STATE OF MICHIGAN

COURT OF APPEALS

In re DOWELL/LANDRUM, Minors.

UNPUBLISHED
June 14, 2016

No. 329730
Oakland Circuit Court
Family Division
LC No. 2010-773030-NA

Before: JANSEN, P.J., and O'CONNELL and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor children, "TD" and "DL," under MCL 712A.19b(3)(b)(*i*) (parent caused physical injury), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to parent). We affirm.

I. FACTUAL BACKGROUND

During the pendency of the proceedings, the children were placed with their maternal grandmother, who had cared for respondent's oldest child, "DD," in a guardianship for seven years. DD is not one of the children involved in this case. In the instant case, respondent had resisted placing the children with her mother, but no other suitable relatives were available. Respondent gave birth to TD, who tested positive for marijuana at birth. The child was removed from respondent's custody, and respondent was provided services, including counseling, parenting classes, and drug screens and treatment. She demonstrated "exceptional parenting skills," and the child was returned in November 2010.

Another petition for temporary custody was filed in May 2011. Allegations included that respondent had a physical altercation with another resident in the Lighthouse program, respondent continued to use marijuana, and respondent did not receive mental health treatment. Again, respondent made progress in services. In August 2012, a Child Protective Services (CPS) complaint was received alleging improper supervision and abandonment of TD. The court allowed TD to remain with respondent and found respondent compliant with mental health services.

DL was born and taken under the jurisdiction of the court because he, too, tested positive for marijuana. Respondent again complied with services, and jurisdiction was terminated in February 2013. An original petition to terminate respondent's parental rights to the minor

children was filed in April 2015. The petition alleged physical abuse, extensive CPS history, leaving the children without proper care or custody, and failure to comply with previous services.

Before the termination hearing, petitioner filed a motion to admit statements TD made in a forensic interview under the "tender years" exception to the hearsay rule MCR 3.972(C)(2). At the hearing, Sarah Killips, MSW, a forensic interviewer for CARE House, testified that she interviewed TD, who was four years old at the time, in May 2015. Killips had been qualified as an expert over 30 times and was so qualified in this case as well. She testified that after she ascertained that TD knew the difference between truth and lies, TD asked, "[C]an I tell you something?" TD then stated, "My brother [AL] had sex with me."[1] Killips testified that for a young child to spontaneously disclose information in this manner was not unusual and happened quite often. It was not an indication of coaching. Asked where on her body she was touched, the child pointed between her legs and said her "private parts." She also said that AL "peed" in her mouth and on her pajamas, and put a knife on her private area. The referee then viewed a DVD of Killips's interview with TD and ruled the statements admissible. The referee found the statements trustworthy, noting that TD also stated that her mother "got angry and we had to leave [AL]," and also that "my mom whipped him with a belt."

At the termination hearing, Dr. Nathan Goymerac, qualified as an expert in traumatic versus nontraumatic injuries, testified that he saw both TD and DL in the emergency room on March 31, 2015. The children were brought in by their maternal grandmother after being referred by CPS for possible physical abuse. Dr. Goymerac found several linear wounds to TD's upper back, left forearm, and both legs. TD attributed these to being struck with a broom and mop by her mother.[2] Dr. Goymerac diagnosed multiple abrasions and possible child abuse. There were concerns of nonaccidental injuries because of the pattern of the marks and the patient's statement.

Dr. Goymerac testified that respondent's younger child, DL, also had multiple abrasions that were attributable to possible child abuse and nonaccidental trauma. DL had multiple healing abrasions and circular lesions to the chest and forehead, as well as linear abrasions to the right arm and back, and scabbed-over lesions on both legs. The circular lesions could have been cigarette burns. Dr. Goymerac reported the children's injuries to CPS. He opined that although some of the injuries could have been accidental, their location and the involvement of multiple different areas of the body led to concerns of child abuse. An exact timeframe could not be pinpointed, but the scabbed-over injuries would have been inflicted "within weeks."

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[1] AL was the son of a woman who looked after respondent's children and with whom respondent was close.

[2] Respondent's attorney raised a continuing hearsay objection to statements made by the child to third parties because allegations in a petition to terminate parental rights at the initial disposition hearing must be proven by clear and convincing, legally admissible evidence. MCR 3.977(E)(3). The court overruled this particular objection on the basis that the medical treatment exception to the hearsay rule applied in this case. Respondent does not raise an argument on appeal regarding hearsay.

Respondent denied abusing the children and blamed their injuries on rough, active play. Respondent did not believe that TD had been sexually abused. Respondent allowed her friend to babysit TD and DL, but insisted that she never let AL around her children after she heard that allegations of child sexual abuse had been made against him. AL was placed on probation in a criminal case involving child sexual abuse, and he was not allowed to be around other children. However, respondent believed that AL and TD had probably seen each other while "coming and going." Respondent testified regarding an incident in January 2013, when she took TD to the hospital because "some pee was found on her pajamas." The incident was reported as possible sexual abuse. Respondent also reported the problem to police because of "allegations and accusations going around that [TD] had been molested by [AL]."

Respondent presented the testimony of her children's pediatrician, Dr. Moniruzzaman Khan, who testified that he saw the children regularly for checkups and illnesses and never noticed any injuries suggestive of child abuse. The director of the children's preschool also testified that she never observed or heard about any such injuries to the children.

The referee found that respondent had neglected the minor children by leaving them with inappropriate caretakers. The referee found that respondent had an assaultive history. The referee also determined that respondent caused the injuries to TD and DL. These injuries would have been visible and painful, and respondent's failure to seek treatment suggested that she caused the injuries. Although respondent received numerous services in the past, the court found that she had not benefited. The court suspended parenting time and set the best-interest hearing for August 2015.

At the best-interest hearing, Dr. Melissa Sulfaro, of the Oakland Psychological Clinic, qualified as an expert in psychology, testified that she evaluated respondent in August 2015. Dr. Sulfaro opined that respondent's arrests, lack of stable housing, mental instability, drug use, and use of a caretaker whose son was on probation for child sexual abuse all posed a risk to the children that outweighed the mother-child bond and any potential benefits of reunification. Dr. Sulfaro thought that giving respondent more time and services to correct her problems would not likely produce a different result.

Dawn Williams, foster-care worker for petitioner, testified that she had observed respondent's parenting times and saw the children with their maternal grandmother, the relative caretaker. With their grandmother, the children were more friendly, talkative, organized, and willing to listen to directions. When the children first came into care, in parenting times with respondent, they would scream, yell, and run around. Respondent had difficulty controlling them. After observing three parenting times, Williams could not say there was a bond between respondent and the children. The children did not run up to respondent, give her hugs or kisses, or ask for their mom. Instead, they were much more excited to see their grandmother.

The court found termination to be in the children's best interests. The court referred to the multiple times the court took jurisdiction over the children and the incidents of nonaccidental trauma. The court also referred to the fact that the children were thriving in their placement, and the maternal grandmother intended to adopt the children. The court opined that, although placement with relatives would ordinarily favor giving respondent more time, respondent and her

mother did not get along and respondent was unlikely to be able to sustain a long-term commitment to caring for the children.

II. STATUTORY GROUNDS

Respondent argues, first, that clear and convincing evidence did not support termination of her parental rights under any statutory ground. We disagree.

Respondent's parental rights were terminated under MCL 712A.19b(3)(b)(*i*), (g), and (j), which provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
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> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
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> * * *
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> (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.
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> * * *
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> (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 of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination, and proves that termination is in the children's best interests. MCR 3.977(E); MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). " '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.' " *Id*. (citation omitted).

The trial court did not err in concluding that MCL 712A.19b(3)(b)(*i*) was established by clear and convincing evidence. Dr. Goymerac found the injuries nonaccidental. The injuries on DL were healing and did not appear to be new injuries. Dr. Goymerac did not see any recent

wounds on DL. TD told Dr. Goymerac that respondent hit her with a broom and a mop. Respondent had custody of the children before they were removed from her care, and the children's grandmother took them to the hospital in connection with the injuries a couple of days after they were placed in her care. Thus, the evidence indicates that respondent had custody of the children at the time that the injuries were inflicted. Respondent contends on appeal that she provided evidence that the children were not injured. However, there was ample evidence in the record regarding the children's injuries because Dr. Goymerac testified regarding the injuries, and there were photographs admitted into evidence that showed the injuries. Therefore, the court did not err in concluding that MCL 712A.19b(3)(b)(*i*) provided a statutory ground for termination. Furthermore, there was a reasonable likelihood that the children would suffer injury or abuse in the foreseeable future if placed in respondent's home because there was no indication that respondent would alter her behavior so that the children would not suffer physical injuries in the future. See MCL 712A.19b(3)(b)(*i*).

The trial court also did not err in terminating respondent's parental rights under MCL 712A.19b(3)(g) and (j). With regard to the incident of sexual abuse, TD's statements regarding sexual abuse by AL were found admissible under MCR 3.972(C), and respondent does not challenge the admissibility of the statements or the DVD. Respondent testified that she did not allow AL to be around her children after he was placed on probation in relation to a separate incident involving sexual abuse. However, respondent agreed that it was likely that AL would have been around TD when his mother was watching TD and DL, and respondent testified that AL and TD would have encountered each other when they were "coming and going." Thus, the evidence indicated that respondent failed to protect the children from sexual abuse when she continued to place her children in situations where they might have encountered AL after she learned of the allegations of sexual assault.

With regard to the physical injuries that the children suffered, although respondent claimed that she did not cause the injuries, termination under subsections (g) and (j) has been upheld even in the absence of definitive proof regarding the identity of the abuser, where the evidence has shown that the parent either caused the injuries or failed to protect the children. See *In re VanDalen*, 293 Mich App 120, 139-140; 809 NW2d 412 (2011); *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007). Here, there was evidence that the children suffered physical injuries while in respondent's care, and TD directly attributed her injuries to respondent. Therefore, respondent failed to provide proper care and custody of the children, and the physical injuries indicate that there is a reasonable likelihood that the children would be harmed if returned to respondent's home. See MCL 712A.19b(3)(g) and (j).

There were other circumstances supporting termination under MCL 712A.19b(3)(g) and (j). The children were found in respondent's car during a traffic stop without proper car seats or booster seats. Respondent spent nearly a month in jail and did not provide a suitable placement for the children. Instead, all of the placement options that she suggested were found to be unsuitable. There was no indication that respondent would be able to provide proper care and custody within a reasonable time considering the young ages of the children because respondent failed to make progress with regard to the above problems in spite of consistent court intervention. Accordingly, the court properly concluded that respondent failed to provide proper care or custody for the children and that there was a reasonable likelihood, based on respondent's conduct or capacity, that the children would be harmed if returned to respondent's home. After

carefully examining the record, we find no clear error in the trial court's conclusion that clear and convincing evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(b)(*i*), (g), and (j).

Respondent argues in connection with the statutory grounds for termination that petitioner should have provided services. However, petitioner does not need to provide services when the permanency goal is termination. See *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Accordingly, petitioner did not need to provide services because the permanency goal was termination.

III. BEST INTERESTS OF THE CHILDREN

Respondent also argues that the court erred in determining that termination was in the best interests of the children. We disagree.

Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights if termination is in the children's best interests. MCR 3.977(E); MCL 712A.19b(5). We review for clear error a trial court's decision that termination is in a child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The standard of proof for best interests is preponderance of the evidence. *Id*.

In the case at bar, the court did not clearly err in finding termination to be in the children's best interests. When evaluating best interests, the court may look to the bond between the parent and the child, and the child's need for permanency, stability, and finality. *Olive/Metts*, 297 Mich App at 41-42. The court may also consider the parent's parenting ability, and the advantages of a foster home over the respondent's home. *Id*. at 42. The 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." *White*, 303 Mich App at 714.

Respondent argues that termination was not in the children's best interests because of the loving bond they shared with her and because they were placed with a relative. We conclude, however, that the court did not clearly err in finding termination to be in the children's best interests. The evidence indicated that respondent neglected and physically abused both children. She left them with inappropriate caretakers. While respondent did benefit from services previously, she failed to maintain the improvements she made. There was also testimony that the children were doing well in the care of their grandmother, their behavior improved under her care, and there was a possibility of adoption. Although there was testimony supporting the fact that there was a bond between respondent and her children, Williams testified that she did not observe a bond between respondent and her children during parenting time. She also believed that returning the children to respondent would pose a risk of harm because of the allegations of neglect and abuse, as well as respondent's ongoing criminal history. Additionally, the facts support a finding that the grandmother would provide the children with permanency, stability, and finality considering that the children were doing well in her care. The trial court did not err in relying on the testimony of Dr. Sulfaro and caseworker Williams to find that giving respondent more time and services to work on her problems would not likely result in respondent being able to properly care for her children.

As for the effect of relative care, "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*, 297 Mich App at 43. The court must consider the fact that the child is placed with a relative in its best-interest determination, but the court may terminate the respondent's parental rights if it finds that termination is in the child's best interests even if the child is placed with relatives. *Id*. The court expressly addressed the fact that the children were residing with their maternal grandmother. However, the court considered the fact that respondent has a "tumultuous relationship" with her mother, and, therefore, the ordinary circumstances for application of this rule did not necessarily apply. Respondent would need to work cooperatively with her mother while visiting her children and attempting to regain custody. However, respondent and her mother had a long history of animosity that would prevent cooperation. The evidence showed little chance that their relationship could improve sufficiently to benefit the children. Therefore, the trial court did adequately consider relative care and did not err in its analysis or conclusions. Accordingly, the court properly determined that termination was in the best interests of the children.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Riordan