

STATE OF MICHIGAN
COURT OF APPEALS

In re S. A. TRAVIS, Minor.

UNPUBLISHED
December 13, 2016

No. 332363
Wayne Circuit Court
Family Division
LC No. 14-516124-NA

Before: JANSEN, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals as of right an order terminating her parental rights to her daughter, SAT, pursuant to MCL 719A.19b(3)(i) (parental rights to a sibling of the child have been terminated due to abuse or neglect and prior rehabilitation efforts were unsuccessful) and (l) (parental rights to another child were terminated under the juvenile code).¹ We affirm.

On December 24, 2015, shortly after SAT's birth, a petition for permanent custody was filed by the Department of Health and Human Services (DHHS). Petitioner asserted that the trial court had recently terminated respondent's parental rights to SAT's three brothers on November 24, 2015, and that respondent had failed to rectify the conditions that first brought her other children into foster care. Further, respondent was pregnant with SAT at the time of the prior terminations and had not successfully completed her treatment plan in connection with the earlier child protective proceedings.

An adjudication hearing was held on February 19, 2016. The court took judicial notice of the earlier proceedings regarding SAT's brothers and admitted a certified copy of the November 24, 2015 termination order as evidence. According to DHHS worker Kai Mason, respondent's parental rights to SAT should be terminated because the conditions that led to the prior terminations had not been rectified. Mason also recalled that respondent had not fully complied with her previous treatment plan. The court found that SAT came within the court's jurisdiction under MCL 712A.2(b)(1) and (2) because it had previously terminated respondent's rights over the other children and because respondent's home environment exposed SAT to a substantial risk of harm. It also found that statutory grounds for termination existed under MCL 719A.19b(3)(i) and (l).

¹ SAT's father's parental rights were also terminated but he is not a party to this appeal.

A separate best-interests hearing was held on April 1, 2016, at which the court heard testimony from Mason, foster care worker Judy Truong, and respondent. Before ruling, the trial court noted that it was “intimately familiar with this family,” and recalled presiding over the November 2015 proceedings regarding respondent’s other children. At the time of the November hearings, the children’s father was running a house of prostitution. The trial court believed that the children’s father had continued to operate that enterprise and respondent had continued to serve as “one of his girls.” Moreover, each of the professionals involved in this case believed that respondent’s home was not a safe environment for SAT, just as it had not been a safe environment for SAT’s brothers. The trial court observed that SAT was very young and “adoptable,” and had been placed in a foster home with a family that was interested in adopting SAT. Moreover, SAT’s foster family had a relationship with the persons who wanted to adopt her brothers; thus, termination would actually serve to encourage a relationship between SAT and her brothers. Accordingly, the trial court found “by well more than a preponderance of evidence” that termination of respondent’s parental rights was in SAT’s best interests.

On appeal, respondent challenges the termination of her parental rights to SAT, arguing that the trial court erred in its finding of statutory grounds for termination and in its best-interests determination. We disagree.

This Court reviews the trial court’s decisions regarding statutory grounds for termination and the child’s best interests for clear error. *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014) (citation omitted). The trial court’s findings of fact are also reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). “A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made.” *In re LaFrance Minors*, 306 Mich App at 723.

As an initial matter, we note that the trial court found that statutory grounds for termination of respondent’s parental rights existed under MCL 712A.19b(3)(i) and (l). However, shortly after the trial court terminated respondent’s parental rights in this case, this Court held that termination of a respondent’s parental rights under subdivision (l)—which authorizes a trial court to terminate parental rights if “[t]he parent’s rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state”—was unconstitutional because it violates the respondent’s constitutional due process rights. *In re D Gach*, ___ Mich App ___, ___; ___ NW2d ___ (2016) (Docket No. 328714); slip op at 6-7. This is not to say that a respondent’s parental rights can *never* be terminated on the basis of a prior termination. In fact, in finding that subdivision (l) did not afford a respondent sufficient due process protections, we distinguished subdivision (l) from subdivision (i), which also provides for termination based, in part, on an earlier termination. *Id.* at ___; slip op at 7. Compared to MCL 712A.19b(3)(l), the circumstances in which a trial court may terminate parental rights pursuant to MCL 712A.19b(3)(i) are much more limited: the prior termination must have been due to “serious and chronic neglect or physical or sexual abuse,” and the trial court must also find that “prior attempts to rehabilitate the parents have been unsuccessful.” *In re D Gach*, ___ at ___; slip op at 7. Thus, where there has been an earlier termination, a respondent’s parental rights may be still be terminated under MCL 712A.19b(3)(i) if the requirements of that subdivision are satisfied. *In re D Gach*, ___ at ___; slip op at 8.

As already noted above, MCL 712A.19b(3)(i) provides statutory grounds for termination of parental rights 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.” Additionally, “the 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 D Gach*, ___ at ___; slip op at 5. It was undisputed that respondent’s parental rights with respect to SAT’s brothers had been terminated approximately three months before the adjudication hearing in this case. Thus, the testimony offered at the February 19, 2016 hearing concerning the statutory grounds for termination was limited. Such testimony by DHHS worker Mason included that termination of respondent’s parental rights to SAT was sought because of the prior termination proceedings and the fact that respondent was pregnant at the time of those proceedings. Nevertheless, respondent failed to comply with the court-ordered treatment plans and still had not rectified the conditions that led to those proceedings; thus, SAT clearly remained at risk of harm just as her siblings had been at risk of harm. The trial court also admitted a certified copy of the order terminating respondent’s parental rights to SAT’s brothers and took judicial notice of the court file from the earlier proceedings. Considering the record evidence, the trial court did not clearly err in concluding that clear and convincing evidence established that termination of respondent’s parental rights was proper under MCL 712A.19b(3)(i).

More particularly, in the prior termination proceedings, SAT’s brothers were made temporary court wards after the trial court found that respondent had “an unfit home environment by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent” This finding was supported by respondent’s admissions. For example, respondent agreed that her two oldest sons were removed from her home on May 22, 2014, after petitioner discovered that there was a backup of sewage and feces in her basement. The home also had boarded up windows and there were “issues” with the electrical meter. Respondent admitted that the two older boys appeared malnourished when they were removed from her care and that she failed to have them examined by a doctor after being directed to do so by a CPS worker. Respondent testified that she did not have insurance when she was pregnant with her youngest son and, therefore, did not obtain any prenatal care during that pregnancy. Her youngest son was later born with serious medical conditions.

While reunification was the original permanency plan in the prior termination proceedings, petitioner sought permanent custody after it became clear that respondent had failed to either comply with her treatment plan or rectify the conditions that led to her children’s placement in foster care. The trial court ultimately terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i) (failure to rectify conditions that led to adjudication), (g) (failure to provide proper care or custody within reasonable period), and (j) (reasonable likelihood that child will be harmed if returned to the parent). Again, there was evidence supporting this holding. Testimony included that, despite the 18 to 20 months that elapsed while her children were in foster care and the services that were provided to respondent, respondent had still failed to acquire adequate housing or a legal source of income; her participation in medical treatment was sporadic and inconsistent; and she did not seem capable of providing the appropriate level of supervision for the children during her supervised visitations, nor did she provide adequate supplies for the visits on a regular basis. In articulating its ruling, the trial court found that “mom and the other women in the home are prostitutes and dad is the manager and he’s a participant

some of the time,” which rendered the home unsuitable for children, even if the home was otherwise fit. It also found that respondent failed to provide the necessary support for her children because she frequently failed to attend visitations and medical appointments. The court observed that respondent had a “chaotic life style” and was unable to “show the conduct and capacity to put the children first.” Given the evidence presented in the earlier proceedings and the trial court’s findings in that case, the trial court did not clearly err in this case by finding that respondent’s parental rights to SAT’s brothers were terminated as a result of serious or chronic neglect.

It is equally clear from the earlier proceedings that prior attempts to rehabilitate respondent were unsuccessful. A DHHS worker testified at the February 19, 2016 adjudication hearing that respondent had failed to comply with her court-ordered treatment plan in connection with the earlier proceedings. Additionally, it was clear from the record in the earlier termination case that respondent had been provided a number of rehabilitative services, including parenting classes, psychological and psychiatric evaluations, and counseling. Despite these services, the foster care workers never reached a point where they felt comfortable recommending that respondent be allowed unsupervised visits with her sons because respondent never demonstrated an ability to provide adequate supervision or otherwise attend to her children’s needs during the supervised visits. The foster care workers also provided respondent with referrals for assistance in obtaining suitable housing and employment. Apart from her own unsubstantiated assertions, there was no evidence that respondent availed herself of either referral. Because there was clear and convincing evidence that respondent’s parental rights to SAT’s brothers were terminated due to serious or chronic neglect and that prior attempts to rehabilitate respondent had been unsuccessful, the trial court did not clearly err by finding that statutory grounds for termination existed under MCL 712A.19b(3)(i).

Respondent argues, however, that termination was not warranted because petitioner sought termination of her parental rights with respect to SAT based solely on the previous termination orders and without providing any rehabilitative services after the November 2015 terminations. According to respondent, the instant termination was based only on her previous behavior and was, therefore, inconsistent with her due process rights. This argument lacks merit for several reasons. First, the trial court’s decision to terminate respondent’s parental rights with respect to SAT was not based *solely* on her “past behavior.” As discussed above, the trial court considered the reasons underlying the prior terminations and also found that petitioner’s prior attempts to rehabilitate respondent had proven unsuccessful. Inherent in this finding is the fact that petitioner *did* provide respondent with significant rehabilitative services in connection with her prior termination proceedings. Had those services proven successful, it is reasonably probable that petitioner would not have sought termination of respondent’s parental rights to SAT. Moreover, the services that respondent participated in were not provided during some distant historical time frame that had no bearing on this case: respondent was receiving rehabilitative services while she was pregnant with SAT, and those services were terminated a mere three months before the adjudication hearing in this case. In any event, petitioner “is not required to provide reunification services when termination of parental rights is the agency’s goal.” *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013) (citation omitted). Thus, because petitioner sought termination of respondent’s parental rights in its original petition relating to SAT, it had no obligation to provide additional services to respondent.

Respondent also asserts in a conclusory fashion that “the trial court clearly erred by finding that termination of appellant’s parental rights was in the best interests of the child.” This issue is not properly before this Court because “[a]n appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant’s claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority.” *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015). But even if respondent had properly presented this issue for appellate review, her perfunctory argument lacks merit.

Once a statutory ground for termination of a respondent’s parental rights has been proven by clear and convincing evidence, “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). The trial court’s best-interests determination must be supported by a preponderance of the evidence. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In making this determination, a court should consider “a wide variety of factors that may include 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.* (internal quotation marks and citation omitted).

At the time of the best-interests hearing in this case, SAT was less than four months old. SAT was removed from respondent’s care 11 days after her birth. Thus, SAT had only a limited opportunity to form a bond with respondent before being placed in foster care. It is unlikely that SAT’s bond with respondent increased in any meaningful sense thereafter, as respondent only attended six visitations with SAT before the best-interests hearing took place. Indeed, the trial court noted that SAT was “too young to have wishes” regarding the termination of respondent’s parental rights. There was also evidence that respondent lacked the necessary skills to parent SAT on her own. For example, one foster care worker testified that respondent did not wipe SAT properly when changing her diaper and attempted to make a bottle using too much formula. When confronted with testimony suggesting that she was incapable of changing SAT’s diaper without assistance, respondent explained that she only asked for assistance because SAT was kicking at the time. Respondent’s explanation only seems to support the proposition that she struggles to perform basic child care tasks independently.

Furthermore, if returned to respondent’s care, SAT would be cut off from her brothers and dependent on a single parent who had not been gainfully employed for several years and was, by her own admission, financially dependent on someone else. Even when respondent testified about a hypothetical future in which she did not reside with someone else, respondent maintained that her own mother would continue to provide financial assistance. Respondent’s poor housing situation, which first came to petitioner’s attention at the beginning of 2014, was one of the primary obstacles to reunification in the earlier proceedings that resulted in termination of respondent’s parental rights with respect to her three older children. But despite understanding that she was required to obtain and maintain suitable housing, respondent continued to relocate on a regular basis and only allowed foster care workers to assess one of her residences, which the worker deemed unsuitable for children. After two years of purportedly looking for adequate housing, respondent testified at the best-interests hearing that she continued to reside with someone else and had made only minimal (and unverifiable) efforts to seek appropriate housing. Thus, it is clear that respondent was incapable of effectively providing permanency or stability for herself, let alone her newborn infant.

By contrast, termination of respondent's parental rights allowed SAT an opportunity to be adopted by her foster family, who had provided a stable and healthy environment for SAT "essentially from day one." Additionally, because SAT's foster family had a relationship with the individuals who intended to adopt her biological brothers, allowing SAT to potentially be placed with her foster family permanently also made it possible for her to develop a long-term relationship with her brothers. In light of the clear shortcomings in respondent's parenting skills, her inability to provide a healthy and stable environment for SAT, and the unlikely probability that SAT developed a bond with respondent during their limited interactions, the trial court did not clearly err by finding that termination of respondent's parental rights was in SAT's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra