

STATE OF MICHIGAN
COURT OF APPEALS

In re K. WOODRUFF, Minor.

UNPUBLISHED
October 25, 2016

No. 331649
Oakland Circuit Court
Family Division
LC No. 14-817555-NA

Before: GADOLA, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Respondent mother appeals as of right an order terminating her parental rights to the minor child KW pursuant to MCL 712.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (parent has failed to provide proper care or custody), and (j) (reasonable likelihood of harm if child returned to parent). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Respondent is KW's maternal grandmother. Respondent adopted KW in 2010, after the parental rights of KW's biological mother were terminated for severely abusing the child. In March 2014, the court authorized a petition seeking court jurisdiction over KW and removal from respondent's care. According to the petition, respondent permitted the child's biological mother to visit and babysit the child, despite a no contact order. Further, in December 2013, respondent allowed a man, who was paroled, into her home, and this man invited two other men to the home who sexually abused respondent's adult cognitively impaired child while respondent was present in the home. When made aware of the situation, respondent failed to report the incident to law enforcement and denied the allegations. According to the petition, respondent continued to have contact and allow the parolee in her home, placing the minor child at risk of harm.

Respondent entered a no contest plea to an amended petition and the court assumed jurisdiction over KW. At disposition, the court ordered respondent to comply with a treatment plan. Respondent's treatment plan required a psychological evaluation, as well as mental health services through Community Network Services (CNS), where she had already had a treatment relationship. Respondent's goals were to make appropriate decisions and achieve emotional stability. Respondent was to have no contact with KW's biological mother and refrain from exposing the child to unsuitable persons. Respondent was to have employment and housing. Respondent was also required to complete a parenting class focusing on parenting a special needs child. The biological mother's abuse resulted in KW having Shaken Baby Syndrome, and

the child is permanently brain damaged, partially blind, has a shunt in her head, and needs 24-hour care. The child is nonverbal with a cognitive level of a child who is 18 to 24 months old. The child was placed in a specialized foster care home, and respondent was given supervised visits at the agency.

At the December 2014 review hearing, the caseworker reported she had received many records concerning respondent's past mental health treatment, which included treatment dating back to 1998 and a prior suicide attempt. The caseworker expressed concern that respondent's extensive mental health history could prohibit her from caring for the child. At the May 2015 review hearing, the caseworker recommended the plan change from reunification to adoption. The caseworker felt that respondent would not be able to provide for the child's extensive needs. The caseworker pointed out that respondent's psychological evaluation revealed that she had unrealistic expectations for the child's care, had extensive mental health needs, and she failed to acknowledge why her child was in care. The caseworker submitted a termination petition in August 2015. Following the proofs, the court entered orders terminating respondent's parental rights. Respondent appeals.

II. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Only one statutory ground need be established to support termination of respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

If the trial 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. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews the trial court's best-interest determination for clear error. *In re Trejo*, 462 Mich at 356-357; *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

III. STATUTORY GROUNDS

Termination of respondent's parental rights was based on MCL 712A.19b(3)(c)(i), (g), and (j), which permit termination of parental rights under the following circumstances:

(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.

* * *

(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.

In this case, the court assumed jurisdiction over KW because respondent exposed the child to harm, including allowing improper contact with adult guests including the child's biological mother, who had previously violently abused the child. Respondent also allowed a parolee into her home, and that situation led to the sexual assault of respondent's cognitively impaired adult child.

Respondent contends termination was unwarranted because there was no evidence she continued to expose the child to the biological mother or had inappropriate people at her house. She also points out that she complied with her treatment plan and had appropriate interactions with the minor child during visits. Nonetheless, the caseworker testified she was still concerned about respondent's poor judgment and how that would impact the minor child, who was very vulnerable. Respondent did not appear to understand the risk of harm her conduct posed to KW and had made no progress in this area. The caseworker felt there was a substantial risk of harm if the minor child were returned to respondent's care and that respondent had not benefited from services to a level that would assure the safety of the child. Another caseworker was also concerned that respondent failed to take responsibility for her actions that led to the child's removal and explained there was a consensus that respondent was not benefiting from her services. Respondent also had extensive mental health needs, and she had been hospitalized in August 2014 for these issues; these circumstances created additional concerns about her ability to care for KW, a special needs child. Given these circumstances, the trial court did not clearly err in finding grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j).

Respondent also contends termination was not justified because the Department of Health and Human Services (DHHS) failed to make reasonable reunification efforts. We disagree.

Generally, reasonable reunification efforts must be made to reunite the parent and child unless certain aggravating circumstances exist. *In re Mason*, 486 Mich at 152; *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); MCL 712A.19a(2). However, while DHHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondent to participate in the services that are offered. *In re Frey*, 297 Mich App at 248.

In support of her claim of inadequate reunification efforts, respondent first asserts that she was not offered specialized parenting classes as required by her treatment plan. The record shows that diligent efforts were made to locate a special needs parenting class but there simply was not one available. Respondent was instead offered, and participated in, parenting classes designed to accomplish the same goals, as well as a support group for parents of children with special needs, which satisfied this aspect of the treatment plan. Yet, respondent had not benefited from those services to the point where returning the child was safe. Given the above circumstances, respondent has not shown that DHHS failed to make reasonable efforts to provide services. *In re Mason*, 486 Mich at 152.

Respondent also contends that reunification efforts were not adequate because her visitation was inappropriately suspended for a time while this case was pending. At the July 2014 review hearing, the caseworker informed the court there was an open investigation regarding sexual abuse of the minor child while in respondent's care. Because of the investigation, the court suspended respondent's visitations pending a police report on the allegations. Then, at the September 2014 permanency planning hearing, the court was informed that Adult Protective Services had removed respondent's cognitively impaired adult daughter from her care. DHHS recommended that visitation remain suspended because it was investigating the matter involving the minor child, and also because of respondent's mental health issues. Respondent had recently checked herself into Common Ground because of her mental issues when her adult child was removed. The court continued to suspend visitation but returned respondent to supervised visits at the next review hearing in November 2014 after the investigation into alleged sexual abuse of the minor child was closed. The pending investigation into sexual abuse allegations regarding the minor child, removal of another cognitively impaired adult child, and respondent's mental state were all legitimate reasons for temporarily suspending respondent's visitation and in no way show a failure to make reasonable reunification efforts.

Respondent further asserts that reunification efforts were not reasonable because DHHS failed to convey to CNS what she was to accomplish in her mental health treatment. The record shows that DHHS lacked communication with CNS until late in the case. It was not until June 2015 that the caseworker contacted the CNS caseworker and therapist to discuss what they were doing to address respondent's failure to protect the minor child. Nonetheless the CNS therapist and caseworker were fully aware of the petition allegations and respondent's issue of failure to protect KW as respondent had communicated this information. A CNS representative had also attended family team meetings where the issues were discussed. Given these circumstances, DHHS's failure to make more extensive contact with respondent's mental health provider does not indicate that its reunification efforts were insufficient. *In re Mason*, 486 Mich at 152.

IV. BEST INTERESTS

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); *In re Olive/Metts*, 297 Mich App at 41-42. The trial court should weigh all the evidence available to determine the child's best interests. *In re White*, 303 Mich App at 713.

In finding termination was in KW's best interests, the court noted there was a bond between respondent and the minor child, but there was a question about her ability to parent her special needs child, given her mental health issues. The court also noted respondent's inability to progress beyond supervised visits and concerns about exposing her children to undesirable individuals. The court also mentioned that the child had a great need for permanency, stability and finality, given her past tragic life. Finally, the court noted the child was receiving good care in her foster home and had stability there. The trial court's decision regarding best interests is fully supported by a preponderance of evidence and not clearly erroneous.

At the best-interest hearing, the caseworker acknowledged that respondent had a suitable home and was employed. In addition, respondent was still receiving services from CNS, and she previously had appropriate visitations with her child. Nonetheless, the caseworker also opined that respondent's poor judgment continued to exist and she was unable to safely parent the minor child. The caseworker testified that there was a substantial risk of harm if the child was returned to respondent's care, because respondent failed to understand her role in exposing her special needs child to harm and additional services would not rectify respondent's poor insight and judgment.

Furthermore, KW had been in the same foster care home since May 2014, all her needs were being met there, and there were no concerns about a risk of harm in her placement. KW had a stable and permanent home environment in her current placement. The caseworker did not believe respondent could provide the same level of care or that respondent could rectify her issues in the near future. The caseworker testified that termination of respondent's parental rights was in the child's best interests. This was also the conclusion of respondent's most recent psychological evaluation.

In sum, the trial court did not clearly err in finding a preponderance of the evidence supported that termination was in KW's best interests. *In re White*, 303 Mich App at 713.

Affirmed.

/s/ Michael F. Gadola
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens