

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TATUM, Minors.

UNPUBLISHED
November 7, 2013

No. 313161
Calhoun Circuit Court
Family Division
LC No. 2006-002631-NA

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Respondent father appeals as of right the order terminating his parental rights to the minor children. We affirm.

The trial court terminated respondent's rights under four statutory grounds: MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist and are unlikely to be rectified within a reasonable time), (c)(ii) (other conditions exist that have not been rectified and are unlikely to be rectified within a reasonable time), (g) (failure to provide proper care or custody and no expectation that the parent will be able to do so within a reasonable time), and (j) (likelihood of harm to the child if returned). Because establishment of only one statutory ground is necessary, erroneous termination on one ground is harmless if another ground was also properly established. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

It is not clear what grounds the trial court relied on under MCL 712A.19b(3)(c)(i), but respondent's plea indicated that respondent father's domestic violence, previous criminal behavior, and the previous neglect case were conditions of adjudication. The record indicates that respondent participated in counseling and was on waiting lists for various classes, but there was no evidence of any progress. Rather, there was evidence that even if respondent was able to successfully complete all potential services while incarcerated, he would need to complete additional services such as a psychological evaluation, outreach counseling, and parenting times after his release. Thus, to the extent the trial court relied on domestic violence, criminal behavior, and neglect, there is no indication these conditions had been rectified. At the time of adjudication, the trial court also found "an unfit home environment by reason of neglect," which was also not rectified. Respondent claimed the children were being neglected only by their mother, but he never stepped in to prevent neglect even though he stated that he had daily contact with the children. The trial court acknowledged that being in prison made it difficult for respondent to care for the children, provide housing, and provide for their other needs. Nevertheless, the record clearly supports that respondent never reached a point where he could

provide housing or for the needs of his children as necessary to rectify the condition of an unfit home environment due to neglect.

Respondent argues that he should be afforded additional time to rectify the barriers to reunification. We disagree. MCL 712A.19b(3)(c)(i) requires that “there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.” This language indicates that the Legislature did not intend for children to be left indefinitely in foster care. *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). The trial court properly found that the children could not “sit forever waiting” to see if respondent could care for them in six months or one year or 1-1/2 years. The children were removed when one was about 25 months old and the other was about eight months old. They were in care for about 22 months at the time of the termination hearing. Respondent had, at a minimum, 16 months remaining of incarceration. As in *Dahms*, it is appropriate to consider how long the children can continue to wait when determining whether the conditions may be rectified within a reasonable time. In this case, considering the minimum time the children would have to continue to wait of 16 months, and the time they had already been in care of 22 months, the trial court did not clearly err when it determined conditions continued to exist and there was not a reasonable likelihood that respondent father could rectify the conditions within a reasonable time. MCL 712A.19b(3)(c)(i); *In re Trejo Minors*, 462 Mich at 356-357.

Respondent does not explicitly challenge the trial court’s finding under MCL 712A.19b((3)(c)(ii). Consequently, we need not address it. *City of Riverview v Sibley Limestone*, 270 Mich App 627, 638; 716 NW2d 615 (2006). It is furthermore not entirely clear whether the trial court found any “other conditions” beyond one of the children’s hemophilia. Nevertheless, it is clear from the record that at least one of the children did indeed have special medical needs above and beyond what a child would ordinarily be expected to need. It is equally clear that respondent was not providing for those needs and would not likely be able to within a reasonable time. We therefore do not find that the trial court clearly erred in finding that other conditions exist that would warrant the court taking jurisdiction and that they would not be rectified within a reasonable time. MCL 712A.19b(3)(c)(ii); *In re Trejo Minors*, 462 Mich at 356-357.

Regarding MCL 712A.19b(3)(g), respondent testified that he previously had daily contact with the children, but other evidence contradicted this testimony. Moreover, if respondent had been having daily contact with the children, he would likely have been aware that they lacked a place to live and were being neglected by their mother, yet he did nothing to rectify that situation. Consequently, respondent was not providing proper care and custody prior to removal. Respondent’s incarceration precludes any available housing, and he had no parenting classes available to him. As with (c)(i), there is no likelihood that respondent would become able to provide proper care and custody within a reasonable time considering the ages of the children. At least 16 months remained before respondent’s release, and he would require additional services after release in any event. The children had already been in placement for 22 months. We do not believe the children should be compelled to wait that much longer. *In re Dahms*, 187 Mich App at 648. On this record, the trial court did not clearly err in finding clear and convincing evidence that respondent did not provide proper care and custody for the children and there was no reasonable expectation that he would be able to do so within a reasonable time

considering the ages of the children. MCL 712A.19b(3)(g); *In re Trejo Minors*, 462 Mich at 356-357.

Regarding MCL 712A.19b(3)(j), the trial court found it would be harmful to return the children to respondent father's home when that home was the prison system. It also noted respondent had a history of perpetrating domestic violence, and the evidence does not show that respondent's domestic violence issues had been rectified. The trial court found that respondent testified that he had regular contact with the children, but that, during that time, their mother was housing the children in "less than desirable circumstances." The trial court found that there was no indication that respondent father was concerned about the children or that they were his first priority. In light of respondent father's inaction when respondent mother was homeless and not providing proper care for the children, we find no error in concluding that he did not make the children his priority. On this record, the trial court did not clearly err when it found clear and convincing evidence that there was a reasonable likelihood that children would be harmed if returned to the home of respondent father. MCL 712A.19b(3)(j); *In re Trejo Minors*, 462 Mich at 356-357. We note that it is clear from the record that the trial court terminated respondent's parental rights on the basis of his own inability to rectify conditions and provide proper care and custody, and the reasonable likelihood of harm if the children were returned to him; they were not terminated on the basis of the children's mother's actions and inactions.

Respondent further argues that the trial court erred in finding that termination was in the children's best interests. A child's need for stability and permanency may be considered in determining best interests. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). Other considerations regarding best interest may include the respondent's amount of meaningful contact with the children, the bond between the respondent and the children, and how the children were doing in the care of their guardians. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). In this case, respondent had been in jail or prison for approximately the previous 22 months. Although he indicated he telephoned and sent letters to the children, there was no evidence that he had a bond with them. The children referred to their foster parents as "mom" and "dad." The children needed permanency, which the foster family could provide. The children's two half-siblings were in the same foster home and the foster family wanted to adopt all four children. One of the children had hemophilia, and the foster family provided him with the required care. The children were doing very well in the foster home. On this record, the trial court did not clearly err when it found termination was in the best interests of the children. MCL 712A.19b(5).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra