# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of
LARSON/CLIFFORD/CORNELL, Minors.

UNPUBLISHED
January 14, 2014

No. 317099
Dickinson Circuit Court
Family Division
LC No. 12-000520-NA

BEFORE: HOEKSTRA, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to M.L., V.C., A.C., D.C., and J.C. pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to the adjudication continue to exist), (3)(g) (proper care and custody), and (3)(j) (reasonable likelihood of harm).[1] Because we conclude that the trial court did not clearly err by finding at least one statutory ground for termination was proved by clear and convincing evidence or by finding that termination was in the child's best interests, we affirm.

On appeal, respondent first argues that the trial court erred by finding that the statutory grounds for termination were established by clear and convincing evidence. Specifically, respondent argues that she was not given enough time to participate in services in order to demonstrate that she could rectify the conditions that led to the adjudication and to demonstrate that she could provide proper care and custody. Respondent further argues that the trial court's conclusion regarding harm to the minor children if returned to her care was based only on speculation.

We review for clear error a trial court's finding that a statutory ground for termination has been proven by clear and convincing evidence. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). A finding is clearly erroneous if "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). To terminate a

[1] The termination of respondent-father's parental rights to J.C. was affirmed in *In re Cornell*, unpublished opinion per curiam of the Court of Appeals, issued July 23, 2013 (Docket No. 313764). Although also listed as a respondent in the trial court, he is not a party to this appeal. For ease of discussion, we refer to respondent-mother as "respondent."

respondent's parental rights, the petitioner must present "clear and convincing evidence that persuades the court that at least one ground for termination is established under [MCL 712A.19b(3)]." *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). When a trial court does not clearly err in finding that one statutory ground for termination is proven by clear and convincing evidence, any error in terminating parental rights under another statutory ground is harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j), which provide in pertinent part:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (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.
>
> * * *
>
> (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.
>
> * * *
>
> (j) There 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.

MCL 712A.19b(3)(c)(*i*) applies when the conditions that initially caused the child or children to come within the jurisdiction of the court continue to exist at the termination hearing. See *In re Sours*, 459 Mich 624, 636; 593 NW2d 520 (1999).

Here, the record supports the trial court's finding with respect to MCL 712A.19b(3)(c)(*i*).[2] When respondent pleaded to some of the allegations reflected in the petition

[2] It is not disputed that more than 182 days elapsed between the October 18, 2012 initial dispositional order and the June 17, 2013 termination of parental rights.

at the preliminary hearing and thereby caused the trial court to take jurisdiction over the children, respondent admitted that she lived at a residence with J.C.'s father, a sex offender who posed a threat to her children. Thus, the trial court decided to take jurisdiction over the children, in part, because respondent lived with a man who could sexually abuse at least one of the children. At the time of the termination hearing, multiple witnesses testified that respondent continued to have contact with J.C.'s father, as well as at least two additional men who could pose similar threats to the children. Simply put, respondent chose to establish and maintain relationships with sex offenders and other inappropriate individuals throughout these proceedings despite being repeatedly warned that these individuals should not be in the presence of her children. Given that respondent continued to establish and maintain these unhealthy relationships notwithstanding months of counseling and therapy, the trial court did not clearly err by finding that there was no reasonable likelihood that respondent would be able to rectify her relationship issues within a reasonable time.

Further, while the children were a variety of ages, the fact that respondent's relationship issues had been ongoing for several years suggests that the "rectified within a reasonable time" requirement would not have been satisfied regardless of each child's age. See *In re Sours*, 459 Mich at 640-641. Similarly, respondent's argument that she needed more time to participate in services in order to rectify the conditions supports the trial court's conclusion that respondent would be unable to rectify the problems in a reasonable amount of time. Accordingly, we conclude that the trial court did not clearly err by finding that MCL 712A.19b(3)(c)(*i*) was proven by clear and convincing evidence.

While petitioner need only prove one statutory ground to support an order for termination of parental rights, *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012), we conclude that MCL 712A.19b(3)(g) and (3)(j) were also established. In regard to MCL 712A.19b(3)(g) (proper care and custody), the evidence demonstrated that the "trashed" basement in which respondent and the five children were living when the original petition was filed was certainly an inappropriate living environment. For instance, the five children shared one bed, and the bed itself did not have any sheets. Further, a therapist who worked with respondent for about four months testified that respondent would require at least one year of additional therapy before she would be able to provide a suitable living environment for the children. As the trial court explained, one year is too long for a child to wait without a permanent household. See *In re Hamlet* (*After Remand*), 225 Mich App 505, 516-517; 571 NW2d 750 (1997), overruled in part on other grounds by *In re Trejo*, 462 Mich at 353-354 (when a respondent requires at least one year of additional counseling before he or she could be able to provide proper care and custody, it is not a "reasonable time" for the purposes of MCL 712A.19b(3)(g)). Thus, respondent's argument that she needed more time is unavailing. Further, while it is true that respondent had maintained a satisfactory apartment throughout most of the proceedings, the trial court reasonably observed that it is much easier to maintain an orderly residence when living alone than it is when living with five children. This observation was consistent with the testimony of respondent's therapists, who explained that she did not have the organizational skills and mental discipline to parent five children.

Regarding MCL 712A.19b(3)(j) (reasonable likelihood of harm), the record supports the trial court's observation that the evidence showed that respondent had a history of bringing sex offenders into her household with the children present, and she continued to associate with sex

offenders after the children were removed from her care. Respondent continued to maintain a relationship was J.C.'s father, a sex offender, who directly stated his sexual attraction to one of respondent's minor children. He also indicated a sexual attraction to 12-year-old girls in general, and another one of respondent's daughters was about 10 or 11 years old when he indicated this attraction. Yet when the children were removed from respondent's household in September 2012, J.C.'s father was present. Accordingly, we conclude that respondent's repeated interactions with J.C.'s father and other sex offenders after the children were removed from her care showed a reasonable likelihood that one or more of her children would be harmed if returned to her care. See *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007). The trial court's determination in this regard was further supported by the fact that respondent had received months of therapy and was repeatedly instructed to avoid interacting with such individuals, but she was unable to do so for more than a few weeks. Thus, contrary to respondent's argument, the trial court's findings were not based purely on speculation.

Respondent also argues that the trial court clearly erred by finding that termination of her parental rights was in the child's best interests. MCL 712A.19(b)(5); MCR 3.977(K).

We review the trial court's best-interest determination for clear error. MCR 3.977(K). "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.19(b)(5). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo Minors*, 462 Mich at 353. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

In this case, the record indicates that each of the children, with the exception of J.C., did not have a significant bond with respondent. This fact weighs in favor of termination of parental rights for the remaining four children. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). Further, although J.C. apparently had a bond with respondent, it was still undisputed that respondent would require at least one more year of additional therapy before she could become a suitable parent. The trial court reasonably determined that a delay of at least one year, in addition to the time that the children spent in foster care after they were removed from respondent's care in September 2012, was too long to wait for possible improvement. Moreover, the record indicated that the behavior of A.C. and D.C. had improved after being placed in foster care. When a child shows improvement after being placed in foster care, it weighs in favor of a finding that termination of parental rights is in the child's best interests. See *In re VanDalen*, 293 Mich App 120, 141-142; 809 NW2d 412 (2011). Finally, the trial court reasonably observed that M.L. and V.C. needed a stable household before they reached adulthood, and that it was uncertain whether respondent would ever be able to provide such a stable household given her

extended needs for therapy. Thus, we cannot conclude that the trial court's best-interests determination was clearly erroneous.[3]

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Amy Ronayne Krause

[3] While not identified as an issue by respondent, we recognize that this Court held in *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012), that "the trial court has a duty to decide the best interests of each child individually," and the trial court in this case did not specifically name A.C. and D.C. in its findings regarding the children's best interests. However, the trial court appeared to incorporate its previous findings regarding A.C.'s and D.C.'s behavioral improvement in foster care into its best interests determination when it briefly referenced the fact that the five children were "developmentally delayed." Moreover, this case differs from the circumstances of *In re Olive/Metts Minors* because this case does not involve relative placement. Further, in this case all the minor children were in the same household when the abuse was discovered. Accordingly, we conclude that the trial court's oversight does not constitute error requiring reversal because the record supports the trial court's ultimate best-interests determination and it is evident that the trial court considered each child individually. See MCR 2.613(A); *In re Kulkoski*, unpublished opinion per curiam of the Court of Appeals, issued March 26, 2013 (Docket No 311770) (holding the trial court's failure to specifically name each minor child in its best interests findings did not constitute error). We note that while not binding, unpublished opinions may be instructive or persuasive. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136 n 3; 783 NW2d 133 (2010).