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# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* I. E. COOK, Minor.

UNPUBLISHED
September 10, 2020

Nos. 352482; 352483
Isabella Circuit Court
Family Division
LC No. 2018-000085-NA

Before: CAVANAGH, P.J., and BORRELLO and TUKEL, JJ.

PER CURIAM.

In Docket No. 352482, respondent-mother appeals by right the order terminating her parental rights to the child under MCL 712A.19b(3)(c)(*i*) (failure to rectify the conditions leading to adjudication), (g) (failure to provide proper care and custody), (h) (parental incarceration), and (j) (risk of harm to the child). In Docket No. 352483, respondent-father appeals by right the same order terminating his rights to the child under MCL 712A.19b(3)(g), (h), and (j). We affirm.

## I. FACTUAL BACKGROUND

At the time the child was born, respondents were both imprisoned in Florida on charges of second-degree murder, obstructing a criminal investigation, grand theft of a motor vehicle, and grand theft of a firearm. After the child was born, respondent-mother executed a power of attorney that allowed the child's maternal grandmother to care for her. Respondents were each sentenced to serve 30 years' imprisonment following their respective convictions for the crimes.

After respondent-mother was convicted, the child's grandmother moved to Michigan, where the power of attorney expired and the Department of Health and Human Services (DHHS) was concerned about the child's welfare. During the proceedings, the grandmother repeatedly tested positive for methamphetamine and amphetamines. Respondent-father was adjudicated following a paternity test and testified that he had never met the child. The trial court found that adoption was the child's best permanency plan because, by the time respondents were released from prison, the child would be an adult.

At the time of the termination hearing, respondents both had pending appeals in Florida concerning their criminal cases. Respondent-mother had filed a belated appeal requesting a new trial, and respondent-father had filed an appeal seeking to withdraw his plea. The child's

caseworker testified that respondent-mother had participated in services to the extent that she could, but respondent-father had declined to participate in services. The caseworker testified that she could provide no services that would rectify the barrier to reunifying the child with respondents given their lengthy terms of imprisonment. The caseworker testified that respondents' relatives were either unwilling to care for the child or had been denied placement because of child-abuse concerns.

Following the termination hearing, the trial court found that DHHS had proven that statutory grounds MCL 712A.19b(3)(c)(*i*), (g), (h), and (j) supported terminating respondent-mother's parental rights, and that statutory grounds MCL 712A.19b(3)(g), (h), and (j) supported terminating respondent-father's parental rights. It found that even though respondents had each filed an appeal, whether their appeals would succeed was speculative. Even if respondents received relief on their appeals, the trial court did not believe that respondents would receive new adjudications on their criminal charges within a reasonable time given the child's age. The court reasoned that it had taken two and a half years to adjudicate respondent-father's initial criminal case and three years to adjudicate respondent-mother's initial criminal case.

The court found that respondents could not provide the child with proper care and custody because, while respondent-mother had attempted to provide for the child's care, the grandmother's home was inappropriate. The court also opined that it would "defy logic" not to be concerned about the child's welfare because both respondents had been convicted of murder. After finding that termination was in the child's best interests, the trial court ordered respondents' parental rights terminated.

## II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if there is evidence to support it but this Court is definitely and firmly convinced that the trial court made a mistake. *Id*.

## III. PARENTAL INCARCERATION

Both respondents argue that DHHS did not prove that they would be unable to care for the child within a reasonable period of time because they had pending appeals. We disagree.

Parents have a significant liberty interest in the care and custody of their children. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). The petitioner has the burden to prove the existence of a statutory ground to support terminating parental rights by clear and convincing evidence. *Mason*, 486 Mich at 152. Clear and convincing evidence is clear, direct, and weighty evidence that allows the finder of fact to reach a conclusion without hesitancy. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citation omitted).

MCL 712A.19b(3)(h) provides that the trial court may terminate a parent's rights if

> [t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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 trial court may not terminate a parent's parental rights solely on the basis of parental incarceration. *Mason*, 486 Mich at 160. Termination is not authorized under MCL 712A.19b(3)(h) if the parent arranges for someone else to care for his or her children while incarcerated. *Id.* at 160-161. Whether there is a reasonable expectation that the parent will be able to provide the child with care is a forward-looking consideration. *Id.* at 161.

At the time of the termination hearing, respondents were each incarcerated and had been sentenced to serve 30 years' imprisonment. Therefore, at the time of the termination, the condition requiring that a parent "*is* imprisoned . . . for a period exceeding 2 years . . ." was met. See MCL 712A.19b(3)(h) (emphasis added).

Respondent-mother argues that MCL 712A.19b(3)(h) does not apply in her case because it was reasonably likely that her imprisonment would end within 9 to 14 months. We disagree.

This statutory ground requires the trial court to consider the likelihood that the parent will be able to provide for the child's proper care and custody within a reasonable time, considering the child's age. MCL 712A.19b(3)(h). Respondent-mother will be released in either 2041 or 2045.[1] At the termination hearing, respondent-mother testified that she had filed an appeal and was waiting on mail from the Florida District Court of Appeals. Respondent-mother was waiting to learn whether the court would hear her belated appeal. If the Florida court granted her belated appeal, she would ask for a new trial. Respondent-mother's appeal might take between three and six months.

At the time of the termination hearing, the child was three years old and had been in foster care for 17 months. Respondent-mother's initial crime took place on January 23, 2016, and respondent-mother was sentenced on August 15, 2018. Even if respondent-mother's appeal was resolved favorably within three to six months and she was immediately granted a new trial, that did not necessarily mean that respondent-mother would be able to care for the child within three to six months. Respondent-mother's criminal case initially took almost 18 months to resolve. After three to six months, plus an additional 18 months, the child would have spent approximately 35 months—nearly three years—in foster care, which would have been the majority of the child's life given her age.

We are not definitely and firmly convinced that the trial court made a mistake when it found that MCL 712A.19b(3)(h) supported terminating respondent-mother's parental rights. The trial court appropriately considered whether respondent-mother's appeal was reasonably likely to be resolved in a reasonable time given the child's age.

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[1] Witnesses provided inconsistent testimony regarding respondent-mother's exact release date.

Respondent-father also argues that the trial court erred by finding that an appeal would necessarily take too long when he could have received the results of his appeal within three to six months.[2] We disagree.

In this case, on January 23, 2016, respondent-father committed second-degree murder, obstructing a criminal investigation, grand theft of a motor vehicle, and grand theft of a firearm, and he pleaded no-contest to the charges. Respondent-father was sentenced on March 26, 2018. Respondent-father would be eligible for parole on March 9, 2046. Respondent-father testified that he had appealed his conviction, his appeal included a request to withdraw his plea, and respondent-father believed his appeal would be resolved within three to six months.

These facts do not support respondent-father's contention that he would be able to rectify his incarceration with an appeal within a reasonable time. Again, the child was three years old and had been in foster care for 17 months. Respondent-father's initial crime took place on January 23, 2016, and respondent-father was sentenced on March 26, 2018. Even if respondent-father was allowed to withdraw his plea, he would not necessarily be able to immediately care for the child. Respondent-father's case initially took 14 months to resolve by plea. Even if respondent-father's appeal was immediately granted within his shortest estimate of three months, in 17 months, the child would have spent approximately 34 months in foster care. Again, this would have been the majority of the child's life.

We are not definitely and firmly convinced that the trial court made a mistake when it found that respondent-father was imprisoned for more than two years and was not likely to be able to provide the child with proper care and custody within a reasonable time considering her age. The trial court appropriately considered the entire length of time it would take for respondent-father's criminal case to be resolved when determining whether it was reasonably likely that respondent-father would be able to provide the child with proper care and custody within a reasonable time.

We decline to consider the remainder of respondents' arguments concerning other statutory grounds for termination. The trial court need only find a single statutory ground to terminate a parent's parental rights. *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012). If one statutory ground supports terminating a parent's parental rights, error in another statutory ground is harmless. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). In this case, MCL 712A.19b(3)(h) supported terminating both respondents' parental rights. Because only

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[2] To the extent that respondent-father states as an issue presented that the trial court erred by finding he would necessarily lose his appeal, he abandoned this issue by raising it only in his statement of facts but failing to make any meaningful argument to support it. See *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008). Regardless, respondent-father's argument is baseless. The party seeking reversal on appeal has the burden to provide the court with a record that establishes the factual basis of his or her argument. *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). In this case, the trial court found that, while respondents had both filed appeals, it was "impossible to know whether either parent will be granted any type of relief." The trial court did not find that respondent-father would necessarily lose his appeal.

one statutory ground for termination was required, any errors concerning other statutory grounds were harmless.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello
/s/ Jonathan Tukel