

STATE OF MICHIGAN
COURT OF APPEALS

In re HALL, Minors.

UNPUBLISHED
March 26, 2019

No. 345577
Wayne Circuit Court
Family Division
LC No. 94-314896-NA

Before: O’BRIEN, P.J., and JANSEN and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating his parental rights to his minor children SH, AH, NH, and SCH (together “the children”) under MCL 712A.19b(3)(a)(ii)¹ (“[t]he child’s parent has deserted the child for 91 or more days and has not sought custody of the child during that period[.]”); MCL 712A.19b(3)(c)(i) (182 or more days have elapsed since the issuance of the initial disposition order, “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[.]”); MCL 712A.19b(3)(g) (failure to provide proper care or custody); and MCL 712A.19b(3)(j) (reasonable likelihood of harm if returned to custody of the parent). Respondent only challenges the trial court’s best-interests finding. We affirm.

I. FACTS

This case arises from allegations that respondent could not provide appropriate care or custody for the children, due to respondent’s addiction to heroin, as well as his unemployment and homelessness. The children’s mother died shortly before the petition was first filed. As a

¹ The parties argue that one of the grounds to terminate respondent’s parental rights was MCL 712A.19b(3)(a)(i), but the trial court’s written order instead listed MCL 712A.19b(3)(a)(ii) as one of the statutory grounds for termination. Because trial courts speak through their written orders and judgments, not their oral pronouncements, we have reviewed this case with MCL 712A.19b(3)(a)(ii) as one of the statutory bases to terminate respondent’s parental rights. See *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009).

result of her death and of respondent's inability to provide a proper environment for the children, the children were living with their adult half-sister, Mercedes Daniels (the sister). The sister's care of the children began when she drove from her home in Detroit down to Ohio, where the children had been abandoned at a Family Dollar store. Soon after that, respondent requested that the sister drop the children off with a family friend. It was quickly discovered that said family friend was listed on the Child Abuse and Neglect Central Registry. The children were returned to their sister about a week later as part of a safety plan.

Throughout the proceedings in the lower court, the children remained with their sister. While there, they were clothed, fed, in school, and were taken to see the doctor and dentist. Respondent did not provide any financial support, and he maintained that he did not want to "make contact with the agency" to see the children for fear that "he was going to get locked up" due to a warrant in Ohio. Respondent would not appear in court until the dispositional review hearing, nearly a year after the preliminary examination took place. At that time, the hearing was adjourned so that respondent could participate in services and possibly plan for his children.

Respondent showed some progress for a brief time. Unfortunately, after about six months, respondent began missing appointments to see the children, causing them great distress and even requiring an increase in therapy for one of the children. Respondent claimed that this was due to a transportation issue that served as a barrier to attending his visits; however, when bus tickets were offered, respondent failed to use them. Further, respondent missed 33 drug screens over the course of five months. Respondent continued to fail to provide any financial or emotional support for the children, and one foster care specialist opined that respondent had "put forth no effort to reunify with the children."

Finally, when a termination hearing was held as a result of the above behavior, respondent failed to appear. The trial court held that respondent "had never been fully compliant with his service plan," had "missed [drug] screens," as well as had a recent positive drug screen for marijuana, and was not providing financial support for the children. Further, the trial court found that respondent's continued involvement with the children "had more negative impact than positive," due to them "expect[ing] certain support" from respondent and not receiving it. Additionally, respondent's home had not been inspected for the safety of the children. The trial court concluded that respondent "had not rectified any of the conditions which led to the adjudication of these children and was not in a position where he was providing much support as a parent or even as a positive adult figure." Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(i), (c)(i), (g), and (j). This appeal followed.

II. ISSUES RAISED ON APPEAL

As an initial matter, we conclude that the only issue raised on appeal is whether the trial court properly found termination to be in the best interests of the children. In his statement of questions presented, respondent nominally contends that the trial court erred in finding that he had abandoned the children. Although this could be construed as impliedly challenging the trial court's findings as to MCL 712A.19b(a)(ii), respondent does not actually make that argument. Rather, he argues only that termination of his parental rights was contrary to the best interests of the children, especially given their residency with a relative, their older sibling. We therefore

conclude that no challenge has been made to the trial court's findings that statutory grounds for termination existed.

III. STANDARD OF REVIEW

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's ruling regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "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." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

IV. BEST INTERESTS

The trial court found that respondent's inconsistent involvement in the lives of the children was harmful to them, the children were "thriving" in their sister's care, and they had "all expressed a desire to stay in [their sister's] home." The trial court then held that termination of respondent's parental rights and the adoption of the children by their sister was in their best interests because there was no reasonable expectation that respondent would be able to offer a significant positive role in the lives of the children "anytime soon." We conclude that the trial court engaged in the proper analysis and that its findings are properly supported by the record.

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider . . . , the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. When the trial court makes its best interests determination, it may rely upon evidence on the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83.

Respondent abandoned his children, forcing their adult sister to drive to Ohio to pick them up at a store. Shortly after that, respondent asked the sister to place the children with an unnamed family friend who was on the Child Abuse and Neglect Central Registry, requiring them to be returned to their sister. The children remained with their sister thereafter, and are "thriving" in her care. In contrast, respondent made his first appearance at any hearing in this case almost a year after the first hearing in this matter. Respondent also failed to financially support the children, caused the children emotional distress by repeatedly missing visits with them, missed or failed many drug screens, failed to comply with his treatment plan, and,

according to a foster care specialist, he “put forth no effort to reunify with [the] children.” At the time of the termination hearing, respondent had not visited the children in about five months, and the Department of Health and Human Services was unable to complete an assessment of respondent’s home. Finally, after four months of no drug screens, respondent submitted only one drug screen, which proved to be positive for marijuana. We do not find the trial court’s conclusion that respondent was a negative factor in the children’s lives to be clearly erroneous.

Respondent nevertheless argues that termination of his parental rights was not in the best interests of the children because of the family support system in place and his bond with the children, and because permanency could be achieved without termination. Respondent’s argument about the family support system undoubtedly refers to the children’s sister, who has cared for the children since June 2016. “[A] child’s placement with relatives weighs against termination.” *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). “[T]he 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.” *In re Olive/Metts Minors*, 297 Mich App at 43. While a trial court may terminate parental rights in lieu of placing the child with relatives, a child’s placement with relatives “is an explicit factor to consider in determining whether termination was in the children’s best interests.” *Id.* (citation and quotation marks omitted). As noted, the children are indeed placed with a relative, their sister.

The children’s sister, however, testified that, although she wanted to adopt the children, she was unwilling to participate in a guardianship plan because she wanted permanency for the children. Without the care of the children’s sister, the family support system referenced by respondent does not appear to exist. Furthermore, although respondent did have a bond with his children, his failure to consistently be a part of their lives was causing that bond to have a detrimental, rather than positive, impact on them. The children had expressed a desire to be adopted by their sister and to remain in her care. Respondent was repeatedly given opportunities to take actions that would help him reunite with the children, but he consistently failed to take advantage of those opportunities. Despite respondent’s failure to take sincere or effective action towards reunification, the children have reportedly “thrived” while in their sister’s care and her adoption of the children provides them with permanency. Further, simply because permanency could somehow be achieved without termination does not mean that the trial court was precluded from selecting it as an option.

In the instant case, respondent was offered numerous other methods for securing permanency for the children without termination of his parental rights; he simply failed to meaningfully pursue them.

V. CONCLUSION

The trial court properly analyzed the best interests of the children, and we are not “definitely and firmly convinced that the trial court erred” by finding that termination of respondent’s parental rights was in the children’s best interests. Affirmed.

/s/ Colleen A. O'Brien
/s/ Kathleen Jansen
/s/ Amy Ronayne Krause