

STATE OF MICHIGAN
COURT OF APPEALS

In re A.L. KNOTT, Minor.

UNPUBLISHED
December 20, 2016

No. 331996; 331997
St. Clair Circuit Court
Family Division
LC No. 15-000422-NA

Before: SERVITTO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this consolidated appeal,¹ respondents, mother and father, appeal as of right the order terminating their parental rights to the minor child, ALK. The court terminated respondents' rights pursuant to MCL 712A.19b(3)(g) (parent failed to provide proper care or custody within a reasonable time), (i) (parental rights to sibling of the child terminated for serious and chronic neglect, and prior attempts to rehabilitate unsuccessful), and (j) (reasonable likelihood child will be harmed if returned home). We affirm.

I. BACKGROUND

ALK was previously removed from respondents' care after her meconium tested positive for THC. After taking jurisdiction in 2014, the court ordered services for both mother and father, including substance abuse and domestic violence treatment, individual counseling, and parenting classes. Respondents completed the services quickly, ALK was returned to their care in December 2014, and the case was closed in March 2015. In June 2015, the police were called to respondents' apartment for a domestic dispute. ALK was removed from respondents' care, in this case, following a domestic violence incident between mother and father in November 2015.

II. STATUTORY GROUNDS FOR TERMINATION

Mother first argues that insufficient evidence existed for the court to take jurisdiction over ALK pursuant to MCL 712A.2(b)(1) and (2). We disagree.

¹ *In re A L Knott Minor*, unpublished order of the Court of Appeals, entered March 23, 2016 (Docket Nos. 331996 and 331997).

“We review the trial court’s decision to exercise jurisdiction for clear error in light of the court’s findings of fact[.]” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004), citing *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). “Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake.” *In re Dearmon*, 303 Mich App 684, 700; 847 NW2d 514 (2014).

Child protective proceedings are divided into two phases – the adjudication phase and the dispositional phase. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006), citing MCR 3.972 and MCR 3.973. “[T]o take jurisdiction over a child, the trial court must find that the petitioner has proved by a preponderance of the evidence one or more statutory grounds for the taking of jurisdiction alleged in the petition.” *In re Kanjia*, 308 Mich App 660, 664; 866 NW2d 862 (2014), citing *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). Further, a court may order termination at the initial dispositional hearing if certain conditions are met,

including (1) that the original or amended petition requested termination, (2) that the trier of fact found by a preponderance of the evidence at the adjudicative hearing that the child came within the jurisdiction of the court, and (3) that at the initial dispositional hearing, the court finds by clear and convincing legally admissible evidence that had been introduced at the adjudicative hearing or the plea proceeding or that is introduced at the dispositional hearing that a statutory ground for termination is established, “unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule (G)(2), that termination of parental rights is not in the best interests of the child.” [*In re AMAC*, 269 Mich App at 537-538, quoting MCR 3.997(E).]

Here, the original petition requested that the court take jurisdiction over ALK pursuant to MCL 712A.2(b)(1) and (2), and that the court terminate respondents’ parental rights following a combined adjudication and termination hearing, the court took jurisdiction over ALK pursuant to MCL 712A.2(b)(1) and (2). MCL 712A.2(b) provides, in pertinent part:

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this subdivision:

(A) “Education” means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B) “Without proper custody or guardianship” does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

The trial court did not clearly err when it found that a preponderance of evidence existed to take jurisdiction over ALK pursuant to MCL 712A.2(b)(1) and (2). The police responded to domestic disputes at respondents’ apartment in June 2015 and November 2015. During the June incident, mother kicked in the apartment door, leading to a verbal altercation, while ALK was in the apartment. In November, mother retrieved a knife during an argument with father. Father was cut when he tried to take the knife from mother. Again, ALK was in the apartment at the time, and Port Huron Officers James Morgan and Daniel Stockar testified that father told them he tried to take the knife from mother out of concern for ALK. Further, officers testified that respondents appeared to be under the influence of alcohol during each incident, and mother was arrested for marijuana possession during the November incident. Thus, a preponderance of the evidence established that ALK’s mental and physical well-being was subject to a substantial risk of harm while in respondents’ care, and that respondents’ home was unfit for ALK due to drunkenness and criminality, especially in light of the prior case involving ALK.

Mother appears to argue, in part, that because neither party was charged with assault, insufficient evidence existed for the court to take jurisdiction over ALK. However, “in order for the trial court to assume jurisdiction over . . . minor children on the basis of criminality, the petitioner does not need to prove that the respondent was convicted of a crime.” *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

Next, both respondents argue that the court erred when it found clear and convincing evidence to terminate their rights to ALK pursuant to MCL 712A.19b(3)(g), (i), and (j). We disagree that the court erred when it terminated mother’s rights pursuant to MCL 712A.19b(3)(g), (i), and (j). We do agree that the court erred when it terminated father’s rights pursuant to MCL 712A.19b(3)(i), however, we find that the error was harmless because clear and convincing evidence existed to terminate father’s rights pursuant to MCL 712A.19b(3)(g) and (j).

“This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A trial court’s findings of fact are clearly erroneous if “we are definitely and firmly convinced that it made a mistake.” *Id.* at 709-710.

To terminate parental rights, the trial court must first find that the petitioner has established, by clear and convincing evidence, a statutory ground for termination. *Id.* at 713. A court may terminate parental rights pursuant to MCL 712A.19b(3)(i) if “[p]arental 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. MCL

712A.19b(3)(i). “[T]he clear language of the statute requires the court to determine the success of prior rehabilitation efforts as of the date of the termination hearing.” *In re Gach*, ___ Mich App ___, ___ NW2d ___ (2016) (Docket No. 328714); slip op at 5.

In a recent decision, this Court held that MCL 712A.19b(3)(l), which authorized termination where a “parent’s rights to another child were terminated as a result of proceedings under section 2(b) of this chapter,” violated due process. *In re Gach*, ___ Mich App at ___; slip op at 6-8. In so doing, it explained that, unlike MCL 712A.19b(3)(i), “there is no requirement under statutory ground (3)(l) that its application be limited to ‘serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.’ ” *In re Gach*, ___ Mich App at ___; slip op at 7. Thus, the limitations on terminating a parent’s rights based on prior terminations, contained in MCL 712A.19b(3)(i), help safeguard parents’ due process rights.

Clear and convincing evidence existed for the court to find that mother had previous terminations due to serious and chronic neglect and that prior attempts at rehabilitation had been unsuccessful. At the combined adjudication and termination hearing, Leah Redman, the foster care case worker during ALK’s previous case, testified that mother previously had her rights terminated to two children as the result of substance abuse and physical neglect, and to two more children due to substance abuse, threatened harm, and improper supervision. The court also admitted into evidence documents related to mother’s prior terminations corroborating this testimony, and for which the referee appeared to rely on for his recommended findings of fact and conclusions of law.

Petitioner submitted into evidence the 1997 petition requesting termination of mother’s rights to two children, the referee’s recommended findings and conclusions of law in that case, and the order terminating mother’s parental rights. Although the 1997 termination order does not indicate under which statutory grounds the court terminated mother’s rights, the referee recommended termination pursuant to MCL 712A.19b(3)(c)(i), finding that the children were removed from mother’s care following a drug raid that uncovered 30 rocks of crack-cocaine and a loaded gun in the home. He also found that mother failed to complete substance abuse services, and denied knowledge of how the crack-cocaine got into her home. Petitioner also submitted into evidence the 2009 petition requesting termination of mother’s rights to two children, the referee’s recommended findings and conclusions, and the court’s order terminating mother’s parental rights. In that case, based on the referee’s findings, the court terminated mother’s parental rights pursuant to MCL 712A.19b(3)(i), (j), and (l). The referee found that the testimony presented supported the allegations in the petition that mother used marijuana and was often intoxicated when caring for one of the children, drugs were being sold out of the home, mother used the oven to heat the home, and one child was found walking around alone at night. The referee also found that mother continued to use marijuana and alcohol during the pendency of the proceeding, and failed to complete a rehabilitation program. From the testimony at the combined adjudication and termination hearing and these exhibits, the court did not clearly err by finding clear and convincing evidence that mother’s prior terminations were the result of serious and chronic neglect. The evidence demonstrates that mother’s history of substance abuse issues prevented her from providing proper care, and placed her children in dangerous situations.

Clear and convincing evidence also existed for the court to conclude that prior attempts to rehabilitate mother had been unsuccessful. Mother's failure to participate in and benefit from substance abuse services contributed to her prior terminations. Her substance abuse issues continued in 2014 when ALK was originally removed from respondents' care due to a positive meconium screen for marijuana. Despite participating in substance abuse and other services during that case, mother continued to use marijuana and alcohol after ALK's return to respondents' care. Officers testified, at the combined adjudication and termination hearing, that she appeared intoxicated during the June and November 2015 police incidents, and that they found marijuana in her possession. Further, mother admitted to still having a substance abuse problem.

With regard to father, the court did clearly err when it terminated his rights pursuant to MCL 712A.19b(3)(i), because petitioner did not establish, by clear and convincing evidence, that father's previous termination was the result of serious and chronic neglect or physical abuse. Although the 2007 petition for termination of father's parental rights to one child, admitted as part of petitioner's evidence, alleged that father was on probation for domestic violence, failed to participate in services, and missed a majority of parenting time visits, the earlier termination order failed to provide the statutory grounds under which the court terminated father's parental rights. Thus, from this evidence, it is unclear which allegations the court determined to be true when it terminated father's rights. In addition, the testimony of Daniel Schave, the petitioner in this case, regarding father's termination for failure to participate in services or follow through with parenting time fails to establish, by clear and convincing evidence, that the termination was the result of serious and chronic neglect.

Nevertheless, even if the court clearly erred by terminating father's rights pursuant to MCL 712A.19b(3)(i), the error was harmless. Clear and convincing evidence existed to terminate both respondents' rights under MCL 712A.19b(3)(g) and (j), and a court need only find one statutory ground by clear and convincing evidence to terminate a respondents' parental rights. See *In re Utrera*, 281 Mich App 1, 24; 761 NW2d 253 (2008).

A trial court may terminate parental rights under MCL 712A.19b(3)(g) if it finds, by clear and convincing evidence, that "[t]he 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." MCL 712A.19b(3)(g). "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710.

The evidence supported the court's conclusion that respondents failed to provide ALK with proper care and custody. Despite the fact that mother's marijuana use led to ALK's original removal from respondents' care, mother continued to abuse alcohol and marijuana, leading to violent arguments with father in ALK's presence. In June 2015, mother kicked in the door to the apartment she shared with father and ALK, and got into an altercation with father. In November 2015, during an argument with father, mother retrieved a knife. Father was cut when he attempted to grab the knife. Officers testified that, during both incidents, respondents appeared to be under the influence of alcohol, and mother was found to be in possession of marijuana.

Further, father disregarded his responsibility, agreed to in a Family Team Meeting during ALK's previous case, to remove ALK from the home if he saw mother drinking.

The evidence presented also supported the court's determination that respondents would be unable to provide ALK proper care and custody within a reasonable time considering ALK's age. Mother's substance abuse issues led to four prior terminations, as well as ALK's original removal from respondents' care. Yet, despite receiving substance abuse treatment on several occasions, including during ALK's previous case, mother continued to abuse alcohol and marijuana. Further, father's history of domestic violence and failure to benefit from services offered during ALK's previous case, combined with his testimony minimizing the severity of the June and November 2015 police incidents and mother's substance abuse issues, demonstrated no reasonable expectation that he would be able to provide ALK proper care or custody within a reasonable time.

A court may terminate parental rights under MCL 712A.19b(3)(j) if "[t]here 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)(j). Petitioner presented clear and convincing evidence, at the combined adjudication and termination hearing, that ALK would likely be harmed if returned home to respondents' care. Mother's substance abuse led to disputes with father involving knives. Although ALK was not physically harmed during the June and November 2015 incidents, further disputes could lead to such harm, especially in light of respondents' failure to recognize the severity of the incidents, or of mother's substance abuse issues. Father even told Officer Morgan, during the November 2015 domestic dispute, that he tried to grab the knife from mother because he felt uneasy about her wielding a knife in ALK's presence. From this evidence, the court did not clearly err when it terminated respondents' rights to ALK pursuant to MCL 712A.19b(3)(j).

III. BEST INTERESTS

Finally, respondents argue that the court clearly erred by finding termination of their rights to be in ALK's best interests. We disagree.

This Court reviews a trial court's determination regarding best interests for clear error. *In re White*, 303 Mich App at 713. "A trial court's decision is clearly erroneous '[i]f although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.'" *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations and quotation marks omitted; alteration in original).

"The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *In re White*, 303 Mich App at 713; see also MCL 712A.19b(5). To make its best-interest determination, "the court may consider 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." *In re Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted). Further considerations may include "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." *In re White*, 303 Mich App at 714. In addition, placement with a relative should be considered, and weighs against termination. *In re Olive/Metts*, 297 Mich App at 43.

In making its best-interest determination, the court appeared to adopt the referee's findings that the bond between respondents and ALK was limited due to the period of time ALK spent in care, that respondents failed to benefit from domestic violence and substance abuse services provided in past terminations and ALK's previous case, and that respondents presented no evidence that their rights should not be terminated due to ALK's placement with a maternal aunt.² The evidence presented at trial supported the court's determination. Although mother and father testified that they felt bonded with ALK, ALK spent a significant portion of her life removed from respondents' care. Further, despite participating in substance abuse and domestic violence services during ALK's previous case, respondents failed to benefit from such services, as evidenced by the domestic violence incidents that occurred between them in June and November 2015, and mother's continued substance abuse issues. Additionally, mother makes no meaningful argument regarding why termination was not in ALK's best interests because of her placement with the maternal aunt. "A party abandons a claim when it fails to make a meaningful argument in support of its position." *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008).

Affirmed.

/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause

² We fail to find any testimony, at the combined adjudication and termination hearing, regarding ALK's placement with a maternal aunt. However, neither respondent disputes this fact. Mother argues only that, although the court considered the placement in making its best-interest determination, the placement should have weighed in respondent's favor.