STATE OF MICHIGAN

COURT OF APPEALS

In re JOHNSON, Minors.

UNPUBLISHED
January 21, 2016

No. 325880
Wayne Circuit Court
Family Division
LC No. 05-440127-NA

Before: STEPHENS, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(g) and (j). Because the trial court did not clearly err by assuming jurisdiction and terminating respondent's parental rights, we affirm.

A petition to terminate respondent's parental rights to the minor twin girls was authorized on May 22, 2014. The petition alleged improper supervision of the twins, failure to thrive with respect to the smaller of the infants, an inability by respondent to care for the children, and the recent occurrence of a child fatality in the home involving signs of child abuse inflicted by individuals that respondent allowed to care for her children. Relevant to these allegations, when Children's Protective Services (CPS) visited respondent, they found insufficient food and inappropriate sleeping arrangements for the minor children, then seven months old. The twins were not cooing, scooting, or moving toward crawling, and one was noticeably smaller than the other. The smaller baby had been diagnosed with failure to thrive. Respondent had been given feeding instructions by a visiting nurse but had trouble measuring the formula and following instructions. CPS also attempted to help respondent with feeding and infant care. After the children were removed and placed in foster care, the smaller twin gained a normal amount of weight even though the foster parent was not given instructions to feed her high calorie formula or more formula than the larger twin. Moreover, shortly before the twins were removed from respondent's care, the six-year-old daughter of respondent's roommate died of opiate poisoning after going to sleep in the upstairs flat of the building where respondent, her roommate, and their children lived downstairs. On the night the child died, respondent was in the upstairs flat watching television, and the twins were either left alone or were being watched by the roommate's boyfriend in respondent's apartment.

While this case was pending, respondent continued to have three-hour weekly parenting times with the twins. She attended most visits at first and, according to the foster care worker, generally acted appropriately and obviously loved the twins. She also took redirection well.

However, over the course of 12 visits, respondent mostly left the babies in their play seats, taking them out one at a time for short periods of time. The foster care worker encouraged her to let them roam about on the carpet, but respondent only did this once for about 10 minutes before becoming uncomfortable. Also, respondent kept asking whether it was time to feed the babies and which bottle was whose. The worker had explained each time that the blue bottle had special formula for the smaller twin to gain weight, and the white bottle had regular formula for the other twin. Respondent missed the last three out of four visits and did not ask to make them up. She had an older child in guardianship who she had not visited for some time.

Respondent testified and presented the testimony of her pastor. The pastor had offered respondent housing owned by the church, where respondent would not be allowed any male visitors or undesirable visitors such as her former roommate. Respondent still had to deal with her current lease, however, and testified that she was living "back and forth" between church housing and the home from which the children were removed. She admitted that during the pendency of the case, she had sexual relations with the twins' father, a registered sex offender. In addition, even though respondent's roommate had her parental rights terminated and was jailed for theft, respondent still did not understand the need to separate from her.

Respondent was evaluated by psychologist Gail Mills. Mills's findings were similar to those of the psychologist who examined respondent in 2005 in her older child's case. According to Mills, respondent was bonded to her twin daughters but it was "quite apparent that she would have a great deal of difficulty actually attending to both the girls[']s needs for an extended period of time." Mills concluded that respondent lacked an adequate support system to help her raise her children and would be unable to meet the children's ongoing medical needs. Mills stated that respondent had suffered from depression and anxiety and would continue to be a victim and to make poor choices in relationships.

The trial court found grounds for assuming jurisdiction under both MCL 712A.2(b)(1) and (b)(2). And, ultimately, the trial court determined that statutory grounds for termination had been met by clear and convincing evidence under MCL 712A.19b(3)(g) and (j). The trial court also determined that termination of respondent's parental rights was in the children's best interests. Based on these findings, the trial court terminated respondent's parental rights. Respondent now appeals as of right.

On appeal, respondent first argues that the court erred by assuming jurisdiction over the minor children. Respondent maintains that there was no evidence that respondent neglected her children or that the home was unfit. Rather, respondent contends that the evidence showed that respondent had food, housing, income, furniture, and that she had taken the children for medical care. According to respondent, it was in actuality the death of her roommate's daughter which prompted the removal of the twins, but this was unwarranted because there was no legally admissible evidence to establish that the roommate posed a danger to the twins.

To exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists and has been established by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *Id.* A decision is clearly erroneous if, "although there is evidence to support it, the reviewing court . . . is left with the definite and firm

conviction that a mistake has been made." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (quotation omitted). Interpretation and application of court rules and statutes are questions of law, reviewed de novo. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

MCL 712A.2(b) confers jurisdiction in proceedings involving a minor child:

> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .
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> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

In the case at bar, the trial court did not clearly err by finding that one or more of the above grounds was shown by a preponderance of the evidence. First, regarding MCL 712A(b)(1), there was clearly evidence that respondent neglected to provide proper and necessary care for the children. For example, respondent provided unsafe sleeping arrangements for her children and she failed to properly feed the infants. Respondent did not have sufficient baby food and formula in her kitchen. Despite instruction, respondent could not learn the steps for making formula, nor could she remember which bottle held the high-caloric formula intended for the child diagnosed with failure to thrive. In comparison, after only two weeks in a foster home, the twin diagnosed with failure to thrive gained a normal amount of weight. In respondent's home, the children were observed to be dirty and not moving or meeting developmental milestones. Respondent had also been observed to leave the children alone. While respondent presented contrary evidence in an effort to establish her care for the children, the weight and credibility of the evidence was a question for the trial court. See *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

Likewise, relevant to MCL 712A.2(b)(2), respondent's home was an unfit environment for her children. Specifically, the home was characterized by drug abuse and criminality. Just before the children were removed, a six-year-old child who lived in the same home died of a drug overdose. This child was the child of a respondent's roommate, a "nonparent adult" who lived with respondent and whose boyfriend was at least a frequent visitor. The child's death was ruled a homicide, and her roommate's parental rights were later terminated.[1] Respondent

[1] On appeal, respondent offers the perfunctory assertion that the court order terminating her roommate's parental rights should not have been introduced as evidence. Respondent has abandoned this issue by failing to cite any supporting authority or to develop her argument. See *Yee v Shiawassee Co Bd of Com'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Moreover, we see no abuse of discretion in the admission of this document and, given the other evidence

claimed that the child who died found morphine pills outside and ate them. However, the evidence showed that the child had been given small doses of opiates for two to three months, that she had suffered physical abuse, and that the roommate and her boyfriend were suspected in the death**.** Respondent should have addressed these dangerous conditions in the home, but instead, she continued her friendship with her roommate and did not appear to understand why her relationship with the roommate should end. Thus, the evidence clearly showed an unfit environment characterized by neglect, criminality, drug abuse, and depravity. The court's findings were supported by a preponderance of the evidence and were not clearly erroneous. The court properly assumed jurisdiction under MCL 712A.2(b).

Next respondent argues that the petitioner presented insufficient evidence to terminate parental rights under MCL 712A.19b(3)(g) and (j). Specifically, respondent contends that she had the ability and desire to care for her children. She also argues that she could have learned any additional skills necessary to care for her children if given appropriate assistance and that she had a valuable support system in the form of her pastor, who was willing to arrange suitable housing for respondent. Given that the children had never been harmed in respondent's care, respondent also maintains that the children would not be at risk if returned to her home.

To warrant termination of parental rights, petitioner must establish at least one statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(E)(3); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B and J*, 279 Mich App 12, 18; 756 NW2d 234 (2008). This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich at 152. The court terminated respondent's parental rights under MCL 712A.19b(3)(g) and (j), which provide that termination is appropriate where:

> (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.
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> (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.

Given the evidence presented in this case, the court did not clearly err in finding clear and convincing evidence to satisfy the above grounds for termination. Respondent clearly neglected her children, had insufficient food, left the twins alone, and had unsafe sleeping arrangements for the children. On the night the roommate's daughter died, respondent had left the twins alone or in the care of the man suspected, along with the roommate, in the child's death. Even after the child's death, respondent failed to understand why her association with her roommate should

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warranting the trial court's assumption of jurisdiction, any alleged error in the admission of this evidence was harmless. See *In re BKD*, 246 Mich App 212, 219; 631 NW2d 353 (2001).

end. The twins, especially the smaller one who was diagnosed with failure to thrive, had special needs, yet they were not getting what they needed for proper growth and development in respondent's care. When CPS, the visiting nurse, and the foster care worker tried to assist respondent in remedying the above issues, she was unable to change her habits or practices that had endangered the children's welfare. Respondent had the opportunity for supervised visits with the twins while the case was ongoing, and she was evaluated by a psychologist. The consensus among those working with respondent was that respondent could not learn to adequately care for the children by herself within a reasonable time, even with the help of a parent partner or similar program, regardless of the amount or type of services provided. No program was available to provide continuous one-to-one help 24 hours a day, which was what respondent would need to adequately care for her children, and petitioner had no obligation to provide such extensive assistance. Cf. *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). Indeed, while respondent has argued that additional services should have been provided before termination of her rights, this is not necessary where, as in this case, the goal at the initial dispositional hearing is termination of parental rights. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182; 836 NW2d 174 (2013); MCR 3.977(E). On these facts, the trial court did not clearly err by finding clear and convincing legally admissible evidence that petitioner had failed to provide proper care and custody for the children, that she would not be able to do so in a reasonable time given the children's ages, and that there was a reasonable likelihood that the children would be harmed if returned to her care. MCR 3.977(E). Consequently, the trial court properly concluded that statutory grounds for termination under MCL 712A.19b(3)(g) and (j) had been met.

Finally, respondent argues that termination was not in the children's best interests. Respondent argues that she is bonded with both children, that she is able to care for her children, that she is willing to improve her parenting skills, and that a return to her care would guarantee that the twins could remain together.

Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights if termination is in the child's best interests. MCR 3.977(E)(4); MCL 712A.19b(5). The trial court's decision on best interests is reviewed for clear error. MCR 3.977(K); *Trejo*, 462 Mich 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). When evaluating the best interests of the child, the court may look to the bond between parents and child, the safety of the child, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012); *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). The court may also consider the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), and the advantages of a foster home, *Foster*, 285 Mich App at 634-635.

In the present case, the evidence supported the court's finding that termination would be in the children's best interests. The children had been clearly neglected in respondent's care. While respondent loved her children and shared a bond with her children, she had been unable to give them the most basic care that they needed. For example, even with help, respondent was unable to learn the basics of feeding the twins. She had left them alone or with inappropriate sitters and she had unsafe sleeping arrangements for the children. They lacked stimulation and were not achieving milestones for babies their age. The psychologist, visiting nurse, and foster care and CPS workers thought that she would be unable to care for the twins adequately even

with help such as a parent partner. Further, respondent had demonstrated poor judgment on numerous occasions, such as allowing her children to be watched by persons suspected in the opiate poisoning and death of another child. During the course of the case, respondent also had resumed her relationship with the children's father, a registered sex offender. Respondent did not appear to recognize the dangers her own children would face by her continued association with these individuals. In contrast, there are no barriers to the twins' adoption, and they need to be cared for by a person or persons able to give proper care and keep them safe. Clearly, the evidence showed that respondent could not be that person, although she loved the twins and wished to be a good mother. Given the facts of this case, the court did not clearly err in its best-interest determination.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto