

STATE OF MICHIGAN
COURT OF APPEALS

In re HAMILTON/SMITH, Minors.

UNPUBLISHED
October 28, 2021

No. 356132
Wayne Circuit Court
Family Division
LC No. 2018-000546-NA

In re M. N. HAMILTON, Minor.

No. 356355
Wayne Circuit Court
Family Division
LC No. 2018-000546-NA

Before: MURRAY, C.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

In these consolidated¹ appeals, respondent-mother appeals as of right the trial court’s orders terminating her parental rights to minor children, ENMS, CRS, AMH, and CNS, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (3)(g) (failure to provide proper care or custody) and (3)(j) (reasonable likelihood of harm to child), and respondent’s parental rights to her other minor child, MNH, under (3)(g) (failure to provide proper care or custody), (3)(i) (parental rights to 1 or more siblings of the child have been terminated), and (3)(j) (reasonable likelihood of harm to child). We affirm.

I. FACTS AND PROCEEDINGS

¹ *In re Hamilton/Smith, Minors; In re MN Hamilton, Minor*, unpublished order of the Court of Appeals, entered March 2, 2021 (Docket Nos. 356132 and 356355).

On April 11, 2018, petitioner, the Department of Health and Human Services (“DHHS”), filed a petition requesting jurisdiction over ENMS, CRS, and AMH, and an order removing the children from the home. Specifically, the petition alleged: (1) the identity and whereabouts of the children’s biological fathers were unknown and unascertainable, and no man had come forward to establish paternity, visit, support, protect, plan for, or assist in the care and custody of ENMS, CRS, and AMH; (2) Child Protective Services (“CPS”) received a referral alleging medical neglect of AMH, including second-degree burns to the abdomen, vaginal area, upper thighs, back and buttocks, and respondent had not visited or called to check on AMH, had failed to make herself available for wound care and additional training on how to administer medical care including injections, had been unwilling to administer the injections to AMH because she was “fearful,” and could not provide a reason for not visiting or being abreast of AMH’s medical prognosis; (3) respondent left AMH, when she was three-months old, in the care of a “Ruby Frierson,” who then left AMH in an adult bathtub without supervision, and as a result, AMH sustained second-degree burns from the bath water; (4) respondent’s family had prior contacts with CPS, and these contacts were made due to allegations of physical abuse, threatened harm, physical neglect, and improper supervision; and (5) respondent was offered services to rectify the condition of improper supervision, but she did not complete these services successfully.

After preliminary and pretrial hearings, the case proceeded to trial before a referee on June 21, 2018, regarding petitioner’s request for jurisdiction over ENMS, CRS, and AMH. Respondent was present at the hearing and made admissions to some of the allegations in the petition. Based on respondent’s admissions, the referee found, by a preponderance of the evidence, that ENMS, CRS, and AMH were subject to the court’s jurisdiction and that there were statutory grounds to exercise jurisdiction based on medical neglect, improper supervision, prior history with CPS, and substantiations with services involving substance abuse. The referee also ordered petitioner to prepare a case service plan (“CSP”) to facilitate the permanency plan of reunification. The referee subsequently ordered respondent to comply with, participate in, and benefit from the following services and obligations: (1) individual therapy; (2) a psychological evaluation; (3) a psychiatric evaluation; (4) random, weekly drug screens; (5) parenting time; (6) a substance abuse assessment; (7) get a parent partner or parent coach; (8) infant mental health services; (9) obtain and maintain suitable housing; (10) obtain and maintain a legal source of income; (11) sign necessary releases, consent forms, and maintain contact with the assigned case worker; and (12) prenatal care.

On December 7, 2018, petitioner filed a petition requesting jurisdiction over CNS and an order removing him from the home of respondent. Specifically, the petition alleged: (1) Tony Houston had been identified as CNS’s putative father, but CNS’s legal father had not been identified; (2) respondent had made only minimal progress on her CSP regarding ENMS, CRS, and AMH; (3) respondent, although financially able to do so, failed to provide and seek adequate food, clothing, shelter, or medical care for CNS; (4) while respondent had reported having housing and clothing for CNS, CPS had been unable to verify housing because respondent had not been cooperative with CPS to complete a home assessment; (5) respondent habitually used drugs, including marijuana, which prevented her from providing CNS with proper care and custody and created a risk of harm for CNS; (6) CNS tested positive for marijuana when he was born; (7) respondent admitted to smoking marijuana during each of her pregnancies; (8) respondent did not seek adequate prenatal care while she was pregnant with CNS; (9) CNS was born with congestive heart disease, had been hospitalized since birth, had one heart surgery, and was going to require another surgery when he turned four months old; and (10) respondent’s family had prior contacts

with CPS, and these contacts were made due to allegations of physical abuse, threatened harm, physical neglect, and improper supervision.

On March 7, 2019, an adjudication was held on the petition to exercise jurisdiction regarding CNS. Mariela Martinez, the assigned foster care worker, testified that respondent did not consistently participate in random screenings. The referee ordered that respondent submit to a drug screen after one of the hearings, which came back positive for marijuana. Accordingly, the referee found, by a preponderance of the evidence, that CNS was subject to the court's jurisdiction because respondent had three children who were in foster care, she had not completed the terms of her CSP, and CNS tested positive for marijuana at birth.

On July 14, 2020, petitioner filed a supplemental petition seeking to terminate respondent's parental rights to ENMS, CRS, AMH, and CNS. A hearing on the supplemental petition commenced on September 16, 2020, resumed on October 22, 2020, and concluded on November 25, 2020. Alison Desmone, the assigned foster care worker, testified that ENMS and AMH were placed with their respective fathers. Desmone testified that respondent had not substantially complied with her CSP during the pendency of this matter. Respondent had received multiple referrals for individual therapy—a total of eight between July 2018 and March 2020—all of which were terminated because respondent did not follow through. A ninth referral was made in August 2020, and respondent attended just one session as of September 16, 2020. Moreover, there were over 100 drug screens required since the inception of this case, and all the drug screens to which respondent submitted returned positive for marijuana. However, respondent had missed more than 90 of over 100 required drug screens. Desmone further testified that respondent was provided with several referrals for substance abuse counseling, but respondent did not comply with this component of her CSP. Desmone indicated that substance abuse remained an ongoing concern for respondent. With respect to parenting time, respondent had missed 81 of 142 visits that were offered. When respondent attended the visits, she was frequently late, the visits were extremely chaotic, the visits required multiple case aides, and respondent physically disciplined or was otherwise physically inappropriate with the children at the visits by doing, among other things, spanking and pushing the children. Desmone testified that after more than two years of the children having been removed from respondent's care, respondent never progressed to having any type of unsupervised visits with the children, and that at no point in time was it safe for her to be alone with any of the children.

After closing arguments were presented, the trial court found that statutory grounds for termination of respondent's parental rights to ENMS, CRS, AMH, and CNS were established by clear and convincing evidence pursuant to MCL 712A.19b(3)(c)(i), (3)(g), and (3)(j), and that termination was in the children's best interests. On December 26, 2020, the trial court entered an order terminating respondent's parental rights pursuant to those subsections. In the order, the trial court reasoned that respondent had not complied with her CSP; she was terminated from individual therapy eight times for nonattendance; she had missed more than 90 of over 100 required drug screens; she did not complete substance abuse counseling; she missed 81 of 142 supervised visits, and the visits that she did attend were chaotic and respondent even spanked and pushed the children during visits; infant mental health services were to be provided at visits but they were terminated because respondent did not consistently attend parenting time; and respondent had lived with a partner in a household where respondent was allegedly subjected to domestic violence and where police officers were allegedly once called to respond to gun shots.

Meanwhile, on November 13, 2020, petitioner filed a petition requesting jurisdiction over MNH, an order removing MNH from the home of respondent, and an order terminating respondent's parental rights to MNH. Specifically, the petition alleged that MNH tested positive for marijuana when she was born. Accordingly, the third petition requested that the trial court terminate respondent's parental rights.

A preliminary hearing on the third petition was held before a referee on November 13, 2020. TaQuan Coleman testified on behalf of petitioner that it was contrary to the welfare of MNH to remain in respondent's care because: (1) respondent's four older children (i.e., ENMS, CRS, AMH, and CNS) had been temporary wards of the court since 2018; (2) a permanent custody petition regarding these four children was ongoing before another referee; (3) respondent had a long history of neglecting her children and mental health issues; (4) respondent had not rectified the conditions that resulted in the removal of her four children even after being provided with years of reunification services; (5) respondent lived with a partner in a home that was dangerous and unsuitable for MNH; (6) respondent's partner allegedly brandished a gun at her and shot at the tires of respondent's car; (7) respondent's home was unsuitable because of domestic violence; and (8) MNH was placed with Martez Fortson, her legal father, after birth. The referee found that probable cause existed to authorize the third petition and placed MNH with DHHS for care and supervision.

An evidentiary hearing on the petition to terminate respondent's parental rights to MNH was held on January 29, 2021. Respondent failed to appear at the hearing. Fortson testified that MNH was placed with him, her legal father, after birth. Fortson testified that respondent had not maintained consistent contact with him for visits. As of late January 2021, respondent had not seen MNH since December 2020. Fortson tried arranging with respondent a Christmas Day visit, to which she agreed but ultimately failed to attend; her excuse was that it was snowing outside. The foster care worker testified that in November 2020, she reached out to respondent to arrange for parenting time; respondent participated in two visits, and in December 2020, respondent ceased all communication with the foster care worker. Although the foster care worker encouraged respondent to re-engage in services, respondent did not think she "had to do anything."

At the conclusion of the hearing, the referee found that statutory grounds for termination of respondent's parental rights to MNH were established by clear and convincing evidence pursuant to MCL 712A.19b(3)(g), (3)(i), and (3)(j), and that termination was in MNH's best interests. On February 16, 2021, the trial court entered an order terminating respondent's parental rights to MNH pursuant to those subsections. In making its ruling, the trial court reasoned: (1) respondent's parental rights to ENMS, CRS, AMH, and CNS were recently terminated; (2) respondent failed to participate in and benefit from her CSP regarding ENMS, CRS, AMH, and CNS; (3) MNH tested positive for marijuana when she was born; and (4) Fortson testified that respondent had never visited MNH. Moreover, the trial court found that termination of respondent's parental rights to MNH was in MNH's best interests, even though MNH was placed with Fortson and was not going to be made available for adoption, because of respondent's "complete lack of interest in establishing any bond with the child." The trial court also released MNH to Fortson and dismissed its jurisdiction over MNH.

II. GROUNDS FOR TERMINATION

Respondent argues that the trial court erred in finding that clear and convincing evidence existed to terminate respondent's parental rights to ENMS, CRS, AMH, and CNS pursuant to MCL 712A.19b(3)(g) and (3)(j), and respondent's parental rights to MNH pursuant to MCL 712A.19b(3)(g), (3)(i), and (3)(j). We disagree.

This Court reviews for clear error the trial court's decision that a ground for termination has been proven by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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 Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

The trial court terminated respondent's parental rights to ENMS, CRS, AMH, and CNS under MCL 712A.19b(3)(c)(i), (3)(g), and (3)(j), but on appeal, respondent only challenges the trial court's decision regarding ENMS, CRS, AMH, and CNS pursuant to MCL 712A.19b(3)(g) and (3)(j). Only one statutory ground is required to terminate a respondent's parental rights. *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012). Because respondent does not challenge the trial court's order to terminate her parental rights to ENMS, CRS, AMH, and CNS under MCL 712A.19b(3)(c)(i), then that ground alone is sufficient to support terminating respondent's parental rights to ENMS, CRS, AMH, and CNS. See *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 371; 689 NW2d 145 (2004) ("When an appellant fails to dispute the basis of the trial court's ruling, this Court need not even consider granting plaintiffs the relief they seek.") (cleaned up).

Even if respondent challenged the trial court's order to terminate her parental rights pursuant to MCL 712A.19b(3)(c)(i), the trial court did not clearly err in terminating respondent's parental rights to ENMS, CRS, AMH, and CNS. Termination of parental rights is proper under MCL 712A.19b(3)(c)(i) if, after 182 days from the issuance of an initial dispositional order, "[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." The conditions that led to the adjudication involved medical neglect, improper supervision, prior history with CPS, and substance abuse. Petitioner presented evidence that these conditions, which led to the adjudication, continued to exist for several months, and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's very young ages. Specifically, petitioner presented evidence that respondent failed to complete and benefit from individual therapy, a substance abuse assessment, a parent partner or parent coach, and infant mental health services. Respondent also failed to maintain a legal income. She did not submit to more than 90 of over 100 required random drug screens despite knowing that missed screens were considered positive screens. Although respondent completed a psychological evaluation and a psychiatric evaluation, she failed to benefit from them. Respondent also failed to visit the children on 81 out of 142 scheduled parenting time visits. Accordingly, the trial court did not clearly err in finding that clear and convincing evidence warranted terminating respondent's parental rights to ENMS, CRS, AMH, and CNS under MCL 712A.19b(3)(c)(i).

With regard to the particular issue raised by respondent on appeal, the trial court did not clearly err in terminating respondent's parental rights to ENMS, CRS, AMH, CNS, and MNH pursuant to MCL 712A.19b(3)(g). Termination of parental rights is proper under MCL 712A.19b(3)(g) when "[t]he 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." "[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). "By the same token, the parent's compliance with the parent-agency agreement is evidence of [her] ability to provide proper care and custody." *Id.*

The trial court did not clearly err when it found clear and convincing evidence that respondent failed to provide proper care or custody for ENMS, CRS, AMH, CNS, and MNH, and there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). The evidence showed that DHHS's initial intervention in this case was warranted because respondent maintained an unsafe and neglectful household for her children. In other words, respondent failed to provide proper care and custody for them. To address these concerns, between 2018 and 2020, respondent received numerous referrals for individual therapy and substance abuse therapy, but she was dismissed from all but the last individual therapy referral for failure to follow through. Respondent testified that she had failed to follow through with services because she had "so much stuff to do." Nevertheless, the trial court permitted respondent to participate in more therapy sessions until November 25, 2020, the final day of the first termination hearing. Between the first and final day of the first termination hearing, respondent participated in less than half of the required therapy sessions. Although respondent attended substance abuse therapy more than she had attended individual therapy, she still failed to complete the former. Moreover, respondent should have submitted to over 100 drug screens since the initial dispositional order was entered, but only provided 11 drug screens in total, all of which returned positive for marijuana. And between September and November 2020, respondent submitted to only three of 12 required drug screens; two of the three returned positive for marijuana. Finally, respondent did not participate in her CSP after the birth of MNH, and she did not communicate with her social workers. Respondent's failure to progress as a parent during these proceedings showed that she was rather unlikely to be able to provide proper care and custody for the children in the foreseeable future. Therefore, the trial court did not clearly err in terminating respondent's parental rights to ENMS, CRS, AMH, CNS, and MNH under MCL 712A.19b(3)(g).²

III. BEST INTERESTS

Respondent next argues that the trial court clearly erred when it found that terminating respondent's parental rights was in the children's best interests. We disagree.

MCL 712A.19b(5) provides, "[i]f 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." "Whether termination of parental rights is in the best interest of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836

² Having so concluded, we need not address whether the trial court clearly erred by finding that grounds for termination under MCL 712A.19b(3)(i) and (3)(j) were established by clear and convincing evidence as well. See *In re Frey*, 297 Mich App at 244.

NW2d 182 (2013). 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 268.

When determining whether termination is in the best interests of the child, the trial court should place its "focus on the child rather than the parent." *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). "[T]he 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). Further, the trial court may consider a respondent's history of substance abuse. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

Here, petitioner presented evidence that infant mental health services were terminated because respondent did not attend them regularly or consistently. Respondent missed 81 of 142 parenting time visits between April 2018 and September 2020, and when she attended, DHHS had to enlist the help of two case aides because the visits were chaotic. Respondent's parenting skills did not progress beyond agency supervised visits. Moreover, between October 22, 2020, and November 25, 2020, the trial court gave respondent four opportunities to visit with the children, and she participated in two of the four visits. Respondent missed one of the visits because she "overslept," and simply failed to appear for the other one. Respondent did not submit to more than 90 of over 100 required random drug screens, while knowing that missed screens were considered positive screens. These factors directly affect the children's needs for permanency, stability, and finality. See *In re Schadler*, 315 Mich App at 411. Respondent also had history of domestic violence; respondent's partner, with whom she was living, allegedly brandished a gun at her and shot at the tires of respondent's car. Simply put, there was scant evidence in the record to suggest that maintaining respondent's parental rights would be in the children's best interests, given her inability or unwillingness to display sufficient parenting skills and maintain a safe, stable household environment.

In addition, respondent did not have consistent contact with Fortson for her visits with MNH. As of late January 2021, respondent had not seen MNH in six weeks. Fortson arranged with respondent for a Christmas Day visit with MNH, but respondent failed to appear at Fortson's home for the visit. In November 2020, the foster care worker reached out to respondent to arrange for parenting time; respondent participated in two visits and in December 2020, respondent ceased all communication with the foster care worker. Although the foster care worker encouraged respondent to re-engage in services, respondent did not think she "had to do anything." Accordingly, the trial court's best-interest determination was not clearly erroneous, and the trial court did not clearly err by terminating respondent's parental rights as to ENMS, CRS, AMH, and CNS, and MNH. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

IV. CONCLUSION

In Docket No. 356132, we affirm the trial court's termination of respondent's parental rights as to ENMS, CRS, AMH, and CNS. In Docket No. 356355, we affirm the trial court's termination of respondent's parental rights as to MNH.

/s/ Christopher M. Murray

/s/ Kathleen Jansen

/s/ Michael J. Riordan