STATE OF MICHIGAN

COURT OF APPEALS

In re D. DEFRECE, Minor.

UNPUBLISHED
April 12, 2016

No. 327425
Lake Circuit Court
Family Division
LC No. 15-001605-NA

Before: BOONSTRA, P.J., and WILDER and METER, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to her minor child, DD, under MCL 712A.19b(3)(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."), and (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 affirm.

I. FACTS

Respondent has an extensive history with petitioner, Department of Health and Human Services (DHHS), generally related to respondent's problems with substance abuse dating back to 2002, when her first child was born. Respondent was offered services over the years, but she had not shown any benefit. In July 2013, respondent overdosed, and DD was placed in the care of her father. Respondent signed a stipulation giving the father full custody of DD and suspending her own parenting time. Subsequently, in November 2014, DHHS received complaints that the father was physically abusing DD. DHHS informed respondent. After asking how to pursue modification of the existing custody and parenting time order, respondent was sent forms to fill out and return, but she never did so.

DHHS filed a petition naming both the mother and father as respondents and sought the termination of respondent's parental rights.[1] The trial court found sufficient testimony presented

[1] The father entered a plea of no contest to the allegations against him, and after respondent's parental rights were terminated, he voluntarily released his parental rights to the child.

at the adjudication hearing to assume jurisdiction over the child, and it ruled in a later proceeding that termination of respondent's parental rights was supported under both MCL 712A.19b(3)(g) and (j) by clear and convincing evidence[2] and that termination was in the child's best interests. This appeal followed.

II. STANDARD OF REVIEW

" 'We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest' under MCL 712A.19b(5)." *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012), quoting *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), and citing MCR 3.977(K). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014). We review the trial court's denial of respondent's motion to adjourn the proceedings for an abuse of discretion. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). A trial court abuses its discretion when its decision falls outside the range of principled outcomes. *In re Brown/Kindle/Muhammad,* 305 Mich App 623, 629; 853 NW2d 459 (2014).

III. ANALYSIS

A. STATUTORY GROUNDS FOR TERMINATION

Grounds for terminating parental rights under MCL 712A.19b must be established by clear and convincing evidence. *In re Krupa*, 490 Mich 1004 (2012). The trial court may terminate a respondent's parental rights on the basis of only one statutory ground under MCL 712A.19b(3). *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

The trial court relied on MCL 712A.19b(3)(g) and (j) in terminating respondent's parental rights. Respondent first argues that neither statutory basis was proven by clear and convincing evidence because, according to respondent, DHHS wanted respondent to file for and obtain custody of DD in light of the fact that the father could no longer care for DD after the

[2] A significant portion of respondent's argument relates to whether the there was sufficient evidence to terminate her parental rights under MCL 7142A.19b(3)(c). Such arguments are misplaced. Based on the language of the amended termination petition, and the statutory provisions that the trial court paraphrased while announcing its ruling, it is clear that the trial court relied on MCL 712A.19b(3)(g) and (j)—not MCL 7142A.19b(3)(c)—in terminating respondent's parental rights. Moreover, because only one statutory ground need be proven to terminate parental rights, MCL 712A.19b(3), *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011), and we conclude that the trial court did not clearly err by finding that termination was appropriate under MCL 712A.19b(3)(g) and (j), it is immaterial whether termination also might or might not have been proper under MCL 7142A.19b(3)(c). See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009) ("Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision.").

complaints regarding his physical abuse were filed. However, the record does not support respondent's contention that DHHS wanted her to gain full custodial rights to DD, nor does it demonstrate that, had respondent pursued such rights, DHHS would have foregone the filing of its termination petition against her. The undisputed facts in this case are that respondent battled serious substance abuse dating back to 2002. Her prior involvement in services over the course of several years did not establish that respondent was making measurable progress. Respondent's July 2013 overdose led DHHS to file a termination petition against respondent, which was abandoned only when respondent agreed, in lieu of termination, to voluntarily release her physical custody rights to DD, which included a complete suspension of parenting time. Additionally, as the trial court noted, respondent tested positive for drugs on the day of the preliminary hearing in this case, which demonstrated that she continued to struggle with addiction. In light of respondent's history, it is illogical to conclude, as respondent does on appeal, that DHHS's primary concern was respondent's failure to pursue modification of her custodial rights. Moreover, in light of respondent's extensive history of substance abuse and failure to demonstrate progress toward rehabilitation, despite being offered services in the past, the trial court did not clearly err by concluding that clear and convincing evidence supported termination under MCL 712A.19b(3)(g) and (j). See *In re Moss*, 301 Mich App 76, 81-82; 836 NW2d 182 (2013) (noting that substance abuse is a relevant consideration under MCL 712A.19b(3)(g) and (j)); *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007) (indicating that a parent's history is relevant in determining whether the child would be harmed if returned to the parent's care).

B. REQUEST FOR ADJOURNMENT

Respondent also argues that the trial court clearly erred, or abused its discretion, by declining to adjourn the proceedings in light of her absence during the adjudication phase of the hearing,[3] which was "apparently" caused by respondent's "transportation issues on the day of the termination trial." In support, respondent cites the following portion of *In re Mason*, 486 Mich 142, 159-160; 782 NW2d 747 (2010):

> Rather, the DHS had focused on its attempts to reunify the children with [their mother] and, in doing so, disregarded respondent[father]'s statutory right to be provided services and, as a result, extended the time it would take him to comply with the service plan upon his release from prison—which was potentially imminent at the time of the termination hearing. The state failed to involve or evaluate respondent, but then terminated his rights, in part because of his failure to comply with the service plan, while giving him no opportunity to comply in the future. This constituted clear error. As we observed in *In re Rood*, a court may not terminate parental rights on the basis of "circumstances and missing information directly attributable to respondent's lack of meaningful prior participation." *In re Rood*, 483 Mich 73, 119, 763 NW2d 587 (2009) (opinion by

[3] Although respondent was absent, her appointed counsel was present and confirmed that respondent had been duly served with notice of the hearing.

> CORRIGAN, J.); see also *id.* at 127 (YOUNG, J., concurring in part) (stating that, as a result of the respondent's inability to participate, "there is a 'hole' in the evidence on which the trial court based its termination decision").

However, unlike *Mason*, here there is no indication that the trial court terminated respondent's rights based on circumstances or information "directly attributable" to her absence from the adjudication hearing. On the contrary, the termination decision was premised on respondent's long history of substance abuse and failure to benefit from treatment services, which is utterly unrelated to her failure to appear at the adjudication hearing.

Moreover, respondent has failed to demonstrate that she was entitled to an adjournment. Under MCR 3.923(G), "[a]djournments of trials or hearings in child protective proceedings should be granted only (1) for good cause, (2) after taking into consideration the best interests of the child, and (3) for as short a period of time as necessary." "[F]or a trial court to find good cause for an adjournment, 'a legally sufficient or substantial reason' must first be shown." *In re Utrera*, 281 Mich App 1, 11; 761 NW2d 253 (2008) (citation omitted). Respondent's purported reason for failing to attend the adjudication was that her plan for transportation to the courthouse fell through at the last minute. There is no record evidence, however, regarding what the plan was or why it failed. Likewise, respondent fails to explain why, if she was able to call and inform her attorney that she was unable to attend the hearing, she was nevertheless unable to participate in the proceeding telephonically.[4] Accordingly, respondent has failed to demonstrate that there was a legally sufficient or substantial reason supporting her request for an adjournment, and the trial court did not abuse its discretion in denying respondent's motion to adjourn the proceedings.

C. REUNIFICATION SERVICES

Respondent next argues that termination of her parental rights was improper because DHHS failed to provide her with reunification services. "In general, petitioner must make reasonable efforts to rectify conditions and reunify families." *In re TK*, 306 Mich App 698, 710-711; 859 NW2d 208 (2014) (citation omitted). However, respondent overlooks the fact that DHHS sought termination at the initiation of this case, and it "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009), citing *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000), and MCR 3.977(D). Thus, respondent's instant claim of error necessarily fails.

D. BEST INTERESTS DETERMINATION

If the trial court determines that clear and convincing evidence supports a statutory basis for the termination of parental rights, "it shall order termination of parental rights if it finds 'that termination of parental rights is in the child's best interests[.]' " *In re Jones*, 286 Mich App 126,

[4] Respondent cannot argue that she was unaware that it was possible to participate in such hearings telephonically; she did so during an earlier hearing, held March 19, 2015.

129; 777 NW2d 728 (2009), quoting MCL 712A.19b(5). Termination of a respondent's parental rights must be supported by a preponderance of the evidence on the whole record. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

> To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include 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. The trial court may also consider a parent's history of domestic violence, 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. [*Id.* at 713-714 (quotation marks, footnotes, and citations omitted).]

The "primary beneficiary" of the best interests analysis "is intended to be the child." *Trejo*, 462 Mich at 356.

A key factor that the trial court relied on in terminating respondent's parental rights was the lack of a bond between respondent and the child. Although there was no testimony relating to the respondent's bond with DD as of the time respondent relinquished her custodial rights and parenting time, in lieu of DHHS seeking termination, respondent does not dispute that since then, she has failed entirely to visit or communicate with DD. Given respondent's lack of involvement with the child for a period of nearly two years leading up to termination, the trial court's conclusion that the parent-child bond was "strained, at best" was not clearly erroneous. See generally *In re LE*, 278 Mich App 1, 25; 747 NW2d 888 (2008) (holding that termination was supported, in part, where the child had no bond with the respondent or any paternal relative). Furthermore, respondent's attempt to blame DHHS for her lack of a bond with DD is unavailing. Ultimately, respondent is at fault, not DHHS. Respondent was faced with the decision whether to relinquish custodial rights and parenting time to DD because she had not exhibited an ability to properly care for the child or sufficient progress in addressing obstacles preventing reunification. Further, it is undisputed that respondent has a serious substance abuse problem, which has continued unabated over a decade. Indeed, just one month before the trial court made its best interest determination, respondent once again failed a drug test. Given respondent's substance abuse history, the chance of her recovery in a reasonable amount of time in order to demonstrate an ability to parent the child is highly questionable. See *Moss*, 301 Mich App at 90 (holding that terminating the respondent's parental rights was in the child's best interests, in part, because the respondent's "ultimate success regarding her substance abuse and mental health treatments is uncertain at best"). Respondent's stated desire to change may be genuine, and it is certainly laudable, but it is not evidence that she will ever actually do so.

Respondent further argues that the child would not be harmed if this case was remanded so that respondent could participate in further reunification services. But she has not demonstrated that there was any error warranting reversal. Further, stability and permanence are important factors that the trial court relied on in concluding that termination would be in the child's best interests, and the fulfillment of such needs, contrary to respondent's argument, would be delayed if this matter were remanded. Ultimately, the child's need for stability outweighs the possibility that after a period of time, respondent *might* be able to effectively care

for her child, particularly in light of respondent's extensive history of failing to benefit from treatment and services. Accordingly, we conclude that the trial court did not clearly err in holding that termination of respondent's parental rights was in the child's best interests based on a preponderance of the evidence.

Affirmed.

/s/ Mark T. Boonstra
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter