STATE OF MICHIGAN

COURT OF APPEALS

In re MOORE/CRUM, Minors.

UNPUBLISHED
October 18, 2016

Nos. 332161; 332189
Berrien Circuit Court
Family Division
LC Nos. 2013-000059-NA;
2013-000079-NA;
2013-000125-NA;
2015-000050-NA

Before: K. F. KELLY, P.J., and O'CONNELL and BOONSTRA, JJ.

PER CURIAM.

In Docket No. 332161, respondent-mother appeals by right the orders of the trial court terminating her parental rights to minor children LM, KM, and AC pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm), and to QC pursuant to MCL 712A.19b(3)(g) and (j) only. In Docket No. 332189, respondent-father appeals by right the orders of the trial court terminating his parental rights to minor children AC and QC under MCL 712A.19b(3)(g) and (j).[1] We affirm in both dockets.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner, the Department of Health and Human Services (DHHS),[2] petitioned the trial court to remove LM and KM from respondent-mother's home in May 2013, after KM, then eight months old, was examined in a hospital and was found to have multiple points of trauma to

[1] The trial court also terminated the rights of LM's father and KM's unknown putative father, but they are not parties to this appeal.

[2] By Executive Order signed by the Governor on February 6, 2015, the Department of Human Services (DHS) was abolished and its functions merged with the newly created Department of Health and Human Services (DHHS). Executive Order No. 2015-4. Although these proceedings began with "DHS" as the petitioning agency, we refer to petitioner as DHHS throughout this opinion to reflect the current title of the Department.

her brain and skull that were consistent with head trauma or abuse and inconsistent with an accidental fall. Respondent-mother could provide no explanation for KM's injuries. The trial court ordered LM and KM removed and placed in foster care. LM and KM were later returned to respondent-mother's care pending an adjudication trial and dispositional hearing. In September 2013, petitioner filed an amended petition stating that respondent-mother had violated the court's order prohibiting any nonrelatives from being in respondent-mother's home without DHHS approval. The petition also alleged that respondent-mother had allowed respondent-father into the home while KM was in her custody,[3] and that respondent-mother was involved in a domestic violence incident with respondent-father, for which respondent-father was later convicted. The trial court again removed KM and LM from respondent-mother's home. AC was born to respondent-mother September 2013, and respondent-mother identified respondent-father as AC's putative father. Following the conclusion of the adjudication trial for the three children in October 2013, the trial court found that LM, KM, and AC were subject to a substantial risk of harm to their mental well-being in respondent-mother's care and found that there was criminality in the home such that the home was an unfit place for the children to live. Most pertinently, respondent-father committed domestic violence against respondent-mother in June 2013, and was found and arrested in respondent-mother's home in September 2013 after he absconded from his probation program. The trial court also found that there was a risk of anticipatory neglect to LM and AC as a result of KM's injuries. The trial court took jurisdiction over all three children with respect to respondent mother and they were placed in nonrelative foster care.

Over the next two years, respondent-mother participated in services and parenting time with varying levels of success. At times, she participated well and made progress, but each period of progress was followed by stagnation and, ultimately, regression. In April 2015, QC was born to respondent-mother, and she identified respondent-father as QC's putative father. QC was born prematurely (at 30 weeks) and remained in the hospital for a period of time. He was removed from respondent-mother's care in May 2015 after petitioner filed a petition alleging that respondent-mother did not have safe and appropriate housing, did not have the supplies necessary for a newborn child, and had very limited contact with QC during his hospitalization. In July 2015, the trial court found that QC was subject to a substantial risk of harm to his mental well-being in respondent-mother's home and found that the home was an unfit place for QC to live. The trial court also found that respondent-father had a substantial criminal history, a warrant out for charges of domestic violence, and a previous history of domestic violence. The trial court assumed jurisdiction over QC with respect to respondent-mother.

In June 2015, respondent-father acknowledged his paternity and became AC's legal father, and in November 2015, respondent-father acknowledged his paternity and became QC's legal father. Until November 2015, respondent-father did not participate in any services, did not attend parenting time, and was not involved in the care, custody, or support of AC or QC. In December 2015, petitioner filed supplemental petitions identifying respondent-father as AC and

[3] For reasons that are not entirely clear from the record, KM was returned to respondent-mother's custody approximately two months before LM was returned.

QC's legal father. After a combined adjudication trial and dispositional hearing that concluded on January 20, 2016, the trial court took jurisdiction over AC and QC as to respondent-father, terminated respondent-mother's parental rights to all four children, and terminated respondent-father's parental rights to his two children. These appeals by respondent-mother and respondent-father followed.

II. TERMINATION OF PARENTAL RIGHTS

Respondent-mother and respondent-father challenge the termination of their parental rights on several grounds. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's determination regarding termination of parental rights for clear error. *Id*. A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). This Court gives deference to "the trial court's special opportunity to judge the credibly of the witnesses." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The statutory grounds for termination at issue in this case are MCL 712A.19b(3)(c)(*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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> * * *
>
> (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.
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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.

* * *

> (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.

The trial court need only find that one statutory ground is proven by clear and convincing evidence. *HRC*, 286 Mich App at 461.

A. RESPONDENT-MOTHER (DOCKET NO. 332161)

The trial court terminated mother's parental rights to KM, AM, and AC under MCL 712A.19b(3)(c)(*i*), (g) and (j), and it terminated her parental rights to QC under MCL 712A.19b(3)(g) and (j). Respondent-mother argues that all of these statutory grounds were found in error. We disagree.

1. 712A.19b(3)(c)(*i*)

With regard to 712A.19b(3)(c)(*i*), this Court has held that that termination was proper under MCL 712A.19b(3)(c)(*i*) when "the totality of the evidence amply support[ed] that [the respondent] had not accomplished any meaningful change in the conditions" that led to the adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Here, with regard to the three children, the trial court entered the initial dispositional order on October 3, 2013, and termination was ordered on January 19, 2016; thus, well over 182 days had elapsed since the issuance of the initial dispositional order when respondent-mother's parental rights were terminated. MCL 712A.19b(3)(c)(*i*).

Respondent-mother argues that the trial court improperly based its decision on her issues with domestic violence and lack of parenting skills even though those issues were not a basis cited in the original adjudication. We disagree. The trial court's adjudication was based on petitions that alleged issues involving domestic violence, respondent-mother's continued association with respondent-father, and the fact that respondent-mother was overwhelmed by caring for her children and selected inappropriate caregivers to assist her in caring for her children, as well as anticipatory neglect based on KM's injuries. Testimony at the termination hearing supported the trial court's finding that those same conditions continued to exist at the time of termination. A CPS worker testified that respondent-mother and respondent-father's relationship was violent and hostile and involved domestic violence. Numerous caseworkers testified that respondent-mother had concealed the fact that she had a relationship with respondent-father during the pendency of the case, had not benefitted from any of the services provided, and remained unable to properly care for her children. Based on this testimony, the trial court found that respondent-mother continued to have issues regarding domestic violence and insufficient parenting skills up until the time of termination. We find no clear error in this determination. *Williams*, 286 Mich App at 272; see also *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000) (finding that the trial court did not err in terminating the respondents' parental rights when despite "time to make changes and the opportunity to take advantage of a variety of services, the conditions that originally brought the children into the

foster care system still existed" and "[t]here was no evidence that [respondents] would be likely to rectify these conditions"). The extensive time given to respondent-mother to correct these issues also supports the trial court's determination. See *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991) (stating that "the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time").

2. 712A.19b(3)(g)

Termination under MCL 712A.19b(3)(g) is proper when "[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." Respondent-mother asserts that the trial court erred by finding that she failed to provide proper care or custody of the children, claiming that the trial court relied exclusively on respondent-mother's lack of appropriate housing without taking into account pregnancy complications that caused her housing problems. We disagree.

As stated above, testimony before the trial court revealed that respondent-mother was unable to provide proper care or custody of her children due to her poor parenting skills and her continued association with respondent-father and the domestic violence in their relationship. Testimony before the trial court also revealed that respondent-mother moved to Indiana in July 2015 (while respondent-father was also living in Indiana) and did not participate in any parenting time or services between July 2015 and October 2015. A caseworker testified that respondent-mother had many chances to participate in services and parenting time but failed to take advantage of them and remained unable to provide proper care and custody of the children. Further, respondent-mother's housing problems continued beyond her pregnancies; the caseworker also testified that respondent-mother was unable to establish stable and suitable housing for the children and noted that respondent-mother moved again the week before the termination hearing. This testimony supported that respondent-mother remained unable to provide proper care or custody of the children and that there was no reasonable likelihood that she could further improve such that termination of her parental rights was proper. MCL 712A.19b(3)(g). Although respondent-mother at times showed progress in participating in services and developing her ability to care for the children, she invariably regressed and ended up in no better position than where she began. Respondent-mother had a responsibility to participate in and benefit from the services that were provided to her but failed to do so. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012).

Therefore, the trial court did not err by finding that respondent-mother could not provide proper care and custody of her children and would not be able to do so within a reasonable time such that termination of respondent-mother's parental rights was proper under MCL 712A.19b(3)(g). See *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005), superseded by statute in part on other grounds in MCL 712.A19b(5) (finding no error in termination of the respondent's parental rights when respondent "did not sufficiently benefit from the services offered to enable the court to find that she could provide a home for her children in which they would no longer be at risk of harm"); see also *In re White*, 303 Mich App 701, 712-713; 846 NW2d 61 (2014) (finding the trial court did not clearly err when it determined that the respondent-mother could not provide her children with proper care and custody and the

children were likely to be harmed if returned to her care because she had a history of inviting men with criminal backgrounds into her home and continued to do so throughout the pendency of the case).

3. 712A.19b(3)(j)

Termination under MCL 712A.19(b)(3)(j) is proper when "[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." The harm contemplated in MCL 712A.19(b)(3)(j) can be either physical harm, emotional harm, or both. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *White*, 303 Mich App at 711. Respondent-mother claims that the trial court's finding that this statutory ground was proven was mere conjecture. We disagree. Respondent-mother's extensive history of failure to comply with or benefit from her service plan, failure to maintain appropriate housing, and continued association with respondent-father despite unresolved domestic violence issues provided a solid basis from which the trial court could determine that there was a reasonable likelihood that the children would be harmed if they were returned to mother's care and custody. See *White*, 303 Mich App at 712-713 (finding the trial court did not clearly err when it determined that the mother could not provide her children with proper care and custody, and the children were likely to be harmed if returned to her care, because she had a history of inviting men with criminal backgrounds into her home and continued to do so throughout the pendency of the case); see also *In re Laster*, 303 Mich App 485, 494; 845 NW2d 540 (2013) (stating that termination of the mother's parental rights under subsection (j) was supported by the fact that "[d]uring the approximately two years that the children were in the court's temporary custody, respondent-mother failed to maintain employment and obtain suitable housing, often living with others").

B. RESPONDENT-FATHER (DOCKET NO. 332189)

The trial court terminated respondent-father's parental rights to AC and QC under MCL 712A.19b(3)(g) and (j). Respondent-father argues, with respect to both grounds, that because he did not have a mandatory case service plan until he became the legal father of his children in June 2015, there was not enough time for the trial court to conclude that either statutory ground was satisfied. We disagree. A caseworker testified that she regularly communicated with respondent-father between October 2013 and July 2015, and she stated that although respondent-father understood what he needed to do to become AC's legal father, he failed to do so until June 2015. Testimony at trial established that respondent-father was in and out of jail, lived at various residences during the pendency of the case, and did not participate in any services before or after he became his children's legal father until the final month before the termination hearing. Even though AC was born in September 2013, respondent-father did not become her legal father until June 2015 and did not meet her for the first time until after October 2015. Respondent-father was in jail for part of that time, but when he was out of jail he did not engage in visitation or services and moved to Indiana for a time.

At the time of the termination hearing, respondent-father was unemployed and living with one of his sisters, whose home he had moved into too recently for DHHS to determine

whether it was appropriate for the children. A caseworker testified that in the three parenting times respondent-father attended near the end of the case, he was unsure what to do with AC and did not know how to change QC's diaper, prepare a bottle, or calm him down. The caseworker testified that respondent-father would not be able to provide proper care and custody for AC and QC, especially because he had a significant criminal history, he was in jail again at the time of the termination hearing, and he essentially abandoned the children for an extended period of time.

In sum, respondent-father was almost completely absent from the lives of his children. Although he may not have had a duty to participate in a case service plan until he became AC's legal respondent-father, his failure to provide any care or custody for either of the children during the years that this case was pending is indicative of his inability to provide for them in the future. Respondent-father's convictions for domestic violence, his additional criminal history, and his repeated incarcerations also affected his ability to provide proper care and custody for AC and QC. Although respondent-father claims that the time after he acknowledged his paternity of AC in June 2015 was too short for the trial court to make any findings regarding his ability to provide for the children in the future, it is undisputed that even after acknowledging paternity he continued his complete failure to engage in any services or visitation until the end of October 2015. On the basis of this evidence, the trial court did not err by finding that respondent-father could not provide proper care and custody of his children and would not be able to do so within a reasonable time, such that termination of his parental rights was proper under MCL 712A.19b(3)(g); nor did it err in holding that this evidence also affected his ability to keep his children safe from harm. See *White*, 303 Mich App at 712-713; see also *Laster*, 303 Mich App at 494.

Respondent-father also claims that the trial court's termination under subsection (g) represented termination of his rights exclusively on the basis that he was in jail. Pursuant to *Mason*, 486 Mich at 160, "[t]he mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." However, the record demonstrates that respondent-father was only incarcerated during part of the time that this case was pending and that the trial court did not rely on the mere fact of respondent-father's incarceration as the basis for finding that he could not provide proper care and custody of AC and QC.

III. BEST-INTEREST DETERMINATION

Respondents also argue that the trial court erred in finding that termination of their parental rights was in the children's best interests. We disagree. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error the trial court's findings regarding best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "In deciding whether termination is in the child's best interests, 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." *Id*. at 41-42 (citations omitted). The trial court may also consider whether it is likely that the child could be returned to the parent's home in the foreseeable future, *In re Frey*, 297 Mich App at 249, and it is proper to consider evidence that the child is not safe with the parent and is thriving in foster care. *VanDalen*, 293 Mich App at 142.

Respondent-mother and respondent-father argue that the trial court clearly erred by determining that termination was in the children's best interests because the court failed to consider each child's best interests separately and the analysis was based only on the testimony of minimally informed witnesses. We disagree. "[T]he trial court has a duty to decide the best interests of each child individually," *Olive/Metts Minors*, 297 Mich App at 42, but only "if the best interests of the individual children *significantly* differ," *White*, 303 Mich App at 715 (emphasis in original). Individual and redundant factual findings are not required concerning each child's best interests where their interests do not significantly differ. *Id*. at 715-716. In this case, the trial court found that the children were not placed in separate foster-care homes and were not placed with relatives such that their interests should be determined separately. Respondent-mother and respondent-father do not contest that finding and do not present any evidence supporting that the children were placed separately such that their interests should be determined separately. Therefore, the trial court did not clearly err by not individually deciding the best interests of each of the four children. *Id*.

Respondent-mother and respondent-father's claim that the trial court erred because its best-interest analysis was based only on the testimony of minimally informed witnesses is also without merit. In support of their claim, respondent-mother and respondent-father cite *In re JK*, 468 Mich 202; 661 NW2d 216 (2003), for the proposition that the trial court should rely on the testimony of fully knowledgeable staff rather than minimally informed sources. In *JK*, the "fully knowledgeable staff" referenced by the Court included a weekly therapist and an independent-living program supervisor who regularly interacted with the respondent and recommended that the child be returned to the respondent's care, while the minimally informed source was a therapist who met with the respondent once for one hour. *Id*. at 212.

In this case, the trial court relied on testimony of caseworkers who regularly worked with respondent-mother and respondent-father and a case aide who supervised respondent-mother's parenting time with the children for months. These workers are exactly the kind of "fully knowledgeable staff of persons who had worked directly with respondent[s] over a period of time" that *JK* indicates the trial court should rely on while performing its best-interest analysis. *Id*. In addition, this Court gives deference to "the trial court's special opportunity to judge the credibility of the witnesses." *HRC*, 286 Mich App at 459. A caseworker testified that the foster parents indicated that the children exhibited behavioral problems after visiting with respondent-mother or respondent-father, including biting, spitting, refusing to calm down, acting defiantly, pushing each other, whining, crying, and refusing to eat. The caseworker testified that it was in the children's best interests to terminate all parental rights, especially because respondent-mother was offered services for almost two and a half years but did not demonstrate that she had benefitted from the services, and respondent-father essentially abandoned the children during the pendency of the case despite knowing about it. The case aide testified that respondent-mother did not visit the children for four months between July 2015 and November 2015, that

respondent-mother was not participating in any parenting classes or using any skills she could have learned at a parenting class, and that respondent-mother was unable to manage the children appropriately during visits.

This testimony supported the trial court's determination that termination of respondents' parental rights was in the children's best interests. *Olive/Metts Minors*, 297 Mich App at 41-42. Furthermore, respondent-mother and respondent-father could not provide proper care or custody for the children, which also supported that termination of their parental rights was in the children's best interests. *VanDalen*, 293 Mich App at 142. Therefore, there is no basis for a definite and firm conviction that a mistake has been made, and the trial court did not clearly err by finding that termination of the respondent-mother's and respondent-father's parental rights was in the best interests of the children. *Mason*, 486 Mich at 152.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Peter D. O'Connell
/s/ Mark T. Boonstra