# STATE OF MICHIGAN

# COURT OF APPEALS

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UNPUBLISHED
January 22, 2013

In the Matter of L. R. BANKS, Minor.

No. 310976
Wayne Circuit Court
Family Division
LC No. 05-441328

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Before: DONOFRIO, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor child, L.R. Banks, pursuant to MCL 712A.19b(3)(c)(*i*), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). We affirm.

This Court reviews the trial court's "decision that a ground for termination has been proven by clear and convincing evidence" for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (internal quotations and citations omitted); MCR 3.977(K). This Court may only set aside the trial court's findings if it "is left with the definite and firm conviction that a mistake has been made." *Id.* "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

"The existence of a statutory ground for termination of parental rights must be proven by clear and convincing evidence." *In re LE*, 278 Mich App 1, 26; 747 NW2d 883 (2008), citing MCR 3.977(F)(1)(b), MCR 3.977(G)(3), and MCL 712A.19b(1).

> [Clear and convincing evidence] must produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact-finder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. [*Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009) (internal quotations omitted).]

Once the petitioner presents clear and convincing evidence of a statutory ground for termination, "the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). "The petitioner bears the burden of establishing the existence of at least one [] ground[] by clear and convincing evidence." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

On appeal, respondent argues that the trial court erred by determining that there was clear and convincing evidence that any of the statutory grounds for termination existed. We disagree.

First, there was clear and convincing evidence that a statutory ground for terminating respondent's parental rights existed, pursuant to MCL 712A.19b(3)(c)(*i*). MCL 712A.19b(3)(c)(*i*) provides, in relevant part:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> (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:
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> (*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.

The initial dispositional order in this matter was entered on January 14, 2010. More than two years later, on March 5, 2012, the trial court held a hearing on termination. Thus, more than 182 days elapsed between the trial court's initial dispositional order and the hearing on statutory grounds for termination. And, there was clear and convincing evidence that the conditions that led to the adjudication continued to exist.

The conditions that led to the adjudication included: failure to provide suitable housing, no source of income, mental health problems, a lack of parenting skills, and prior noncompliance with a treatment plan concerning another child. During the course of the proceedings, substance abuse problems also came to light. Those conditions continued to exist at the last hearing. Respondent did not, for example, have suitable or stable housing. She moved multiple times during the course of the proceedings and most of the homes she was living in were not suitable for the minor child. At the time of the last hearing, respondent was still living in an unsuitable house. In addition, respondent did not provide the Department of Human Services (DHS) with proof that she had a legal source of income to support the minor child.

Respondent also failed to address her mental health and substance abuse issues. Throughout the proceedings, she repeatedly missed or failed the required drug tests. Respondent completed some of her therapy and initially appeared to be making some progress. However, she thereafter only sporadically attended therapy sessions, was on the verge of being terminated from the program throughout most of the proceedings, was terminated from one substance abuse program, and despite ample opportunity, never attended the mandatory psychological examination. Finally, although respondent acted appropriately with the minor child during parenting time and completed her parenting classes, she only attended 56 of the 96 parenting visits. Additionally, she only attended three of 13 parenting visits in the three months leading up to the termination.

There is no reasonable likelihood that respondent will rectify the conditions in a reasonable amount of time given the minor child's age. The child had been in placement since birth and the DHS provided respondent with services for over two years in order to regain custody of both her children and respondent was noncompliant throughout most of the process. Notably, the trial court began its termination hearing in March 2012, and took its decision under advisement for 90 days, advising respondent that she had 90 additional days to comply with the parent agency agreement or that her parental rights would be terminated. Respondent was still noncompliant, indicating that she will not change her behavior in the future.

There was also clear and convincing evidence that a statutory ground for terminating respondent's parental rights existed, pursuant to MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) provides for termination where:

> 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.

Here, respondent failed to provide the minor child with proper care. Respondent did not obtain a legal source of income in the more than two years that the DHS was providing respondent with services. She also did not obtain stable and appropriate housing in that time. She failed to address her mental health and substance abuse problems. Furthermore, given this history, respondent will likely not be able to provide proper care in the future.

Additionally, there was clear and convincing evidence that a statutory ground for terminating respondent's parental rights existed, pursuant to MCL 712A.19b(3)(j). Termination is appropriate under MCL 712A.19b(3)(j) where "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." Respondent suffers from mental illness and has a substance abuse problem. She is not able to support herself or the minor child. She cannot provide the minor child with stable housing. There is a reasonable likelihood that if the trial court returned the minor child to respondent's care, the minor child would be harmed.

Respondent next argues the trial court erred by determining it was in the minor child's best interest to terminate respondent's parental rights. We disagree.

This Court reviews the trial court's best interest determination for clear error. *Olive/Metts*, 297 Mich App at 40. This Court may only set aside the trial court's findings if it "is left with the definite and firm conviction that a mistake has been made." *Id.* Additionally, "'[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.'" *Olive/Metts*, 297 Mich App at 42, quoting MCL 712A.19b(5).

When determining the best interest of a child in a termination case, a trial court may consider the respondent's history, parenting techniques during parenting time, family bonding, participation in the treatment program, the foster environment and possibility for adoption, and the parent's continued involvement in situations involving domestic violence. *In re Jones*, 286

Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). A court may also consider "the child's need for permanency, stability, and finality." *Olive/Metts*, 297 Mich App at 42.

Contrary to respondent's argument, the trial court noted multiple reasons why it was in the minor child's best interest to terminate. The trial court found that respondent did not complete her psychological evaluation, did not submit to the required drug screens, did not obtain suitable housing, and did not visit the minor child regularly. Respondent's mental health issues, substance abuse problems, and housing situation are all relevant to an inquiry into the minor child's best interest. The trial court also questioned the existence of a bond between respondent and the minor child, stating, "[i]f there is a bond, if there is love, if there is a connection, parents will make a way to see their children."

The trial court did not clearly err by determining that it is in the minor child's best interest to terminate respondent's parental rights. Respondent failed to comply with her treatment plan, even when she knew that it was her last chance to avoid termination. In the last three-month reporting period, respondent only completed three of the nine required drug screenings. She tested positive at one of the screens that she attended. Respondent only attended three of 13 parenting visits with the minor child and the home respondent was living in at the time was not suitable for the minor child.

And, contrary to respondent's argument, there was not a strong bond between respondent and the minor child. Both the trial court and the DHS worker noted the lack of emotional attachment between respondent and the minor child. The DHS worker testified that the minor child was not upset or distressed when she went with her foster parents at the end of her visits with respondent. The trial court doubted that respondent was emotionally bonded with the minor child because of respondent's history of failing to attend parenting time.

Affirmed.

/s/ Pat M. Donofrio
/s/ Karen Fort Hood
/s/ Deborah A. Servitto