STATE OF MICHIGAN

COURT OF APPEALS

In re WOZNIAK/VanWIEREN, Minors.

UNPUBLISHED
March 17, 2016

Nos. 328820; 329286
Kent Circuit Court
Family Division
LC Nos. 14-050827-NA;
14-050828-NA

Before: O'CONNELL, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

In Docket No. 328820, respondent-father, R. Wozniak, appeals the trial court's termination of his parental rights to his minor children under MCL 712A.19b(3)(c)(*i*) (failure to rectify existing conditions), and (g) (failure to provide proper care and custody). In Docket No. 329286, respondent-mother, V. VanWieren, appeals as of right the trial court's termination of her parental rights to the same children under MCL 712A.19b(3)(c)(*i*), (*ii*) (failure to rectify new or different conditions), and (g). We affirm.

I. FACTUAL BACKGROUND

VanWieren had a history of involvement in domestically violent relationships and a Children's' Protective Services (CPS) history that included referrals in 1998, 1999, 2000, 2005, and 2008. In 2005, Wozniak and VanWieren began a relationship. They eventually married and had two children together. The younger child was born premature and had special needs.

In 2007, Wozniak pleaded guilty to two counts of possessing child pornography. After Wozniak was incarcerated, he failed to successfully complete sex offender counseling because he refused to admit that he had possessed the pornographic materials; he instead blamed his brother for "planting" them. A 2012 Sex Offender Risk Assessment reported that Wozniak minimized his actions and was unlikely to successfully complete treatment for that reason. The therapist concluded that Wozniak's risk of re-offense would "dramatically" increase if he maintained long-term contact with younger females and that he might act on his sexual interests in young girls if "given access and opportunity." As part of his probation, Wozniak was not allowed to have contact with children.

The parents' relationship deteriorated, and VanWieren obtained a personal protection order against Wozniak in 2012, alleging stalking and threatening behavior. In March 2014, the infant stopped breathing while in VanWieren's care because of a respiratory virus. The infant

suffered a collapsed lung, had to spend several weeks in the neonatal intensive-care unit, and was prescribed an apnea monitor and nebulizer mask to ensure that he breathed appropriately. Also in March 2014, a CPS worker observed Wozniak at VanWieren's apartment, despite Wozniak's probation conditions and VanWieren's protection order.

The trial court authorized a petition to place the children under protective custody, and it ordered that Wozniak was not permitted to contact VanWieren or the children. Wozniak was convicted of failing to comply with the Sex Offender Registration Act (SORA), and a psychological evaluation indicated that VanWieren suffered from depressive disorder.

In May 2014, Wozniak and VanWieren pleaded responsible to the allegations in the petition, which included that Wozniak had been convicted of possessing child pornography, was a sex offender, and had failed to comply with the SORA, and that VanWieren suffered from mental health issues and allowed Wozniak to be present with the children. The trial court placed the children with VanWieren and ordered services.

Holly Weisz, the children's caseworker through the Department of Health and Human Services (the Department), testified that in late May 2014, she discovered that VanWieren had taken the children to the "filthy and disgusting" home of friends that had an extensive CPS history, including criminal sexual history. According to Weisz, VanWieren admitted she had taken the children there numerous times, and the older child confirmed this statement.

The Department petitioned to remove the children from VanWieren's care. At the June 2014 removal hearing, Weisz testified that, despite signing a safety plan, VanWieren continued to allow inappropriate men into her home. She allowed her seven-year-old child to supervise her special-needs infant. And despite his breathing issues and the fact he had an appropriate crib, VanWieren had not been using the infant's sleep apnea machine, and Weisz observed the infant lying on an air mattress in a "nest of blankets." The seven-year-old had also made concerning statements, including suicidal ideations.

Courtney Kotrch, the children's foster care worker through Bethany Christian Services, testified that VanWieren did well at her parenting visits. According to Kotrch, VanWieren admitted that she took the children to an inappropriate friend's home once. Kotrch was concerned that VanWieren would let Wozniak into the home because it had happened in the past. However, Taylor Beals, VanWieren's Families First service provider, testified that VanWieren's home was sanitary, and she did not believe the children were at a risk of harm in VanWieren's care. The trial court removed the children from VanWieren's home and placed them in foster care on the basis that the children were not safe.

In August 2014, Wozniak was released from jail, and Kotrch recommended he receive an updated sexual offender risk assessment. Dr. Jeffrey Kieliszewski conducted a psychological evaluation of Wozniak and indicated that Wozniak had significantly deficient knowledge about child development and parenting. Dr. Kieliszewski also recommended that social services workers obtain Wozniak's child pornography treatment records to determine the level of risk he posed to children.

According to Kotrch, VanWieren managed her mood well during parenting times, but she did not provide Kotrch with information about the people with whom she had frequent contact so that Kotrch could ascertain if they were on the child abuse central registry. In January 2015, a parenting time specialist encountered Wozniak and VanWieren shopping together in a store, and VanWieren asked the specialist not to inform Kotrch that they were seen together. VanWieren also began testing positive for marijuana, which she continued to test positive for through April 2015.

Kotrch testified that Wozniak began participating in counseling but did not accept responsibility for his child pornography conviction, instead stating that it was "a misunderstanding." Kotrch initially requested an updated risk assessment, but later stated that because Wozniak would not accept responsibility for his criminal sexual history, he could not address the issue and was not participating in services.

In April 2015, the Department filed a supplemental petition that sought to terminate both parents' rights. The trial court held a termination hearing in May 2015. At the termination hearing, Matt Klemp, Wozniak's therapist, testified that Wozniak continued to deny responsibility for his conviction, was unwilling to discuss related issues, and had made no progress since counseling began. Klemp testified that without accountability, Wozniak could not demonstrate that he took the charges seriously or understood safety concerns. Klemp believed that Wozniak's 2012 risk assessment was still valid because Wozniak had not benefitted from counseling since that time.

Kotrch testified that Wozniak's parenting skills had improved, he had completed parenting classes, and he was interacting better with the children and forming a bond with the children. However, he had no employment or income.

Julie Kammeraad, VanWieren's therapist, testified that VanWieren demonstrated "poor interpersonal boundaries" and "poor judgment." She believed VanWieren did not understand why her interpersonal relationships posed a risk to the children. Kammeraad testified that VanWieren pursued relationships with people who were badly flawed because she thought she could help "fix" them. Kammeraad did not believe that VanWieren had taken accountability for the children's removal. Kotrch testified that VanWieren did not seem to appreciate the risk she placed her children at by exposing them to individuals with concerning backgrounds and that VanWieren continued to surround herself with inappropriate people. Kotrch was also concerned with VanWieren's ongoing marijuana use.

However, VanWieren's parenting time specialist testified that VanWieren's parenting skills had improved to the point she was able to create a loving and playful environment, she helped the infant with therapy exercises, she was engaged in parenting time, and she had positive visits overall. The parenting time specialist opined that with more time and consistent improvement, VanWieren would be able to parent the children on a long-term basis. VanWieren testified that the safety of her children was very important to her and that she was willing to work on her treatment goals "as long as it took to get it right."

Regarding the children's best interests, Kotrch testified that Wozniak lacked a bond with the children and could not care for their needs. The infant had special needs but Wozniak was

still working on basic parenting skills. Kotrch also testified that VanWieren's bond with the children was "obvious," but she was not capable of keeping the children safe. Kotrch testified that the children deserved a permanent, stable home without people that posed safety risks and with someone that could provide for the infant's special needs.

Regarding Wozniak, the trial court found that his service plan was designed to address his past sexual misconduct, parenting skills, and housing issues, but Wozniak did not make progress. He did not successfully complete sex offender counseling or register as a sex offender, and he continued to deny responsibility for his actions. It found that Klemp recommended that the trial court consider Wozniak's 2012 sex offender risk assessment, and the 2012 examiner opined that Wozniak was unable to identify areas of concern and would not likely hold himself accountable for his offense. At the time of the termination hearing, Wozniak was "still in denial" and "has no accountable [sic] for his actions," and Klemp was unsure whether Wozniak would benefit from further counseling. The trial court also found that Wozniak made progress with parenting skills and the children were safe during visits, but he lacked housing or employment.

Regarding VanWieren, the trial court found that her service plan was designed to address her tendency to expose the children to "inappropriate, unsafe individuals." While VanWieren was given help and information, the trial court found that she failed to apply the information to her life, was inconsistent about whether she understood why the children were removed from her care, and was unable to comply with the children's safety plan. For instance, the safety plan included that VanWieren should not engage in domestic relationships, but she engaged in online dating and also saw Wozniak. VanWieren tried to "fix" unhealthy individuals and continued in relationships that "she knows are badly flawed." Additionally, VanWieren continued to test positive for marijuana. The trial court found that VanWieren also showed overall improvements in parenting skills, but after extensive services, failed to "recognize unsafe people or situations that pose a risk to her children."

Accordingly, the trial court found that clear and convincing evidence supported terminating both parents' parental rights under MCL 712A.19b(3)(c)(*i*) and (g), and VanWieren's parental rights under MCL 712A.19b(3)(c)(*ii*). Considering the children's best interests, the trial court found that VanWieren was significantly bonded with the older child, but she had a weaker bond with the infant, and the infant had little bond with her. It found that VanWieren had poor parenting skills and was unable to keep the children safe because she engaged in risky relationships. It found that Wozniak had made efforts to build a parenting relationship, but the relationship "remain[ed] limited." Wozniak's parenting skills were improving but not adequate, and his untreated sexual offense posed a safety risk for the children.

The trial court found that the infant had special needs and would require "specially [sic] attention and diligence for him to succeed." The older child also required counseling because she blamed herself for the children's removal, and she required permanency because "visits have become very hard for her." The trial court found that the children were thriving in foster care and, while the foster homes were not willing to adopt, the children required a home that could provide for them. Ultimately, the trial court concluded that terminating the parents' rights was in the children's best interests.

II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order the parent's rights terminated if it finds from a preponderance of evidence that termination is in the children's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review for clear error the trial court's determination regarding the children's best interests. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court has clearly erred if we are definitely and firmly convinced that it made a mistake. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

III. STATUTORY GROUNDS

A. BACKGROUND LAW

The Department has the burden to prove the existence of a statutory ground by clear and convincing evidence. MCL 712A.19b(3); *Mason*, 486 Mich at 166. Clear and convincing evidence is "evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (quotation marks and citation omitted, alteration in original).

MCL 712A.19b(3)(c) provides that the trial court may terminate a parent's rights if either of the following exist:

> (*i*) 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.
>
> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

This statutory ground exists when the conditions that brought the children into foster care continue to exist despite "time to make changes and the opportunity to take advantage of a variety of services." See *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000); *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009). MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

> [t]he 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.

A parent's failure to comply with his or her 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 701, 710-711; 846 NW2d 61 (2014). The trial court may also consider a parent's tendency to engage in

relationships that may pose a danger to the children when determining whether statutory grounds exist to terminate a parent's parental rights. *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011).

B. WOZNIAK'S STATUTORY GROUNDS

Wozniak contends that the trial court erred when it found that statutory grounds supported termination under MCL 712A.19b(3)(c)(*i*) and (g). The crux of Wozniak's argument is that the trial court did not have sufficient evidence on these statutory grounds because it based its findings on his status as a sex offender but did not order an updated sex offender risk assessment. We disagree.

A parent must both comply with and benefit from a service plan. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). In this case, Wozniak's 2012 sex offender risk assessment stated that he was a risk for re-offending if he had prolonged contact with younger females and provided that he should not have contact with "children, specifically young females." Wozniak's daughter is a young female. While the trial court did not order a new assessment as the case progressed, the evidence overwhelmingly showed that Wozniak refused to hold himself accountable for the actions that led to his conviction. Kotrch stated that because Wozniak would not accept responsibility for his criminal sexual history, he could not address the issue and was not benefitting from services. Klemp also testified that Wozniak was "at square one" in his counseling because he continued to deny responsibility for his actions. Klemp specifically believed that Wozniak's 2012 assessment was still valid because Wozniak had not benefitted from counseling since that time. A parent cannot correct a problem that he or she refuses to recognize.

Amicus contends on Wozniak's behalf that the trial court may not rely solely on a parent's past criminal sexual history to terminate parental rights. However, it is clear that that is not what the trial court did in this case—rather, the trial court considered Wozniak's failure to comply with his service plan, which was designed to ensure the safety of his children. Kotrch and Klemp's testimonies supported the trial court's findings that Wozniak's children would not be safe in his care because of his past, unaddressed criminal sexual history. There is no indication that the trial court operated on a presumption.

Additionally, this was not the only reason why the trial court terminated Wozniak's parental rights. It also found that, while Wozniak's parenting skills had improved, they still were not minimally sufficient to be able to parent the children, particularly his infant child with special needs. Reviewing the evidence in this case, we are not definitely and firmly convinced that the trial court made a mistake when it found that clear and convincing evidence supported terminating Wozniak's parental rights under MCL 712A.19b(3)(c)(*i*) and (g).

C. VANWIEREN'S STATUTORY GROUNDS

VanWieren contends that the trial court improperly terminated her parental rights to her children because the children were only in foster care for five months, during which time VanWieren made progress on her service plan. VanWieren contends that she needed more time to demonstrate that she would be able to care for her children. We disagree.

MCL 712A.19b(3)(c)(*i*) is concerned with whether the conditions that led to the adjudication are likely to be rectified within a reasonable time. In this case, the adjudication took place in May 2014, the Department filed its petition to terminate parental rights almost a year later in April 2015, and the trial court terminated VanWieren's parental rights in July 2015. VanWieren had over a year to demonstrate improvement. According to Kammeraad, VanWieren instead demonstrated poor boundaries and poor judgment. Kotrch testified that VanWieren did not seem to appreciate the risk that associating people with sexual offense and CPS history placed on her children. She maintained surreptitious contact with Wozniak, took the children to the home of another sex offender, and would or could not provide the Department with information about people with whom she had frequent contact.

Because VanWieren did not demonstrate progress in this area in the year her children were within the trial court's jurisdiction, we are not definitely and firmly convinced that the trial court erred when it found that VanWieren was not likely to improve within a reasonable time under MCL 719A.19b(3)(c)(*i*). Similarly, because VanWieren did not address these circumstances, she was unable to provide the children with proper care and custody under MCL 712A.19b(3)(g).

Not only did VanWieren fail to demonstrate progress with keeping her children safe from unsavory individuals, she also began abusing marijuana during the time the children were in foster care. Despite substance abuse services, including counseling and drug screens, VanWieren tested positive for marijuana the month before the termination hearing. We are also not definitely and firmly convinced that the trial court made a mistake when it terminated VanWieren's parental rights under MCL 712A.19b(3)(c)(*ii*).

IV. THE CHILDREN'S BEST INTERESTS

A. BACKGROUND LAW

The trial court should weigh all the evidence available to determine the children's best interests. *Trejo*, 462 Mich at 356-357. We defer to the special ability of the trial court to judge the credibility of witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To determine whether termination of a parent's 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." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

B. WOZNIAK

Wozniak contends that the trial court erred when it failed to consider the evidence of his bond with the children. We disagree.

It is clear from the trial court's opinion that it did consider evidence of the improving bond between Wozniak and the children. The trial court specifically found that Wozniak was initially not bonded with the children but, through his efforts, he built at least a limited parenting relationship. However, other factors—including Wozniak's untreated sexual offense, his inadequate parenting skills particularly in light of the special needs of the infant, and the

children's need for permanency—outweighed that bond. This Court defers to the trial court's determination of the weight of the evidence. See *White*, 303 Mich App at 714. We are not definitely and firmly convinced the trial court made a mistake when it found that terminating Wozniak's parental rights was in the children's best interests.

C. VANWIEREN

VanWieren contends that the trial court clearly erred when it found that terminating her parental rights was in the children's best interests because the older child was strongly bonded to her, the infant's medical needs were "exaggerated" to secure termination, and the children were not in a preadoptive home. We disagree.

Again, a review of the trial court's findings indicate that it did consider the older child's bond to VanWieren, but it ultimately concluded that other factors—including VanWieren's poor parenting skills, penchant for exposing her children to unsavory individuals, and the children's needs—prevailed over that bond. Similarly, the trial court recognized that the children were not placed in adoptive homes but found that the children's needs for permanency and homes that could provide for them prevailed. This Court defers to the trial court's determinations regarding the weight of the evidence, see *White*, 303 Mich App at 714, and its determinations of credibility, *Miller*, 433 Mich at 337. The trial court, not this Court, was in the best position to determine whether witnesses were exaggerating the infant's medical needs. We are not definitely and firmly convinced that the trial court erred when it found that terminating VanWieren's parental rights was in the children's best interests.

We affirm.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Christopher M. Murray