

STATE OF MICHIGAN
COURT OF APPEALS

In re S. RENNIE II, Minor.

UNPUBLISHED
June 21, 2016

No. 330315
Eaton Circuit Court
Family Division
LC No. 15-019134-NA

Before: METER, P.J., and SHAPIRO and O'BRIEN, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to his son, SR, under MCL 712A.19b(3)(b) (physical injury or abuse) and (j) (reasonable likelihood of harm if returned). We affirm.

I. BACKGROUND

Respondent and SR's mother were romantically involved for a number of years. SR's mother testified that during the course of their relationship, she and respondent used a lot of drugs and engaged in a lot of fights, including verbal and physical altercations. Respondent testified that he and SR's mother used methamphetamines three or four times a week for the majority of their relationship. SR's mother testified that there were two incidents of domestic violence sometime during 2005 and 2006 or 2007, resulting in two convictions against respondent.

Respondent began a new relationship in 2011. As with SR's mother, respondent's new relationship was characterized by drug use. Although both respondent and his girlfriend stopped using methamphetamines, respondent's girlfriend returned to abusing drugs. She was also convicted of fourth-degree child abuse for abusing SR.

SR was removed from his mother's care in early 2012. He was first placed with her niece and then with respondent. However, following an incident in February 2015 wherein SR sustained bleeding on the left side of the brain and a fractured liver, SR was again placed with his mother's niece.

II. ANALYSIS

A. STANDARD OF REVIEW

“ ‘We review for clear error both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest’ under MCL 712A.19b(5).” *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012), quoting *In re Trejo, Minors*, 462 Mich. 341, 356-357; 612 NW2d 407 (2000). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed.” *In re Campbell*, 170 Mich App 243, 253-254; 428 NW2d 347 (1988). In making that determination, “regard 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); see also MCR 2.613(C).

B. STATUTORY GROUNDS

A trial court’s grounds for terminating parental rights under MCL 712A.19b must have been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). A trial court need only find sufficient evidence supporting one statutory ground to terminate a respondent’s parental rights under MCL 712A.19b(3). *In re Trejo*, 462 Mich at 360.

The trial court found sufficient evidence to terminate respondent’s parental rights under the following statutory grounds:

(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:

(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.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.

(iii) A nonparent adult’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 by the nonparent adult in the foreseeable future if placed in the parent’s home.

* * *

(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. [MCL 712A.19b(3).]

In arguing that it was improper to terminate his parental rights under § 19b(3)(j), respondent asserts that the trial court clearly erred in relying on factual findings regarding respondent's alleged drug abuse and physical abuse of SR. Although it is not clear when he stopped using methamphetamines, given his testimony that he did so in March 2012 and the testimony of his girlfriend that he stopping using in 2013, respondent correctly notes that there was insufficient evidence of use of methamphetamines as of the termination hearing.

However, his frequent use of methamphetamines throughout his relationship with SR's mother and the beginning of his new romantic relationship was a legitimate concern. Notably, respondent's use of methamphetamines post-dated the birth of SR. Generally, a trial court may rely on a parent's history in determining whether the child would be harmed if returned to the parent's care. See *In re Archer*, 277 Mich App 71, 75; 744 NW2d 1 (2007). Further, albeit in the context of its best-interests analysis, the trial court found that respondent lacked an appreciation for the extent and implications of his girlfriend's drug use in the home.

In any event, the trial court expressly stated that respondent's physical abuse of SR was the more important factor underlying its finding with regard to MCL 712A.19b(3)(j). The trial court relied on testimony by the doctor who attended to SR in February 2015 in the pediatric intensive care unit at Sparrow Hospital in Lansing. The doctor testified that his examination of SR revealed non-accidental injuries, including some that were over 18 hours old. Additionally, the child's foster mother testified that SR made to her more than one statement about respondent hitting him. Also, Carrie Gregg, an expert in the field of forensic interviewing, testified that SR reported to her that respondent got mad and hit him on multiple areas of the body. Numerous witnesses also testified that SR was fearful of respondent. The trial court found that respondent's and his girlfriend's testimony regarding SR's injuries lacked credibility, and we reject any suggestion by respondent to second-guess that determination, given that the trial court was able to observe the witnesses. See *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).

Respondent faults the trial court for not specifically indicating how it determined that he, as opposed to his girlfriend, had abused SR. However, "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2).¹

¹ In addition, even if there had not been evidence of respondent himself hitting the child, at the very least respondent failed to protect the child, who had been presenting with bruising—bruising that, according to respondent, prompted him to call the child's mother—from a person with a history of drug use and child abuse.

The court's finding that MCL 712A.19b(3)(j) was established is supported by the record evidence. In light of this, we need not review the propriety of the court's other findings with regard to the statutory grounds. *In re Trejo*, 462 Mich at 360.

C. BEST INTERESTS

If the trial court determines that clear and convincing evidence supports a statutory basis for the termination of parental rights, "it shall order termination of parental rights if it finds 'that termination of parental rights is in the child's best interests[.]'" *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009), quoting MCL 712A.19b(5). In deciding a child's best interests, a court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); A trial court may also consider a parent's history, including a history of substance abuse. See *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

Contrary to respondent's argument, the trial court did not clearly err in determining that SR's current fear of respondent undercut the strength of any bond that continued to exist between the two. Respondent argues that the evidence established that SR was not necessarily afraid of respondent, but rather he associated respondent with fear of his girlfriend. Respondent explains that when Gregg performed the forensic interview, she observed SR whining in the corner only when the issue of his girlfriend arose. This is true, but Gregg also testified that SR disclosed that respondent hit him on various parts of his body when respondent gets mad. Further, other witnesses also testified that SR was fearful of respondent. Although some testimony indicated that eventually SR would warm to respondent during visits, SR did so only under his foster mother's watchful eye and reassurance. Moreover, testimony about the extreme nature of SR's reaction to visiting with respondent is significant.²

Respondent argues that the trial court erroneously relied on his girlfriend's drug abuse and the existence of domestic violence to conclude that his ability to parent was hindered by questionable moral fitness. Respondent did testify that he was not aware of his girlfriend's more recent drug use while caring for SR, and she corroborated his testimony, stating that she actually hid her drug use from respondent. The trial court did not expressly refer to this testimony, but as noted, it generally found that respondent and his girlfriend lacked credibility. We reiterate that "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2).³ In addition,

² Even if SR was fearful of respondent's home because of his girlfriend rather than respondent, this still supports a conclusion that the strength of the child-parent bond had been weakened. In this scenario, respondent failed to provide a home environment that allowed his son to feel safe. As a result, consistent with numerous witnesses' testimony, SR looked to his foster mother for protection, not to respondent.

³ We also note that the girlfriend relapsed in April 2015 (after the removal of SR), but respondent stated that he continued living with her because he "[has] a big heart"

contrary to respondent's argument, there was adequate evidence regarding domestic violence for the trial court to properly consider this factor as weighing against respondent's reunification with SR.

Finally, contrary to respondent's assertion on appeal, the trial court did not err in concluding that despite the placement with a relative, termination was in SR's best interests. Respondent acknowledges that the trial court properly observed that "because 'a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a),' 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." *In re Olive/Metts*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). However, the evidence showed that SR had been provided stability and permanency by his foster mother, who testified that she was willing to make a commitment to SR's care. Indeed, SR's mother indicated that this was a good placement for SR, and respondent even acknowledged that he believed the foster family to be comprised of good people. SR's foster mother testified that SR's behavior problems subsided after visitations with respondent were stopped and that his bruising problems had ceased. In light of the needs of this child and the continuing volatility of his environment while in respondent's care, the court's conclusion that termination was in his best interests was amply supported.

Affirmed.

/s/ Patrick M. Meter
/s/ Douglas B. Shapiro
/s/ Colleen A. O'Brien