STATE OF MICHIGAN

COURT OF APPEALS

In re LUTTMAN/O'BRYAN, Minors.

UNPUBLISHED
January 12, 2016

No. 328122
Wayne Circuit Court
Family Division
LC No. 14-515544-NA

Before: TALBOT, C.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Respondent H. Luttman appeals as of right the circuit court's order terminating her parental rights to the minor children.[1] We affirm.

The children came into care in January 2014, primarily because respondent had a history of drug abuse, the child KL tested positive for cocaine and opiates at birth, and respondent failed to benefit from services provided to treat her substance abuse problem. Respondent also had been diagnosed with depression and was not taking her medication. The children were adjudicated court wards in March 2014. A supplemental petition for termination was filed in March 2015. Following a hearing on the petition, the trial court terminated respondent's parental rights. Respondent's sole claim on appeal is that the trial court erred in concluding that termination of her parental rights was in the children's best interests. We review the trial court's decision regarding a child's best interests for clear error. MCR 3.977(K); *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not

[1] The trial court terminated the parental rights of respondent Luttman and respondent N. Meinke, the father of one of the minor children. Respondent Meinke is not a party to this appeal. The trial court identified statutory grounds for termination under MCL 712A.19b(3)(a)(*ii*), (c), (g), (j), and (k)(*i*), but did not specify which grounds apply to each respondent. However, respondent Luttman does not challenge the trial court's findings regarding the existence of a statutory ground to support termination of her parental rights. Rather, she only challenges the trial court's finding that termination of her parental rights was in the children's best interests.

be made." MCL 712A.19b(5). Whether termination is in the child's best interests is to be determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). If parental rights to more than one child are at stake and the bests interests of the individual children differ significantly, the trial court must decide the best interests of each child individually. *In re White*, 303 Mich App at 715; *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). In deciding whether termination is in the child's best interests, the court may consider a variety of factors, such as the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009); the parent's history of substance abuse or mental health issues, *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001); the parent's compliance with her case service plan and her visitation history with the child, *In re White*, 303 Mich App at 714; the child's bond to the parent, *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); the child's safety and well-being, *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011); the child's "need for permanency, stability, and finality," *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992); the advantages of a foster home over the parent's home, *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009); and the possibility of adoption, *In re White*, 303 Mich App at 714. However, "a child's placement with relatives weighs against termination," *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), and if a child is living with a relative when the case proceeds to termination, the trial court must "explicitly address whether termination is appropriate in light of the children's placement with relatives" in making its best-interests determination. *In re Olive/Metts*, 297 Mich App at 43.

The trial court's decision indicates that it dutifully considered each child's best interests separately, and also accounted for each child's relative placement, although the child AO was not technically placed with a relative. The relative-placement factor is derived from MCL 712A.19a(6)(a). *In re Mason*, 486 Mich at 164. For purposes of § 19a, a relative is defined as a "grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above[.]" MCL 712A.13a(1)(j). The definition does not include a parent, i.e., the mother or legal father. MCR 3.903(A)(18). Therefore, when a child is placed with a parent, relative placement is not a necessary consideration.

The trial court found that respondent did not have a bond with KL, who was in need of permanency, had not maintained her bond with AO by visiting regularly, and had made no effort to comply with reunification services. Those findings are fully supported by the record and thus are not clearly erroneous. The record further shows that both children were doing well in their current placements and that KL's great aunt was interested in adopting her. Respondent, who lacked housing and a verifiable source of income and had done nothing to overcome her substance abuse problem, was simply not in a position to meet the children's needs, had made no progress toward reunification after more than a year, and had "stopped coming to court hearings." Thus, it was not likely that her circumstances would improve any time soon. Under the circumstances, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

We note that respondent's brief is replete with references to general principles of law regarding child protective proceedings, but respondent makes no effort to apply most of those principles to this case. She does argue in part that termination was improper because she will not

neglect the children in the future. At one time, MCL 712A.19a(e) authorized termination of parental rights if the parent was "unable to provide a fit home for the child by reason of neglect." In *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993), the Court stated that while evidence of temporary neglect was sufficient to allow a court to take jurisdiction over a child, "the entry of an order for permanent custody due to neglect must be based upon testimony of such a nature as to establish or seriously threaten neglect of the child for the long-run future." That holding was followed in *In re Schmeltzer*, 175 Mich App 666, 676; 438 NW2d 866 (1989), and *In re Bedwell*, 160 Mich App 168, 172-173; 408 NW2d 65 (1987), two of the cases cited by respondent. But § 19b(3), enacted 30 years after *Fritts* was decided, now governs termination. The various subsections do not specifically refer to "neglect" or long-term neglect, but identify parental conduct and circumstances, some of which are consistent with neglect, that justify termination of parental rights. Regardless, respondent does not challenge the trial court's findings regarding the existence of multiple statutory grounds for termination in this case. Therefore, respondent's reliance on the *Fritts* line of cases is misplaced.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly