

STATE OF MICHIGAN
COURT OF APPEALS

In re GRANT, Minors.

UNPUBLISHED
September 10, 2020

No. 351453
Wayne Circuit Court
Family Division
LC No. 17-001751-NA

Before: MARKEY, P.J., and K. F. KELLY and TUKEL, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating respondent's parental rights to her minor children under MCL 712A.19b(3)(c)(i), (g), and (j). This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1). We affirm.

I. UNDERLYING FACTS

After being evicted and finding herself homeless, respondent requested that petitioner, the Department of Health and Human Services, assume the care and custody of her children. Respondent admitted that, as a result of mental and financial instability, she could not provide proper care for the children. The trial court exercised jurisdiction over the children and ordered the Department to provide respondent with services as part of a treatment plan aimed at reunification.

For the first several reporting periods, respondent complied with and benefited from the requirements of the treatment plan. But this initial success was followed by an extended period of noncompliance, culminating in the trial court's authorization of a supplemental petition seeking termination of respondent's parental rights. Over the course of several termination hearings spanning several months, the trial court heard extensive testimony from Dawn Raymond, the foster care worker assigned to respondent's case, documenting respondent's failure to benefit from services and rectify the conditions that brought the children into the Department's care. Respondent also testified, requesting that the trial court allow her more time to find suitable housing for the children and to otherwise come into compliance with the treatment plan. After considering the evidence and arguments, the trial court terminated respondent's parental rights. This appeal followed.

II. STATUTORY GROUNDS

Respondent argues that there was not clear and convincing evidence to support the trial court's finding of statutory grounds for termination. We disagree.

This Court "reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* In reviewing the trial court's determination, this Court must give due regard to the unique "opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*, citing MCR 2.613(C). Finally, this Court must consider "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 32. In relevant part, MCL 712A.19b(3) authorizes a trial court to terminate parental rights if it "finds, by clear and convincing evidence, [one] or more of the following" conditions:

(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, although, in the court's discretion, financially able to do so, 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.

The trial court found three statutory grounds for terminating respondents' parental rights by clear and convincing evidence, MCL 712A.19b(3)(c)(i), (g), and (j). The statutory basis for terminating parental rights under MCL 712A.19b(3)(c)(i) exists "when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services" *In re White*, 303 Mich App at 710 (alteration in

original; quotation marks and footnote omitted). Similarly, termination is appropriate when “the totality of the evidence amply supports that [respondent] ha[s] not accomplished any meaningful change in the conditions” that brought the children under the court’s jurisdiction and those conditions “still exist at the time of adjudication.” *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

The trial court entered the initial dispositional order in November 2017, nearly two years before it entered the final order terminating respondent’s parental rights in October 2019. The children came into the Department’s care on the basis of respondent’s admissions that financial and mental instability prevented her from providing proper care to the children. As part of the treatment plan ordered by the trial court, respondent was to participate in mental health treatment and obtain housing and employment. At the time of the termination hearing, respondent admitted she had not obtained housing and was living with an unnamed friend. This was consistent with respondent’s pattern throughout the proceedings of living, temporarily, with friends or other individuals for short periods of time. Respondent believed she would be able to obtain housing within one or two months after an unnamed family friend completed eviction proceedings against the occupants of a house the friend would then rent to respondent. Similarly, despite claiming to be employed at various points throughout the proceedings, respondent failed to provide the Department or her caseworker with verification of her employment status or a legal source of income. Finally, respondent testified that she was undergoing therapy for her mental health issues and had been prescribed medication that calmed her. But respondent did not provide any verification of her participation in these services, nor had Raymond—her case worker—been able to contact respondent’s therapist and obtain verification or records concerning respondent’s treatment. Considering this evidence, it was reasonable for the trial court to find that respondent had not completed or benefited from services and that the conditions that led to the children being placed in care continued to exist.

It was also reasonable for the trial court to find there was not a reasonable likelihood that respondent would be able to rectify these conditions in a reasonable time. Respondent’s treatment plan required respondent to provide random drug screens; yet, the record demonstrates that respondent failed to provide the majority of these screens and she specifically failed to provide any screens during the extended period of the termination hearing. Additionally, at least four drug screens respondent did provide tested positive for cocaine. From this evidence it was reasonable for the trial court to infer respondent’s substance abuse was not under control. Coupled with the minimal evidence respondent provided concerning her ability to find housing, it was reasonable for the trial court to find that there was not a reasonable likelihood respondent would be able to rectify the conditions that brought the children into care within a reasonable amount of time. As a result, the trial court did not err in finding statutory grounds for termination under MCL 712A.19b(3)(c)(i). Because the trial court did not err by terminating respondent’s parental rights under MCL 712A.19b(3)(c)(i) we need not consider whether it properly terminated her parental rights under MCL 712A.19b(3)(g) and (j). See *In re Ellis*, 294 Mich App at 32.

Respondent additionally argues that the Department failed to properly refer her to particular services and, therefore, that it did not expend reasonable efforts to reunify her with the children. The record does not support respondent’s argument. While the Department must “expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*,

297 Mich App 242, 248; 842 NW2d 569 (2012). In contrast to the assertion made in her appellate brief, the record shows that the Department did provide respondent with a parent partner, but respondent chose to terminate that service after a conflict arose. Respondent also argues that the Department did not make reasonable efforts to facilitate visitation with the children who, because of their special needs, had been placed in foster care a significant distance from respondent. Additionally, these special needs prevented the children from traveling to respondent for visitation. The testimony of Raymond and respondent both show that the Department provided respondent with bus passes to a pick-up point where a transporter service would meet respondent and transfer her the rest of the way for visitation. When respondent's schedule changed, travel became difficult; but, respondent failed to provide the Department with her new schedule to rearrange the visitation schedule. Our review of the record also shows that respondent objected to this system once, about halfway through the termination hearing, requesting the Department provide a transporter for the complete trip. The trial court found that the Department's efforts were reasonable, and we agree. Services were offered to respondent, but she failed to participate in or benefit from them. Thus, the trial court expended reasonable efforts to reunite respondent with the children.

III. BEST INTERESTS

Respondent argues that the termination of her parental rights was not in the children's best interests. We disagree.

“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 Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). “[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). The trial court's ruling regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *In re Ellis*, 294 Mich App at 33. Furthermore, “[t]his Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written.” *In re LE*, 278 Mich App 1, 22-23; 747 NW2d 883 (2008), abrogated on other grounds as recognized by *In re Long*, 326 Mich App 455; 927 NW2d 724 (2018) (citations and quotation marks omitted).

“The trial court should weigh all the evidence available to determine the children's best interests.” *In re White*, 303 Mich App at 713. In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. “In deciding whether termination is in the child's best interests, the court 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 Minors*, 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 714. When the trial court makes its best interests-

determination, it may rely upon evidence in the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83.

Viewing the record in its entirety, a preponderance of evidence demonstrated termination of respondent's parental rights was in the best interests of the children. At the termination hearing, the Department presented evidence that respondent had not (a) complied with the vast majority of her treatment plan, (b) obtained suitable housing, (c) verified her employment or legal source of income, (d) attended visitation in almost four months during the period the termination hearing was ongoing, or (e) rectified the conditions that brought the children into care. Further, the evidence demonstrated that respondent had not addressed her substance abuse issues. Respondent failed to provide the vast majority of drug screens during the proceedings, admitting that, on occasion, she simply did not feel like meeting that obligation. Additionally, respondent tested positive in drug screens that she did provide. Furthermore, the foster parents with whom the children had been placed were willing to adopt, and Raymond testified that their homes were meeting the needs of the children. Finally, Raymond consistently testified throughout the termination hearing that she believed termination of respondent's parental rights was in the children's best interests.

While the evidence also shows, as respondent asserts, that respondent shared a bond with the children, that is only one of several factors a trial court must consider when making best-interests findings. *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). When weighed against the other evidence in the record, we do not believe the trial court erred in finding that respondent's bond with the children was outweighed by the evidence of the risk of harm should the children be returned to respondent's care. Similarly, respondent's argument that she should have been allowed more time to rectify the situation, especially when considering that the children's needs were met in their respective foster care placements also fails. After children come under the jurisdiction of the trial court, "a parent . . . must demonstrate that she can meet [the children's] basic needs before they will be returned to her care." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *Id.* (quotation marks and citation omitted). The evidence establishes that respondent had not and could not provide for the children's basic needs and, after nearly two years in foster care, the children needed permanence, stability, and safety. Thus, the trial court did not err in finding that termination of respondent's parental rights was in the children's best interests.

IV. CONCLUSION

For the reasons stated in this opinion, the trial court's order terminating respondent's parental rights is affirmed.

/s/ Jane E. Markey
/s/ Kirsten Frank Kelly
/s/ Jonathan Tukel