192 (2005), and *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996), in finding that respondent's history of failing to address her addiction showed that she would be unable to do so in a reasonable amount of time. Respondent argues that her case is not similar to *Fried* or *Conley* because her history and treatment progress were not "nearly as bleak" as the parents in those cases.

In *Fried*, 266 Mich App at 541-542, the father tested positive in a drug screen, he failed to show up for numerous drug screens, failed to complete an intensive outpatient treatment program, and failed to complete an inpatient treatment program. This Court recognized that the father began to address his addiction by the time of the termination hearing, but also ruled that "the evidence established that this process would take eighteen to twenty-four months and that respondent was still in the early stages of dealing with denial of his addiction." *Id.* at 542. This Court held that, "[g]iven that the earliest possible time in which respondent could be in position to care for the child is at least two years, the trial court did not clearly err by finding no reasonable likelihood that the conditions leading to adjudication would be rectified in a reasonable time considering the child's age, fourteen months at the time of the hearing." *Id.*

In *Conley*, 216 Mich App at 43, the mother was an alcoholic who initially attended three inpatient treatment programs, Alcoholics Anonymous meetings, and other counseling sessions, but ultimately relapsed. Indeed, the mother continually relapsed into alcohol abuse during the course of the case, despite efforts to complete inpatient treatment programs and her participation in counseling. *Id.* at 43-44. Based on the mother's failure to overcome her alcoholism despite extensive treatment and counseling, this Court ruled that clear and convincing evidence showed no reasonable likelihood that the mother's addiction would be rectified within a reasonable time. *Id.* at 44.

Contrary to respondent's claim, this case is analogous to *Fried* and *Conley* because respondent's situation was at least as "bleak" as the parents' situation in those cases. *Fried* is distinguishable to the extent that the parent in *Fried* was actually making progress at the time of the termination hearing. Here, based on respondent's own testimony, she was not making progress in resolving her addiction problems. But *Conley* is directly on point. Both respondent and the parent in *Conley* tried to complete treatment programs and other services to address their addictions, and both relapsed. The trial court correctly relied on *Conley* in ruling that respondent would not be able to rectify her drug addiction within a reasonable time. The trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(c)(i), specifically respondent's failure to rectify her unfit home environment by reason of her continued drug abuse. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.<sup>1</sup>

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<sup>1</sup> Pursuant to MCL 712A.19b(3)(c)(ii), respondent struggled with unemployment and a lack of appropriate housing. However, the trial court's discussion of these conditions was very brief. Because respondent's failure to rectify her unfit home environment by reason of her continued drug abuse was a proper ground for termination under MCL 712A.19b(3)(c)(i), and only one

Respondent argues that the trial court erred in finding that termination was in the child's best interests because it improperly weighed the advantages of the minor child's foster home against respondent's home. A trial court's finding that termination is in a child's best interests is generally reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. After a trial court has established a statutory ground for termination by clear and convincing evidence, the court should order termination of parental rights if it finds by a preponderance of the evidence that termination is in the best interests of the child. MCL 712A.19b(5); *In re Moss*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 311610, issued May 9, 2013), slip op at 3, 6.

Here, the trial court ruled that termination was in the minor child's best interests for the following reasons: The child spent nine of the first 14 months of her life in foster care, which prevented the child from forming a bond with respondent; respondent was unable to provide the child with continuous love and affection because of her drug addiction, but the child's foster mother was able to do so; the foster mother had a greater capacity than respondent to care for the child because of the foster mother's medical training; the foster mother was able to provide the child with a stable, satisfactory environment; respondent was unable to provide the child with permanency because she lacked stable employment and housing; and respondent's physical health was "greatly compromised" because of her drug addiction.

Respondent does not challenge the trial court's factual findings, but she cites *Fritts v Krugh*, 354 Mich 97, 115; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426, 440-444; 505 NW2d 834 (1993), for its holding that, in establishing a court's jurisdiction over a child in a termination case,

[i]t is totally inappropriate to weigh the advantages of a foster home against the home of the natural and legal parents. Their fitness as parents and the question of neglect of their children must be measured by statutory standards without reference to any particular alternative home which may be offered the children.

Respondent asserts that the trial court compared respondent's home to the foster home in its best-interest determination, and argues that the determination was, therefore, erroneous under *Fritts*.

However, in *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009), this Court clarified that, "while it is inappropriate for a court to consider the advantages of a foster home in deciding whether a statutory ground for termination has been established, such considerations are appropriate in a best-interests determination." Here, the trial court correctly considered the advantages of the foster home only within the context of its best-interests determination. *Id.* Accordingly, respondent's argument lacks merit and she otherwise fails to show that the trial court clearly erred in finding that termination was in the child's best interests. MCR 3.977(K); *Trejo*, 462 Mich at 356-357.

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statutory ground for termination must be established, *Trejo*, 462 Mich at 360, we need not address the trial court's holding under MCL 712A.19b(3)(c)(ii).

Affirmed.

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