

STATE OF MICHIGAN
COURT OF APPEALS

In re S. R. Hall, Minor.

UNPUBLISHED
May 26, 2016

No. 329497
Shiawassee Circuit Court
Family Division
LC No. 04-010967-NA

Before: GADOLA, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to SH pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

SH was first removed from respondent's care in June 2012 due to concerns that respondent had neglected or refused to provide proper care and support and concerns about unfit housing. During the adjudication hearing on the June 2012 petition, respondent pleaded no contest to the allegations in the petition and the trial court took jurisdiction over SH. A termination petition was filed with respect to SH's father, but, after concluding that statutory grounds to terminate his rights had been established, the trial court concluded that the termination would not be in SH's best interests. Subsequently, SH was returned to respondent's care for a short period.

On June 26, 2014, petitioner filed a second petition seeking removal of SH and her half-sister, VB, from respondent's care. The petition alleged that there was improper supervision and issues of domestic violence between respondent and VB's father. Respondent and VB's father pleaded no contest to the allegations in the second petition, and an order of adjudication was entered on August 29, 2014. Respondent was provided with services, including a psychological evaluation, supervised parenting time, a parenting coach, and referrals to Catholic Charities, Adult Protective Services, Taylor Life, and the Hope Network. A caseworker testified that the Catholic Services referral was supposed to address the domestic violence issues. Additionally, a caseworker testified that respondent received services at Safe Center before she left Safe Center and returned to live with VB's father. Respondent also participated in anger management classes, parenting classes, and counseling. A caseworker, however, testified that respondent did not benefit from the services. There was also testimony that respondent would not provide documentation to show that she completed services. As a result, on December 16, 2014,

petitioner filed a petition seeking to terminate respondent's parental rights to SH.¹ Following a termination hearing, the trial court found that there were grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). The court also found that that termination of respondent's parental rights was in SH's best interests.²

Respondent first argues that the trial court erred by finding that there were statutory grounds for termination of her parental rights.³ We disagree.

Petitioner bears the burden of proving by clear and convincing evidence the existence of at least one of the statutory grounds to terminate a parent's parental rights. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

MCL 712A.19b(3)(c)(i) provides as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence . . .

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(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.

The record reflects that SH was first taken into foster care in 2012. Respondent received services, which she apparently completed, and SH was returned to her care. However, due to concerns about domestic violence and improper supervision, SH was again removed from respondent's care before the original case had been closed. With regard to the allegations of improper supervision, respondent's parenting coach testified that respondent was unable to adequately parent during parenting times. The parenting coach testified to several instances

¹ Petitioner did not seek to terminate respondent's parental rights to VB.

² The trial court also terminated the parental rights of SH's father. That decision has not been challenged on appeal.

³ This Court reviews an order terminating parental rights under the clearly erroneous standard. MCR 3.977(K). A decision of the trial court is clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

where SH provided better supervision for VB than the supervision respondent provided. The parenting coach also testified that respondent's parenting style is not mature and age appropriate because she does not use toys or initiate age appropriate activities. The parenting coach noted that respondent had made progress and was coachable; however, she opined that respondent is not able to parent and indicated that SH would become the effective parent in a home with respondent and VB. In addition, Dr. Harold Sommerschild, the clinical psychologist that evaluated respondent, testified that respondent's ability to process was "very, very poor," that she had a poor attention span, poor processing speed, and that her understanding of parenting was "conflicted." He testified that respondent only had a marginal ability to parent and that in a one-parent household he would be concerned about the children's safety. Given these facts, it is apparent that one condition leading to adjudication, respondent's ability to provide proper parenting to SH, continues to exist. SH spent three of her six years in foster care while respondent attempted to rectify the conditions leading to adjudication. The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) was established by clear and convincing evidence.

The trial court also found that MCL 712A.19b(3)(g) and (j) had been established by clear and convincing evidence. Termination is proper under subsections (g) and (j) if:

(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.

* * *

(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.

Termination under subsection (g) "requires 'clear and convincing evidence' of both a failure and an inability to provide proper care and custody." *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). Compliance with the parent-agency agreement is evidence of an ability to provide proper care and custody, and failure to comply is evidence of a failure to provide proper care and custody. *In re JK*, 468 Mich at 214. The trial court found that Dr. Sommerschild's report indicated that respondent only had a marginal ability to parent. The court also found that respondent failed to benefit from services and was unlikely to do so in the future. Coupled with the testimony from respondent's parenting coach that she was unable to adequately parent during parenting times, and the length of time that the case had been proceeding, the trial court's finding that respondent had failed to provide proper care and custody and would be unlikely to do so within a reasonable time given SH's age was not clearly erroneous.

Termination under subsection (j) is appropriate if the evidence established that a respondent is not in a position to "safeguard the children from injury." *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). This statutory factor also requires a court to look at emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). While it is true

that there was no evidence that the children had been abused, respondent acknowledged that she had a past history of being in abusive relationships, including a relationship with an unnamed boyfriend in 2004, as well as SH's father and VB's father. Respondent testified that the 2004 boyfriend pushed her out of a van, causing her to sustain a severe head injury requiring hospitalization, brain surgery, and rehabilitative therapy. She also testified that SH's father was abusive to her and that VB's father would physically and verbally abuse her. The record reflects that SH and VB were removed in June 2014 after respondent spent a week in the hospital with bruises covering her body. Respondent testified that VB's father caused some of the injuries and that she inflicted others on herself because of the verbal abuse he inflicted upon her. The physical and verbal abuse occurred in front of the children. Further, respondent continued to reside with VB's father for at least six months after the children were removed. Nothing on the record indicated that the history of engaging in abusive relationships was broken, especially in light of evidence that respondent did not initially want to end her relationship with VB's father even though she had been so badly abused that she had been hospitalized for a week. That the children had not been similarly abused was fortunate, but was not evidence of a critical distinction under the facts in this case. The trial court did not clearly err in finding a statutory basis for termination under MCL 712A.19b(3)(j).

Respondent also argues that the trial court erred in finding that termination of her parental rights was in SH's best interests. We disagree.

“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 be made.” MCL 712A.19b(5). The trial court must find by a preponderance of the evidence that termination is in the best interests of the children. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The children's bond to the parent, the parent's parenting ability, and the children's need for permanency, stability, and finality are all factors for the court to consider in deciding whether termination is in the best interests of the children. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

The trial court found that termination was in SH's best interests because of her need for permanence. It is undisputed that the case was open since 2012. When SH was briefly returned to respondent's care, she had behavioral problems at school, which included barking at people and growling.⁴ The behavioral issues, however, did not continue when SH was returned to foster care. As noted, there was also extensive testimony about respondent's history of entering relationships marked by domestic violence, and respondent acknowledged that the domestic abuse occurred in front of her children. The testimony also indicated that respondent was not able to adequately supervise her children and that SH would likely take on parenting responsibility if she were placed with VB and respondent. Accordingly, on these facts, the trial

⁴ The parenting coach testified that, on occasion, respondent would growl during parenting time visits.

court did not clearly err in finding that termination of respondent's parental rights was in SH's best interests.

Affirmed.

/s/ Michael F. Gadola
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro