

STATE OF MICHIGAN
COURT OF APPEALS

In re MITCHELL, Minors.

UNPUBLISHED
October 15, 2020

No. 352676
Kent Circuit Court
Family Division
LC Nos. 18-052594-NA; 18-052595-NA

Before: LETICA, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children, LM and MM,¹ under MCL 712A.19b(3)(c)(i) and (j). Finding no errors warranting reversal, we affirm.

I. BASIC FACTS

Respondent was involved in a tumultuous relationship with the children’s father. While respondent was pregnant and in the presence of eldest child AB, the children’s father kicked respondent. Respondent admitted that she had used cocaine and marijuana during her pregnancy with MM. Additionally, she continued to allow the children’s father into her home despite repeated acts of domestic violence against her and despite knowing that there was a bench warrant for his arrest. Petitioner, the Department of Health and Human Services (DHHS), had difficulty locating respondent because she was homeless and moving from city to city with her children, including the newborn MM. Ultimately, respondent was located, the children were placed in foster care, and respondent agreed to participate in a case service plan.

¹ The prosecutor withdrew respondent’s eldest child, AB, from the petition because AB’s father was granted primary physical custody. The father of LM and MM voluntarily relinquished his parental rights, and he is not a party to this appeal. In this opinion, we refer to the father of LM and MM as the “children’s father.”

Initially, respondent made progress toward reunification with her children. She obtained employment and suitable housing, engaged in counseling, and appropriately visited with her children. However, respondent did not consistently participate in drug screening, a missed drug screen was deemed a positive result, and some drug screens revealed continued substance abuse. Despite participation in counseling and drug treatment programs, respondent continued to use drugs and engage in behavior that allowed the children's father to have a presence in her life, such as leaving her doors unlocked and failing to obtain another personal protection order against him. Respondent would relapse when she felt stressed or lonely. She did not maintain sobriety after a seven-day inpatient treatment program and declined participation in a long-term inpatient treatment program. Consequently, petitioner changed its objective from reunification to termination of parental rights.

At the hearing,² the foster care manager testified that the children were placed in foster care because of respondent's substance abuse, her emotional instability, and her abusive relationship with the children's father. Respondent was subjected to verbal and physical abuse when she was raised. She was only 15-years old when she gave birth to AB. Although respondent completed a parenting class and incorporated those skills during parenting time, she still laughed at the misbehavior by LM and struggled to address his behavior. She did not attend the children's medical appointments. Furthermore, her continued abuse of cocaine, marijuana, and alcohol impaired her judgment and impacted her ability to parent effectively. Despite the completion of a seven-day residential treatment program, respondent used cocaine after her release. Two of her parenting time visits were cancelled because swabs taken upon respondent's arrival were positive for alcohol. Thus, respondent failed to sustain a lengthy period of sobriety. The foster care manager stressed to respondent the importance of sobriety in order to have the children returned to her care.

The foster care manager also expressed concern with respondent's continued contact with the children's father. Despite his periods of incarceration, the children's father wrote letters to respondent, but addressed them to AB. During telephone calls when the children's father was in jail, respondent expressed her love for him. Additionally, during a period of release, the children's father was found with respondent, both were intoxicated, and he fled the police on foot after driving while intoxicated. The foster care manager opined that respondent's decisions placed the children in jeopardy. For example, respondent continued to leave her home unlocked, despite returning to the home and finding the children's father there. The domestic violence perpetrated upon respondent by the children's father was described as "extreme," involved strangulation, and he nearly killed her on one occasion. The children's father also beat up respondent, gave her the means to commit suicide, and encouraged her to do so, an attempt that resulted in her hospitalization. The acts of domestic violence occurred in front of the children and upon respondent when she was pregnant.

² The day before this hearing, respondent tested positive for cocaine. Following the hearing, respondent was given a drug screen that tested positive for alcohol.

Respondent was provided domestic violence intervention and counseling services. Her attendance in therapy was sporadic, she attended only nine sessions in a 14-month period, and she did not demonstrate a benefit. Her therapist opined that respondent had coping skills that included drug use and her relationships encouraged unhealthy behavior. Indeed, respondent's own father urged her to continue her relationship with the children's father. Respondent continued to communicate with the children's father and suffer abuse at his hands.³ However, the children had been in foster care for over 14 months and could not wait for respondent to fully derive benefits from her services. The children's father was to be released from jail in a few days. The foster care manager testified that although respondent would not initiate contact, she was unlikely to prevent or stop the contact. Indeed, the children's father continued to seek a relationship with respondent and believed that they should be together. Although respondent was aware of the danger that the children's father posed, it was opined that she did not sufficiently benefit from counseling and therapy to prevent the harm.

The foster care manager opined that in light of the length of time that the children were placed in foster care and their ages, respondent would not be able to demonstrate and maintain sobriety in a reasonable time. Rather, respondent had struggled with depression and anxiety throughout her life, and she did not appear to engage fully with the services to address her issues. On the whole, the foster care manager concluded that respondent generally participated, but it was insufficient to obtain the full benefits and warrant the return of the children. Therefore, she recommended that respondent's parental rights to LM and MM be terminated and that it was in their best interests. MM had spent nearly his entire life in foster care, and LM had spent nearly half his life in foster care. Respondent did not choose to safeguard her children in times of stress and struggle. After 14-months in foster care, the children needed permanency and could not wait for the possibility of compliance in the future. This recommendation was made despite the children's bond to respondent as demonstrated during visits. Although the children's foster care placement did not seek adoption, the foster care manager opined that the children would be promptly adopted.

When the hearing resumed three weeks later, respondent did not appear. The foster care manager testified that throughout the pendency of the case respondent represented that she would "never, ever, ever" relinquish her rights to the children by choice. However, at the parenting visit that occurred earlier in the week, respondent told an aide that she was thinking of signing off on her parental rights because the children deserved better than what she could offer them. After the conclusion of the presentation of evidence, but before a decision was rendered, DHHS sought to re-open proofs. Respondent's mentor located her at her apartment complex. He sent a text to the foster care manager advising, "She's alive just staggered out of a different building, claiming [the children's father] attacked her last night." The mentor sent an update that he went to the leasing office where he found the children's father. The mentor instructed the children's father to leave

³ The children's father was released from incarceration on December 30, 2019. Despite recommendations that respondent reapply for a personal protection order against the children's father, she had not done so as of January 8, 2020.

or he would be arrested by the police. The children's father advised that he had done nothing wrong and did not "come here uninvited."

DHHS requested the termination of respondent's parental rights and a decision that it was in the children's best interests. The children's guardian joined in the request. The trial court found that the statutory grounds for termination were established and that termination of parental rights was in the children's best interest.

II. STATUTORY GROUNDS

Respondent alleges that DHHS failed to present clear and convincing evidence to support the statutory grounds for termination of her parental rights. We disagree.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *Id.*; see also MCR 3.977(K). Once a statutory ground for termination has been established, the trial court must conclude that termination of parental rights is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A trial court's decision regarding a child's best interests is also reviewed for clear error. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013). This Court defers to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i) and (j). Termination of parental rights under MCL 712A.19b(3)(c)(i) is proper when, after a period of 182 or more days has elapsed, the trial court finds by clear and convincing evidence that "[t]he 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." This statutory subsection requires more than "the mere possibility of a radical change" in the parent's life, and instead considers whether, under the totality of the circumstances, there was "any meaningful change" in the ability of the parent to overcome the circumstances that originally caused adjudication. *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009). In this case, the trial court provided respondent considerably more time than the 182-day statutory period to rectify the conditions that originally led to adjudication. Although 14 months had elapsed, the same issues that brought the children into care—substance abuse, domestic violence, and emotional instability—continued basically unabated. At the time of the termination hearing, respondent had not established a lengthy period of sobriety and continued to use substance abuse as a method of coping with other ongoing issues. A parent's persistent failure to overcome substance abuse despite participation in treatment may constitute grounds for termination. See *In re Conley*, 216 Mich App 41, 43; 549 NW2d 353 (1996). Likewise, there was abundant evidence that respondent continued to struggle with domestic violence and was either unwilling or unable to separate herself from the children's father. Although, it is "impermissible for a parent's parental rights to be terminated solely because he or she was a victim of domestic violence," termination is nonetheless proper when a parent fails to prevent the child's exposure to domestic abuse that causes the child harm. See *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011).

Accordingly, the trial court did not clearly err by finding that the conditions that led to the adjudication still existed at the time of the termination hearing and that there was no reasonable likelihood that respondent would rectify these conditions within a reasonable time frame. See *In re Williams*, 286 Mich App at 272-273.⁴

III. BEST INTERESTS

Respondent contends that termination of her parental rights was not in the children's best interests because she shared a bond with the children, they were not placed in a pre-adoptive home, the children were only placed in care for 14 months, and respondent did not seek contact with the children's father. We disagree.

"[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 at 90 (footnote omitted). This Court reviews the trial court's ruling that termination is in the child's best interests for clear error. *In re Hudson*, 294 Mich App at 264. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App at 80 (citation and quotation marks omitted).

"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.19b(5). "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*, 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 701, 714; 846 NW2d 61 (2014). "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.

In light of the record, the trial court did not clearly err in its determination that termination was in the children's best interests. Respondent was almost wholly unable or unwilling to meaningfully comply with her case service plan, demonstrated little benefit from those services

⁴ Although the DHHS only needed to establish a single statutory ground for termination, for the same reasons, we are also satisfied that there was clear and convincing evidence that continued exposure to substance abuse and domestic violence would also be harmful to the children's physical and mental wellbeing. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (recognizing that MCL 712A.19b(3)(j) considers not only the prospect of physical harm, but also the risk of emotional harm to the children).

that she did participate in, and demonstrated no lasting commitment to doing what was necessary for her children to return to her home. Despite regularly testing positive for cocaine and other drugs, respondent only sparingly participated in substance abuse counseling and treatment and rejected recommendations that she undergo a more intensive treatment program. She also continued to associate with the children's father, a man who abused her.

Most notably, respondent recently acknowledged that the children might be better off in some other situation, recognizing that she could not provide for them in the way they deserved. This statement provides further evidence that respondent was not ready to provide a permanent and stable home despite the passage of 14 months. See *In re L D Rippy*, ___ Mich App ___, ___; ___ NW2d ___ (2019) (Docket No. 347809); slip op at 6. Although respondent asserted that the timeframe in foster care was not that lengthy, LM was in care for over half his life, and MM was in care for nearly all his life. Despite the fact that the foster care placement was not a pre-adoptive home, the foster care manager opined that the children would be promptly adopted. The children deserved stability and permanency under the circumstances. See *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 638; 853 NW2d 459 (2014) (holding that termination of parental rights was in a child's best interests where the mother "lacked the ability to keep her children safe or effectively parent them").

We also reject respondent's related argument that she did not receive sufficient or timely services from the DHHS. Although the DHHS was required to make reasonable efforts to provide the services necessary to secure reunification, it is also clear that respondent had a "commensurate responsibility" to participate in and benefit from the services offered. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). To the extent that there was some delay in the provision of these services or that they were insufficient, as respondent seems to argue, these were concerns that she should have raised before the trial court, not on appeal. See *id.* at 247. In any event, to her credit, respondent sought additional resources in her attempt to secure the return of her children such as participation in Alcoholics Anonymous and more frequent drug screening to "keep her on track." Despite an initial showing of participation and desire, respondent faltered as time passed and simply did not participate in services that would secure the return of her children to her care. Respondent only chose to complete a seven-day drug treatment program and, after relapse, rejected the recommendation that she participate in an intensive 30-day program. She failed to engage in counseling services to learn new methods of coping with stress and loneliness, but resorted to the same behaviors that caused the children to be placed in foster care.

Affirmed.

/s/ Anica Letica
/s/ Kirsten Frank Kelly
/s/ James Robert Redford