

STATE OF MICHIGAN
COURT OF APPEALS

In re C. WHITMORE, Minor.

UNPUBLISHED
April 16, 2015

No. 323493
St. Clair Circuit Court
Family Division
LC No. 14-000027-NA

Before: HOEKSTRA, P.J., and MARKEY and DONOFRIO, JJ.

PER CURIAM.

Respondent C. Bates appeals as of right a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood of harm). We affirm.

A trial court must terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) a preponderance of the evidence establishes that that termination is in the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court terminated respondent's parental rights under MCL 712A.19b(3)(g) and MCL 712A.19b(3)(j), which provide:

(3) 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:

* * *

(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.

We review a trial court's factual findings, including its determination that a statutory ground for termination of parental rights has been proven by clear and convincing evidence, for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

The trial court did not clearly err in finding that § 19b(3)(g) had been established by clear and convincing evidence. Respondent failed to provide proper care or custody for the child by using cocaine during her pregnancy, which exposed the child to a risk of harm and caused him to suffer severe withdrawal symptoms following his birth. Prenatal drug use is evidence of neglect. *In re Baby X*, 97 Mich App 111, 115-116; 293 NW2d 736 (1980). The trial court did not clearly err in finding that respondent did not substantially comply with reunification services as ordered. She failed to obtain psychiatric and substance abuse evaluations to assess her needs, refused to cooperate with a life-skills worker, cooperated with a Families First worker but failed to benefit because she minimized her problems, failed to complete outpatient and inpatient substance abuse treatment, and continued to use drugs as shown by both positive drug screens and her admissions to a CPS worker. She made no effort to obtain a legal source of income and did not maintain stable, suitable housing. Respondent's last-minute attempt to participate in counseling was of little significance; she attended only one appointment, there was no evidence that she continued with treatment, and the therapist gave no prognosis for her recovery. "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody." *In re White*, 303 Mich App at 710. Therefore, the trial court did not clearly err in finding that respondent was not reasonably likely to be able to provide proper care and custody within a reasonable time considering the child's age.

The trial court also did not clearly err in finding that § 19b(3)(j) was established by clear and convincing evidence. Respondent, who had a long-term history of drug abuse, subjected the child to a risk of harm by using cocaine during her pregnancy. She minimized her drug problem, did not successfully complete inpatient or outpatient treatment, and continued to use drugs. She attended family visits while under the influence of substances and her condition was sometimes so bad that she could not be allowed to hold the child. This evidence showed that the child was reasonably likely to be harmed if returned to respondent's custody.

Respondent also argues that the trial court clearly erred when it found that termination of her parental rights was in the minor child's best interests. We review the trial court's best interest determination according to the same clear error standard used in reviewing the trial court's decision regarding the statutory grounds for termination. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

Respondent had a serious substance abuse problem that had persisted for years, and respondent did not benefit from treatment. Her drug abuse indirectly led to her loss of custody of another child, and she at one point abandoned her other child rather than obtain treatment and participate in reunification services. Respondent subjected this child to a risk of harm by using cocaine during pregnancy. She made little effort to overcome her drug problem and continued to use drugs during the pendency of this case. Although she developed a bond with the child and was at times able to take care of him properly, at other times she expressed a lack of understanding of how to attend to his needs or could not take care of him properly because she

was under the influence of substances. Respondent also had mental health problems for which she did not complete treatment and threatened herself or others with harm. In addition, respondent did not have an income with which to support herself and the child, and she did not have stable, suitable housing. Finally, respondent was ambivalent, at best, about being a mother to the child. She exercised supervised visitation but also stated that she had “got over” her other child, and she would “get over [this child] too.” Therefore, given the foregoing, the trial court did not clearly err in finding that a preponderance of the evidence showed that termination of respondent’s parental rights was in the child’s best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Pat M. Donofrio