

STATE OF MICHIGAN
COURT OF APPEALS

In re K N WILLIAMS, Minor.

UNPUBLISHED

April 12, 2016

No. 329102

Wayne Circuit Court

Family Division

LC No. 03-420061-NA

Before: GLEICHER, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her infant daughter at a combined adjudication trial/termination hearing without providing services for reunification. Respondent challenges the statutory grounds supporting the termination decision and asserts that termination of her parental rights was not in her child's best interests. After carefully reviewing the record evidence, we affirm.

I. BACKGROUND

Respondent is no stranger to the child protective system. In 2004, the state took her first child into care and terminated respondent's parental rights because she was homeless, addicted to drugs and suffering from mental illness, yet failed to comply with services geared toward reunifying the family. Eleven years later, respondent found herself pregnant again. She was uncertain about the child's paternity. Moreover, respondent continued to be homeless, choosing to spend her monthly Social Security Disability funds at the casino rather than on housing. Respondent bounced between the homes of family and friends, motels, shelters, and the psychiatric wards of various hospitals. She continued to abuse marijuana. And she was hospitalized frequently for her uncontrolled mental health issues. During one hospitalization in the course of her pregnancy, respondent tested positive for marijuana. On April 25, 2015, the court assigned a guardian ad litem (GAL) to protect respondent's interests, to no avail. Respondent would not cooperate with the GAL's attempts to assist her, instead behaving "[a]bsolutely hostile." Between April 25 and July 10, 2015, respondent was hospitalized several times and the GAL received approximately three dozen calls regarding respondent's bizarre and uncontrolled behavior.

Based on this history, the Department of Health and Human Services (DHHS) took respondent's daughter, KW, into care directly upon the child's release from the hospital. The child was placed with her maternal aunt. The DHHS immediately filed a petition seeking termination of parental rights. On July 10, 2015, the court conducted a combined adjudication

trial/termination hearing. The court heard testimony from respondent's sister and GAL, the foster care worker assigned to the case, and respondent. Based on the evidence, the court terminated respondent's parental rights under MCL 712A.19b(3)(g) (failure to provide proper care or custody), (i) (parental rights to another sibling previously terminated due to serious neglect), (j) (reasonable likelihood that child will be harmed if returned to parent), and (l) (parent's rights to another child were terminated).¹

II. STATUTORY GROUNDS

Respondent broadly argues that the circuit court erred in finding that clear and convincing evidence supported statutory grounds for termination of her parental rights. Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The circuit court terminated respondent's parental rights after finding clear and convincing evidence to support the following factors 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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

* * *

¹ The circuit court cited additional grounds supporting termination that do not seem to apply to respondent. The court also terminated the rights of the child's putative father, likely under those additional grounds.

(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.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

Respondent cannot successfully challenge the evidentiary support for termination under factors (i) and (l). The state involuntarily terminated respondent's parental rights to another daughter in 2004 after respondent failed to comply with and benefit from services geared toward reunification.

The DHHS also presented clear and convincing evidence to terminate respondent's parental rights under factor (g). During her pregnancy and in the two months leading up to the combined hearing, respondent remained homeless and wasted her only income on gambling. She did not care for herself during the pregnancy, and had no means to provide proper care and custody for her child following her birth. In fact, it appears from the record that in the 11 years since the previous termination of her parental rights, respondent has made no attempt to improve her life so that she could provide for a child. Accordingly, the record supports that respondent will be unable to provide proper care and custody within a reasonable time.

Clear and convincing evidence that respondent abused marijuana while pregnant and suffered from uncontrolled mental illness substantiated that KW would face likely harm if placed in her mother's care, supporting termination under factor (j). Uncontrolled mental illness and drug abuse were factors in respondent's previous termination and she made no headway in curbing those issues since. During her current pregnancy, respondent was hospitalized several times for bizarre behavior. Respondent's medical records noted that she was "well known" to the hospital staff due to her frequent voluntary and involuntary hospitalizations. Respondent reported that she had been diagnosed with schizophrenia and bipolar disorder, but believed she suffered only from depression, and therefore refused to take psychotropic medications. Respondent's homelessness, tendency to lose her money gambling, and her mental disorder episodes would reasonably result in harm to KW if she were returned to respondent.

III. BEST INTERESTS

Respondent also contends that termination of her parental rights was not in KW's best interests. Specifically, she argues that the court ignored evidence that she was willing and able to become a better parent and that an opportunity should have been given for her to demonstrate this ability.

"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*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The lower court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357.

Relevant factors in this consideration 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). Additionally, “a child’s placement with relatives weighs against termination,” and accordingly, “the 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.” *Olive/Metts Minors*, 297 Mich App at 43.

We first note that respondent fails to appreciate that MCL 712A.19a(2)(c) permits the DHHS to forego reunification services if “[t]he parent has had rights to the child’s siblings involuntarily terminated.” Accordingly, that she claims to be willing and able to participate in reunification services is not determinative. Moreover, record evidence of respondent’s condition during and shortly after her pregnancy belies her claim. Respondent has had more than a decade to stop using controlled substances and to learn to manage her mental illness. She has not done so. She also continued to gamble and live in a transient state.

The court took into consideration that KW had been placed with a relative. The court found that respondent and her sister did not have a good relationship and therefore the parent-child relationship could not be maintained by creating a guardianship rather than terminating respondent’s parental rights. Respondent’s sister specifically testified that she would not foster KW’s relationship with respondent and respondent accused her sister of adopting her older daughter and “[i]llegally” giving “her away to a lady on the eastside.” Ultimately, given the record evidence, we discern no error in the court’s decision.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood