

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 15, 2013

In the Matter of LOUGHNER, Minors.

Nos. 310279; 310281
Ottawa Circuit Court
Family Division
LC No. 05-051730-NA

Before: GLEICHER, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Respondent father and mother appeal as of right the trial court order terminating their parental rights to their two minor children under MCL 712A.19b(3)(g), (i), and (l). We affirm in part, vacate in part, and remand for further proceedings consistent with this opinion.

On appeal, both respondents acknowledge that because it was undisputed that their parental rights to another child were previously terminated, a statutory ground for termination of their parental rights as to the two minor children at issue existed under MCL 712A.19b(3)(l).¹ Thus, the only argument put forth on appeal is whether the trial court clearly erred in its best interests determination. We hold that it did.

After a trial court has established a statutory ground for termination by clear and convincing evidence, the trial court should order termination of parental rights if termination is in the best interests of the children. MCL 712A.19b(5); *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010). Because “a child’s placement with relatives weighs against termination under MCL

¹ Even if one of the parents had challenged the trial court’s statutory findings, we would hold that the trial court did not clearly err in finding that the three statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Because respondents had an ongoing heroin addiction, which resulted in dangerous living conditions for their children, the trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(g). Also, because respondents used heroin during their first child’s pregnancy and infancy and failed to rehabilitate at that time, the trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(i). And, as noted, the parties do not dispute that the trial court had sufficient grounds for termination under MCL 712A.19b(3)(1).

712A.19a(6)(a),” a child’s placement with a family member is “an explicit factor to consider in determining whether termination was in the children’s best interests[.]” *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Accordingly, a trial court’s failure to explicitly consider whether termination of parental rights was appropriate in the context of a child’s placement with a family member renders the factual record inadequate to make a best-interest determination. *In re Mays*, 490 Mich 993, 994; 807 NW2d 307 (2012).

Here, the minor children were living with an aunt at the time of the dispositional hearing. However, the trial court did not consider the children’s placement with their aunt while making its best-interest determination. And, while only respondent father raises this issue on appeal, the trial court was required to consider this factor in determining the best interests of the children in relation to both parents. Accordingly, the trial court’s determination that termination of both respondents’ parental rights was in the children’s best interests was clear error in this case. MCR 3.977(K); *Mays*, 490 Mich at 994; *Trejo Minors*, 462 Mich at 356-357. We vacate the trial court’s best-interest analysis, and remand this case to the trial court for an evaluation regarding how (if at all) its best interest findings *as to each child* are impacted considering that the maternal aunt had custody of the children at the time of termination. See *In re Olive/Metts Minors*, 297 Mich App 35, __; 823 NW2d 144 (Docket No. 306279, issued May 4, 2012), slip op, p 4.

As one likely can glean from the limited remand we are ordering, we reject respondent mother’s argument that the trial court erred in determining that the termination of her parental rights was in the minor children’s best interests because testimony at the disposition hearing showed that she was a good mother when she was not using heroin. The evidence relied upon by the trial court showed that respondent mother used heroin in 2005 and relapsed into heroin use during 2010 and 2011. She continued to relapse despite her participation in drug tests, Alcoholics Anonymous, counseling, and a parent mentor program. The home environment the children lived in was also dangerous to their health and safety. Hence, we affirm the trial court’s factual findings that the termination of her parental rights was in the best interests of the children, but the court must reevaluate that decision in light of the children’s custodial situation. *In re Olive/Metts*, 297 Mich App at __ (slip op at 4).

Affirmed in part, vacated in part, and remanded to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O’Connell
/s/ Christopher M. Murray