

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
December 18, 2012

In the Matter of HENDERSON, Minors.

No. 310199  
Midland Circuit Court  
Family Division  
LC No. 10-003753-NA

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Before: HOEKSTRA, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals by right from an order of the trial court terminating her parental rights to her children, C.J.H. and B.A-C.H., after finding the existence of grounds for termination under MCL 712A.19b(3)(c)(i), (g), (j) and (l).<sup>1</sup> We affirm.

I. REASONABLE EFFORTS AT REUNIFICATION

Respondent first argues that petitioner did not make reasonable efforts at reunification. Respondent is correct in her assertion that “[r]easonable efforts to reunify the child and family must be made in all cases,” except those involving aggravated circumstances not present in this case. MCL 712A.19a(2); see also *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Contrary to respondent’s contention, the record shows that petitioner did make such efforts.

Respondent was provided with counseling and psychiatric services. Her claim that she was unable to continue in services when she lost her ability to receive Medicaid was countered with testimony from her counselor that she nevertheless could have continued services through other assistance that would have been available to her. Respondent appears to have announced her decision to stop going to counseling for an appreciable period of time without any follow-up discussions with the counselor about her options. Nor did respondent participate in parenting services, even after petitioner’s caseworker made a referral for infant mental health services in July 2011. Respondent received ample opportunities for parenting time. She received transportation assistance, and at one point was offered financial planning assistance. Respondent was not offered baby court services as she was in the protective proceedings involving her older daughter, but she admitted that she had been unable to benefit from those particular services in

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<sup>1</sup> The parental rights of the father of C.J.H. were also terminated. He is not a party to this appeal.

the past. The trial court, who also oversaw the earlier proceedings, agreed with this determination. We conclude that the trial court's determination that reasonable efforts were made at reunification was supported by the evidence presented.

## II. STATUTORY GROUNDS FOR TERMINATION

Respondent next argues that the trial court erred when it found that grounds for termination of respondent's parental rights had been proven. The petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review the trial court's findings of fact for clear error. MCR 3.977(K). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *Id.*; MCR 2.613(C). An order terminating parental rights need be supported by only a single statutory ground. MCL 712A.19b(3).

The trial court did not clearly err by finding that petitioner had provided clear and convincing evidence of the existence of grounds for termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). However, the trial court erred in finding that termination was proper under MCL 712A.19b(3)(l).

MCL 712A.19b(3) contains a number of grounds that may support termination of parental rights. Specifically, in the instant case the trial court found that petitioner had established the existence of the following grounds:

(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.

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(g) The parent, without regard to intent, 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.

\* \* \*

(I) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

As to the trial court's finding that the grounds that led to the initial adjudication continued to exist, and would be likely to continue further, and its decision that respondent had failed and would likely fail to provide proper care and custody, it based its determination on the fact that respondent continued to show the same behaviors that she had shown since jurisdiction was taken over respondent's older child. We agree with this determination. We note that respondent continues to smoke, notwithstanding the fact that C.J.H. has severe asthma problems and both children suffer from "reactive airway disease" which can be caused by cigarette use during pregnancy. Apart from any difficulty in keeping employment for any length of time, which has led respondent to sustained financial instability, this continuing behavior evidences a lack of ability to provide proper care for her children. Respondent was not even willing to refrain from smoking during the in-home visitation with her children, whom she knew had significant health issues. If she is unable, or unwilling, to stop smoking given the specific needs of her children, the trial court's finding concerning a lack of proper care and custody is supported by the evidence.

Additionally, we agree with the trial court that there is little likelihood the conditions that led to adjudication would be rectified within a reasonable period of time. Apart from the fact that since the lower court's decision respondent has again had difficulty maintaining her probation status,<sup>2</sup> the evidence presented at trial indicates that respondent was unable to meet her goals for reunification that existed even during the earlier proceedings concerning her older daughter. The trial court's opinion that little had changed in respondent's attitude or behavior over the 3½ years she participated in services is supported by the testimony provided at trial. Respondent did participate in services, and the testimony supports a finding that she partly benefitted from them. However, she failed to follow through with either the referral for infant mental health sessions, or to explore whether she could continue treatment with her counselor despite losing Medicaid coverage. The trial court's finding that she had not sufficiently progressed with her initial parenting difficulties is supported by the testimony. In addition, "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).

The trial court also found that the children would likely be harmed if returned to respondent. The trial court focused on respondent's long-term neglect of her children, and her lack of progress. This is supported by the testimony presented at trial, which also indicated at

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<sup>2</sup> We note that the Michigan Offender Tracking Information System lists respondent as an "absconder from probation" as of November 30, 2012 (MDOC No. 714151). C.J.H. came into DHS supervision in the instant case due to respondent's ongoing criminal history, specifically the fact that she was to be incarcerated for violations of her tether and probation and had no other placement for C.J.H. other than in the home of the foster-mother of respondent's older daughter.

least the possibility that respondent could physically harm the children if she were sufficiently provoked by outside circumstances.

However, the trial court erred concerning § 19b(3)(l). The trial court should have looked at § 19b(3)(m), given that respondent had voluntarily released her rights to her older daughter, even though this occurred during circumstances where respondent's rights might have otherwise been terminated had she not done so. Agreeing with the trial court's interpretation of § 19b(3)(l) would essentially render § 19b(3)(m) surplusage, which is inappropriate. *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). Nevertheless, because only one ground must be proven, this error is not outcome-determinative.

### III. BEST INTEREST DETERMINATION

Respondent next maintains that the trial court erred when it found that termination of respondent's parental rights was in her children's best interest. Once a statutory ground for termination has been proven, the trial court shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests." MCL 712A.19b(5). This Court reviews the trial court's best-interest finding for clear error. *In re Trejo*, 462 Mich at 356-357.

The trial court specifically found that termination was in the children's best interest. It relied on the children's need for permanency. This determination was supported by the DHS caseworker's testimony. And we note that respondent's older daughter's adoptive mother, who was also fostering C.J.H. and B.A.-C.H., stated that she would be willing to adopt the boys. According to the evidence presented, they were thriving in placement, and she was properly caring for C.J.H.'s medical condition. The determination of a child's best interests may include consideration of availability of suitable alternate homes, see *In re Hamlet (After Remand)*, 225 Mich App 505, 520; 571 NW2d 750 (1997), overruled in part on other grounds *In re Trejo*, 462 Mich at 353-354, as well as the advantages of a foster home over the parent's home. *In re Olive/Metts*, 297 Mich App 35, 41-42; \_\_\_ NW2d \_\_\_ (2012) (citation omitted). The trial court's best-interest finding was not clearly erroneous.

This Court has recently held in *In re Olive/Metts*, 297 Mich App at 44, that the trial court must evaluate whether termination is in the best interest of each child individually. See also MCL 712A.19a(6)(a). Here, the trial court did not specifically break down its findings to discuss its decision concerning each child individually. However, nothing in the facts indicates that the analysis would have been different had the trial court done so. The record indicates that respondent engaged in the long-term neglect of both of her children, and failed to demonstrate any sustained progress toward remedying the problems which caused the removal of the children.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Stephen L. Borrello  
/s/ Mark T. Boonstra