

STATE OF MICHIGAN  
COURT OF APPEALS

---

*In re* BASS/HANNAH, Minors.

UNPUBLISHED  
November 29, 2018

No. 342350  
Oakland Circuit Court  
Family Division  
LC No. 2016-840625-NA

---

Before: O'BRIEN, P.J., and TUKEL and LETICA, JJ.

PER CURIAM.

Respondent-mother appeals as of right an order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions at adjudication continued to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if returned to parent).<sup>1</sup> We affirm.

Respondent argues that the circuit court erred in finding that a statutory basis for termination was established by clear and convincing evidence and in finding that termination of her parental rights was in the children's best interests. We disagree.

I. STANDARD OF REVIEW

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews for clear error a circuit court's decision that a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. Once the petitioner has proven a statutory ground, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). A circuit court's decision regarding a child's best interests is also reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with

---

<sup>1</sup> The statutory ground for termination set forth in MCL 712A.19b(3)(g) was substantively amended by 2018 PA 58, effective June 12, 2018. The order terminating respondent's parental rights was entered pursuant to the former version of MCL 712A.19b(3)(g), as amended by 2012 PA 386.

the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes this Court “as more than just maybe or probably wrong . . . .” *In re Trejo*, 462 Mich at 356 (quotation marks and citation omitted).

## II. STATUTORY GROUNDS

### A. MCL 712A.19b(3)(c)(i) AND (g)

A circuit court may order termination of parental rights under MCL 712A.19b(3)(c)(i) if [t]he 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 . . . :

(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.

A circuit court can also terminate parental rights under former MCL 712A.19b(3)(g) if the court finds 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.”

The circuit court exercised jurisdiction over the children in July 2016 on the basis of allegations that respondent lived in Nevada and failed to consistently provide the children, who resided in Oakland County, with emotional, financial, or physical support. The court also found that between 2013 and 2016, the children were cared for in two guardianships with their maternal grandmother because respondent could not properly care for them. The court ordered that respondent participate in individual therapy, attend a psychological evaluation, complete parenting education classes, submit to a substance abuse evaluation, and maintain suitable housing and employment.

Approximately 11 months later, the court held a hearing concerning an amended petition seeking termination of respondent’s parental rights. A caseworker for petitioner testified that respondent completed parenting classes and maintained frequent contact with the children. She participated in a psychological evaluation and regularly attended individual therapy, with the exception of a several month period of time during which she had no insurance. However, respondent did not complete a substance abuse evaluation or comply with a recommendation for medicinal management of her anxiety. The caseworker further testified that respondent reported five different residences since September 2016, and had no housing appropriate for the children at the time of the hearing. In January 2017, a case worker in Nevada reported that respondent was living in a motel rented by the week, which was inappropriate for the children. Between September 2016 and December 2016, respondent provided documentation of her employment at Subway, but she substantiated no legal income after December 2016.

The caseworker opined that respondent had not benefited substantially from services she participated in. Respondent became angry and hostile with several of the case workers and the

children's maternal grandmother, with whom the children were residing before and throughout these proceedings. The caseworker recommended that the circuit court terminate respondent's parental rights in light of her emotional and physical instability, as reflected in her lack of stable housing or employment and her lack of candor with the case workers. The caseworker did not believe that the children's needs would be met if they were returned to respondent.

We conclude that the circuit court did not clearly err in finding clear and convincing evidence warranting the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g). Respondent had a long history of being unable to provide proper care and custody for her children, and had previously left the children in her mother's care for extended periods of time. It was this inability to care for her children that led to the adjudication in this matter. After more than 182 days had passed, the evidence demonstrated that respondent remained unable to provide proper care and custody and would be unlikely to do so within a reasonable period of time. Respondent did not fully comply with the parent agency agreement and the caseworker opined that she did not substantially benefit from the services she completed. Although respondent testified about her income and recent housing prospects, she had not substantiated her wages or other sources of income over the previous six months and had moved four or five times in less than one year. Despite respondent's belief that she had matured during the course of the proceedings and had established enough stability to care for the children, her beliefs were not borne out by the record.

Respondent argues that the termination of her parental rights was premature because she was making progress and would have been prepared to care for her children within a reasonable time. We find this argument unpersuasive. A decision regarding a reasonable time for improvement "appropriately focus[es] not only on how long it would take respondent to improve her parenting skills, but also on how long her . . . children could wait for this improvement." *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). For more than two years before the commencement of this child protective proceeding, respondent had left the children in the care of their maternal grandmother pursuant to two guardianships without substantially contributing to their support. As already explained, clear and convincing evidence established that despite the circuit court's allowance of more than 11 months for respondent to demonstrate her capacity to be a stable, proper parent, she demonstrated insufficient improvement. Meanwhile, the young children had languished in foster care for approximately a year, after having already spent years before this proceeding in temporary guardianships with the maternal grandmother. Accordingly, we are not convinced that the circuit court was mistaken when it determined that respondent would be unlikely to make sufficient improvements within a reasonable time.

#### B. MCL 712A.19b(3)(j)

A circuit court can also terminate parental rights if the record clearly and convincingly establishes that "[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." MCL 712A.19b(3)(j). The circuit court found that termination was warranted under this provision because respondent's lack of suitable housing and inability to care for the children over the years resulted in inconsistency that could be harmful to them. Respondent takes issue with the court's rationale because her history demonstrated that she always ensured the children were cared for by their maternal grandmother when she was unable to care for them herself. Respondent's

argument fails to recognize that termination of parental rights under MCL 712A.19b(3)(j) is not limited to circumstances in which a child is exposed to a risk of physical harm. Rather, it also encompasses situations in which the child is at risk of emotional harm. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Respondent's history, both before and during the child protective proceeding, suggested that the children would continue to experience unhealthy upheaval in their lives if they were returned to respondent's care. Therefore, the trial court did not clearly err by finding clear and convincing evidence warranting the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(j).

### III. BEST INTERESTS

“Even if the trial court finds that the [petitioner] has established a ground for termination by clear and convincing evidence, it cannot terminate the parent's parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children.” *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). In *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014), this Court summarized:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [Quotation marks and citations omitted.]

Respondent argues that the circuit court erred by finding that termination of her parental rights was in the children's best interests because they miss her and she was making a good faith effort and progress toward reunification. She also contends that the trial court erred by failing to take into account her constitutionally protected liberty interest in parenting her own children. We disagree.

It is well-settled that parents have a fundamental liberty interest in the care, custody, and management of their children that is protected by both the United States and Michigan Constitutions. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). When the circuit court considers whether statutory grounds for termination exist, this interest is of paramount concern. *In re Moss*, 301 Mich App 76, 86-87; 836 NW2d 182 (2013). But after statutory grounds for termination have been established, it is the child's interests, and not the interests of the parent, that are the focus of the proceedings. *Id.* at 87-88. “Although the parent still has an interest in maintaining a relationship with the child, this interest is lessened by the trial court's determination that the parent is unfit to raise the child.” *Id.* at 87.

It is apparent from the circuit court's ruling that the court remained mindful of respondent's rights at the best-interest stage. The court repeatedly referred to and commended the improvements respondent had made and acknowledged the mutual love between respondent and her children. Nonetheless, the court properly focused on whether the children's interests

would be best served by termination of respondent's parental rights and made the "incredibly difficult" decision that the children's need for permanence could not be delayed any longer. The evidence showed that respondent was suffering from untreated mental health disorders that substantially impaired her ability to provide adequate care for the children. Respondent's conduct in repeatedly placing the children in guardianships and regular changes of employment and housing evidenced patterns of inconsistency that would make it difficult for her to satisfy the children's emotional and physical needs. In contrast, the children's emotional, medical, and educational needs were being met while they remained in the care of their maternal grandmother. And although the children expressed love for respondent, they all preferred to live with their maternal grandmother and appeared more strongly bonded to her than respondent. In light of this evidence, we conclude that the circuit court did not clearly err in its best-interest analysis or by ordering termination of respondent's parental rights.

Affirmed.

/s/ Colleen A. O'Brien  
/s/ Jonathan Tukel  
/s/ Anica Letica