

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
July 16, 2013

In the Matter of RODRIGUEZ, Minors.

No. 313346  
Clinton Circuit Court  
Family Division  
LC No. 11-023033-NA

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Before: SAWYER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood of harm if children are returned to parent).<sup>1</sup> Because the evidence supported the statutory grounds for termination but the trial court failed to consider whether termination was appropriate in light of the children's placement with relatives, we affirm in part, vacate the trial court's best-interests determination, and remand for further proceedings.

I. STATUTORY GROUNDS

A trial court may terminate a parent's parental rights if it finds by clear and convincing evidence that one or more statutory grounds for termination has been established. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We review for clear error the trial court's factual findings as well as its determination that a statutory basis for termination has been established by clear and convincing evidence. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459.

The trial court did not clearly err by determining that petitioner presented clear and convincing evidence to support the termination of respondent's parental rights under MCL 712A.19b(3)(g) and (j). Although respondent completed and benefitted from anger management classes, his involvement with drugs remained problematic. Petitioner was concerned that respondent had an untreated substance abuse problem because he tested positive for opiates in

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<sup>1</sup> The children's mother voluntarily released her parental rights and is not a party to this appeal.

November 2011 and was previously convicted of driving while intoxicated. Respondent admitted that he used opiates, but denied any drug abuse. Respondent failed to consistently provide proof of valid opiate prescriptions, however, and had visited an emergency room in order to obtain an opiate prescription in spite of the fact that he agreed to abstain from opiates. Further, a foster-care worker and the drug screener both testified that respondent delayed his screens until a sufficient time had passed for drugs, including opiates, to pass out of his system. In light of this evidence, the court reasonably concluded that respondent had an untreated substance abuse problem that was compounded by his denial and dishonesty.

The evidence also established that respondent failed to benefit from parenting classes. The testimony showed that respondent: (1) missed parenting-time sessions without excuse, and often left in the middle of sessions to go to his car; (2) inappropriately disciplined the children, often with threats; (3) failed to engage the children in play; (4) brought unhealthy and inappropriate food for the children; and (5) acted combatively toward the caregivers in front of the children. Respondent also failed to prove that he had obtained gainful employment until the eve of the termination hearing. “[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 [a] child.” *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Further, a respondent must not only comply with services offered, but also must benefit from such services because benefitting from services is “an inherent and necessary part of compliance with the case service plan.” *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Finally, respondent failed to demonstrate an improved capacity and willingness to provide for his children. Before their removal, the trial court explicitly ordered respondent not to allow any unsupervised contact between the children and their mother because she posed a threat to them. Respondent violated that order notwithstanding the trial court’s warning that the children would be removed from his care if he did so. Respondent absconded with the children and their mother to another county. When petitioner located the family, the children were wearing soiled clothes, were hungry and congested, one child had a rash, and the other child had an untreated burn on her hand. Respondent’s actions demonstrated a palpable disregard for the court’s orders and apathy toward the needs of his children. He has consistently placed his own interests above those of his children. In fact, even at the time of the termination hearing, respondent continued to maintain contact with the children’s mother, who was present in the courtroom. Thus, for the foregoing reasons, the trial court did not clearly err by determining that the statutory grounds for termination had been established.

## II. BEST INTERESTS

Respondent next challenges the trial court’s determination that termination of his parental rights was in the children’s best interests. Once petitioner establishes a statutory basis for termination, the trial court must terminate the parent’s parental rights if it finds that termination is in the children’s best interests. MCL 712A.19b(5); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). “[W]hether termination of parental rights is in the best interests of the child[ren] must be proven by a preponderance of the evidence.” *In re Moss*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2013) (Docket No. 311610, released May 9, 2013), slip op at 6. The court should consider the parent’s ability to parent the children as well as the children’s need for permanency, stability, and finality. *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d

144 (2012). We review for clear error the trial court's best-interests determination. MCR 3.977(K); *In re Jones*, 286 Mich App at 129.

The trial court noted that respondent had not financially provided for the children while they were in care, was combative with the caregivers in front of the children, and did not cooperate with his treatment plan to the point where he could be granted unsupervised visitation. The court also found that, because of the children's youth, vulnerability, and dependence on caretakers, they needed a stable and consistent home environment. The record supported the trial court's findings.

Respondent argues, however, that the trial court erred by terminating his parental rights because the children were placed with relatives. Pursuant to MCL 712A.19a(6)(a), a trial court is not required to order petitioner to file a petition to termination parental rights if the children are being cared for by relatives. In *In re Mason*, 486 Mich at 163-164, our Supreme Court recognized that "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)" and that a parent can "fulfill his duty to provide proper care and custody in the future by voluntarily granting legal custody to his relatives." Further, in *In re Olive/Metts Minors*, 297 Mich App at 43, this Court stated:

[B]ecause a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests. . . . A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal. [Quotation marks and citations omitted.]

Thus, if a trial court fails to consider a child's placement with relatives when making a best-interests determination, the remedy is to vacate the court's best-interests determination and remand for the court to consider that matter. *Id.* at 44.

Admittedly, respondent did not voluntarily place the children with relatives since their placement resulted from his neglect and violation of the trial court's orders. Regardless, the trial court was required to explicitly address why termination of respondent's parental rights was appropriate when the children were placed with relatives. *Id.* at 43. Although the court acknowledged that the children were placed with relatives, with whom respondent had a contentious relationship, it did not explicitly address whether termination was "appropriate in light of the children's placement with relatives." *Id.* Accordingly, we vacate the trial court's best-interests determination and remand for the trial court to consider whether termination was appropriate considering the children's placement with relatives.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Pat M. Donofrio