

STATE OF MICHIGAN
COURT OF APPEALS

In re OSBORNE, Minors.

UNPUBLISHED

May 21, 2020

No. 351203

Ingham Circuit Court

Family Division

LC No. 16-000897-NA

Before: CAVANAGH, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court’s termination of her parental rights to the minor children under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication); (g) (failure to provide proper care and custody); and (j) (reasonable likelihood that child will be harmed if returned to parent).¹ We affirm.

This case arose from allegations that respondent did not provide proper care and custody for the children as a result of her substance abuse. In June 2016, petitioner submitted a petition to the trial court to remove the children from respondent’s care. Petitioner alleged that respondent and the children were previously involved in two Children’s Protective Services (CPS) investigations regarding mother’s substance abuse during which mother participated in various services. Petitioner also alleged that mother had a criminal history of substance-related offenses. Regarding the incident that gave rise to this case, petitioner alleged that respondent tested positive for cocaine and opiates on four occasions from May 2016 to June 2016 while the children were in her care and custody, despite CPS involvement in this case. In June 2016, respondent offered a plea of admission to several allegations against her in the petition, including that she had a criminal history of substance-related offenses, she was involved in a CPS case during which she was substantiated as a perpetrator for substance abuse and threatened harm of the children, she had a history of drug dependence, and she tested positive for cocaine and opiates in May 2016. The trial court accepted respondent’s plea, found that there was a factual basis to support the plea, and found that there was a statutory ground to exercise jurisdiction.

¹ The children’s father was deceased at the time of these child protective proceedings.

The trial court subsequently entered an order terminating respondent's parental rights to the children. The trial court found that respondent had periods of sobriety. However, the trial court found that respondent relapsed and tested positive for substances, despite her participation in substance abuse treatment programs and the extended time for respondent to address her substance abuse issues. The trial court ultimately found that there was no evidence to suggest that respondent's pattern of attending an inpatient substance abuse treatment program and experiencing a relapse would not continue to occur. The trial court also found that respondent's failure to comply with and benefit from the case service plan was evidence that she was unable to provide proper care and custody for the children and that the children would be harmed if they were returned to her care. The trial court also found that there was no reasonable expectation that respondent's substance abuse would be rectified within a reasonable time considering the children's ages and the children's involvement in this case for approximately three years. The trial court determined that petitioner established a statutory basis for termination by clear and convincing evidence. The trial court also determined that termination of respondent's parental rights was in the children's best interests. Respondent now appeals.

Respondent argues that the trial court clearly erred by finding clear and convincing evidence to support the statutory grounds for termination. We disagree.

We review the trial court's findings and factual determinations for clear error. MCR 3.977(K); see also *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000); *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). Additionally, we review for clear error the trial court's ultimate determinations on the statutory grounds for termination. *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). Finally, we must give regard to the special opportunity of the court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "'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.'" *Id.*, quoting MCL 712A.19b(5).

Termination is proper under MCL 712A.19b(3)(c)(i) when the conditions that led to the adjudication continue to exist. Further, termination is proper under MCL 712A.19b(3)(c)(i) when the totality of the evidence supports that the parent has not accomplished any meaningful change in the conditions that led to the adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). In this case, the trial court entered the initial disposition order regarding respondent in July 2016. The trial court terminated respondent's parental rights in October 2019. Therefore, "182 or more days" had "elapsed since the issuance of an initial disposition order." See MCL 712A.19b(3)(c).

The trial court did not clearly err in finding that respondent failed to rectify the conditions that led to her adjudication. The condition that existed at the time of the adjudication was respondent's substance abuse that resulted in criminal convictions and CPS investigation. The trial court found that respondent had periods of sobriety, including a period when the trial court ordered the children's return to respondent's home. However, the trial court found that respondent relapsed and tested positive for substances, despite her participation in substance abuse treatment programs and the extended time for respondent to address her substance abuse issues. The trial court found that respondent tested positive for substances in July 2019 and missed drug screens until she entered an inpatient treatment program in August 2019. The trial court found that respondent's relapses and use of various and "incredibly dangerous drugs" impacted the children and affected her ability to parent the children. The trial court also found that respondent failed to communicate, behaved somewhat defiantly, and failed to participate in services and drug screens during her periods of relapse. The trial court ultimately found that there was no evidence to suggest that respondent's pattern of attending an inpatient substance abuse treatment program and experiencing a relapse after she completed the program would not occur following her completion of an inpatient program. The trial court also found that there was no reasonable expectation that respondent's substance abuse would be rectified within a reasonable time considering the children's ages and the children's involvement in this case for approximately three years.

The record supported the trial court's findings regarding respondent's substance abuse. Respondent demonstrated that she was capable of addressing her substance abuse when she achieved 180 days' sobriety at the time of the July 2017 dispositional hearing. However, respondent tested positive for various substances on 55 occasions, including positive drug tests while the children were in respondent's care and home, and missed approximately 76 drug tests throughout this case. There were 12 parenting-time visitations with the children that correlated with positive drug screens. Additionally, respondent tested positive for cocaine twice while she was completing an inpatient substance abuse treatment program, including a positive test on her day of discharge from the program.

Respondent completed four inpatient rehabilitation programs and was participating in a rehabilitation program at the time of the termination hearing. Respondent also participated in five outpatient substance abuse programs during this case. Further, the trial court ordered respondent to participate in the Family Dependency Treatment Court (FDTC) program. Respondent advanced to phase three of the FDTC program, but she was ultimately unsuccessfully discharged from the program as a result of positive drug screens. Respondent also participated in individual family counseling and individual counseling, but respondent was not participating in those services at the time of the termination hearing. Respondent tested positive for substances in June 2019 and thereafter failed to attend drug screens or participate in any services until respondent voluntarily entered an inpatient rehabilitation program in August 2019. Therefore, respondent failed to rectify her substance use issues and maintain long-term sobriety by the time of the termination hearing in October 2019, despite her participation in various services to address her substance abuse issues. See *In re Williams*, 286 Mich App at 272-273 (holding that the respondent's failure to accomplish a meaningful change in her drug addiction, in addition to her failure to make a meaningful change in her lack of housing and employment, supported termination under MCL 712A.19b(3)(c)(i)).

Additionally, there is no reasonable likelihood that respondent would rectify her substance abuse within a reasonable time considering the children's ages of 10 years old. The trial court presided over this matter for more than three years during which time respondent showed that she

was capable of maintaining sobriety for a period. Respondent also showed that she interacted appropriately with the children during parenting-time visitations, which supported the trial court's decision to return the children to respondent's home in June 2017. However, respondent tested positive for substances on five occasions while the children were in her care, which ultimately led to the children's removal from respondent's home. Respondent continued to test positive for substances, attend inpatient rehabilitation programs, attend outpatient rehabilitation programs, and thereafter test positive for substances from June 2018 to the time of the termination hearing, and respondent failed to participate in services from June 2019 to August 2019. Respondent failed to demonstrate that she was able to consistently address and manage her substance use and long-term sobriety, despite the availability of substance abuse services for approximately three years. Therefore, the trial court did not clearly err in finding that respondent was not able to rectify her substance abuse issue within a reasonable time considering the children's ages. See *In re Williams*, 286 Mich App at 272.

Because we conclude that the trial court did not clearly err by determining that one statutory ground for termination existed, we need not consider whether the other grounds cited by the trial court also supported termination of respondent's parental rights. See *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).²

Respondent also argues that the trial court clearly erred by determining that termination of her parental rights was in the children's best interests. We disagree.

We review for clear error a trial court's determinations regarding a child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); see also MCR 3.977(K). "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App at 40; see also MCL 712A.19b(5); MCR 3.977(E)(4). "[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, 90; 836 NW2d 182 (2013).

"[A] trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. The focus of the best-interest analysis is on the child's interests, rather than the parent's best interests. *In re Moss*, 301 Mich App at 88. The trial court determines each child's best interests individually and, in doing so, "may consider 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." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "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." *In re White*, 303 Mich App at 713. If a child is placed with a relative at the time of the termination hearing, the trial court must consider whether termination is appropriate in light of the child's placement with a relative. *In re Olive/Metts*, 297 Mich App at 43.

² Having reviewed the record, however, we note that clear and convincing evidence supported the trial court's decisions to terminate mother's rights under the remaining statutory grounds as well.

In this case, the evidence and testimony presented at the termination hearing supported the trial court's conclusion that termination of respondent's parental rights was in the children's best interests. The record supported that the children expressed their preference to return to respondent's home and that the children were bonded to respondent. However, the children's bond with respondent diminished as a result of respondent's varying progress throughout this case and respondent's decreased parenting time on the basis of her substance abuse. Regarding respondent's parenting ability, respondent generally demonstrated appropriate parenting skills during parenting-time visitations. However, there were 12 parenting-time visitations that correlated with positive drug screens, and respondent tested positive for substances on five occasions while the children were placed in her home, which ultimately led to the children's removal from respondent's home. Respondent also missed six parenting-time visitations and failed to participate in services from June 2019 to August 2019. Therefore, the evidence showed that respondent did not demonstrate appropriate parenting decisions.

Regarding the children's need for permanency, stability, and finality, the children were 10 years old at the time of the termination hearing and had been involved in this case for more than three years, in addition to previous CPS cases and interventions. The children were initially removed from respondent's care in June 2016 and were returned to respondent's care in June 2017. The children were again removed from respondent's care in March 2018, as a result of respondent's substance abuse. The evidence and testimony supported that the children required permanency, stability, and finality in this case. Additionally, respondent's substance abuse, failure to attend parenting-time visitations, and failure to participate in substance abuse services demonstrated that respondent did not comply with or benefit from the case service plan.

Finally, the trial court considered the children's relative placement. The children's relative met their needs, and the children were bonded with their relative and comfortable in her home, which was near their friends and family. The children were in the placement with their relative for approximately 2½ years throughout this case. Although respondent's home was appropriate for the children, there was no evidence of issues with substance abuse in the children's placement with their relative, whereas respondent had not maintained long-term sobriety by the time of the termination hearing. Additionally, the children's relative wanted to adopt the children to provide the children with stability and permanence. The record showed that respondent's relationship with the children's relative was strained as a result of respondent's lack of progress in this case and her substance abuse issues. Therefore, the evidence and testimony supported that there were advantages of the relative placement in comparison to respondent's home and that the relative was willing and eager to adopt the children. We conclude that the trial court appropriately considered the best-interest factors, and the trial court did not clearly err by determining that termination of respondent's parental rights was in the children's best interests. See *In re Olive/Metts*, 297 Mich App at 41-42.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Michael J. Riordan