

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 13, 2018

In re H. BROWN, Minor.

No. 344611
Jackson Circuit Court
Family Division
LC No. 16-002954-NA

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

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to HB under MCL 712A.19b(3)(g), (j), and (n)(i). We affirm.

The Department of Health and Human Services (the DHHS) originally filed a petition seeking termination during 2016 because HB's father had sexually abused HB and his sister. Respondent-mother was convicted of third-degree criminal sexual conduct (CSC-III) in connection with the sexual abuse perpetrated by HB's father due to her failure to protect. In 2016, the trial court initially placed HB with his maternal grandmother, but following an argument with respondent-mother, she gave HB to his paternal grandmother, who was granted sole custody. During 2018, HB's paternal grandmother left him with the DHHS investigator because she could no longer care for him due to HB's behavioral issues, and requested termination of her custody. The DHHS filed petition seeking to terminate respondent-mother's parental rights because she was convicted of CSC-III and sentenced to 3 to 15 years' imprisonment, with an earliest possible release date of 2020. Following a bench trial, the trial court terminated respondent-mother's parental rights on June 26, 2018.

On appeal, respondent-mother does not challenge the trial court's determination that clear and convincing evidence established the existence of statutory grounds for termination of her parental rights. Rather, respondent-mother takes issue with the trial court's finding that termination was in the best interests of HB. Specifically, respondent-mother argues that the trial court erred by not finding that a preponderance of the evidence established that HB's best interests would be served by placing him in the care and custody of his maternal grandmother. We disagree.

Once statutory grounds for termination have been established, the trial court must find that termination is in the best interests of the minor child before it can terminate a parent's

parental rights. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Whether termination is in the best interests of the minor child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error a trial court's best-interest decision. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

"In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). MCR 3.965(D) mandates that the trial court in child protective proceedings "direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child's best interests, as required by MCL 722.954a(2)." See also *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). However, "[i]f it is in the best interests of the child, the probate court may properly terminate parental rights instead of placing the child with relatives." *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), overruled on other grounds *In re Morris*, 491 Mich 81, 121; 815 NW2d 62 (2012).

When considering best interests, the trial court must focus on the child rather than the parent. *In re Moss*, 301 Mich at 87. The trial court may consider several factors including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012), how long the child has lived in the present home, and the likelihood that the child "could be returned to [the] parent's home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 248-249. In *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014), this Court summarized:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the 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. The trial court may also consider 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. [Quotation marks and citation omitted.]

Further, a child's safety and well-being, including the risk of harm a child might face if returned to the parent's care, constitute factors relevant to a best-interest determination. *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011). A "child's placement with relatives weighs against termination. . . ." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Whether the "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. Where placement with a relative is a viable option, termination is not required and a long-term guardianship with the relative may be an appropriate option. *In re Mason*, 486 Mich at 164.

The record before us does not support respondent-mother's argument that it was in the best interests of HB to be placed in the custody of his maternal grandmother, as opposed to terminating respondent-mother's parental rights. In this case, the record reflects that the trial

court considered relevant factors and the evidence in the record for its best-interest decision. A preponderance of the evidence in this case established that the best-interest factors weighed in favor of termination of respondent-mother's parental rights. Respondent-mother was incarcerated for third-degree criminal sexual conduct and had to serve a potentially long prison term before her release. Further, despite pleading no contest to the offense, respondent-mother never acknowledged her complicity and culpability for failure to protect and defend HB from sexual abuse.

The record reflects that HB suffered trauma in the family home because of the abuse and that he continued to suffer trauma that affected his ability to have any trust in adults. Further, when placed with his maternal grandmother and later his paternal grandmother, HB did not progress. HB exhibited the first real progress when placed in the care of his foster parents with whom HB established a bond and learned to trust.

The record indicates that HB needed stability and permanency. When placed with his maternal grandmother after initially being removed from the family home, his maternal grandmother gave him up to his paternal grandmother simply because of an argument with respondent-mother. Later, HB's paternal grandmother gave HB back to the DHHS because she no longer could handle his behavior problems and desired to have her custody terminated. The record established that HB experienced little if any stability or permanency by being shifted from one home to another. The DHHS also investigated the homes of respondent-mother's sisters, but found neither suitable for placement. HB only found consistency and stability in his foster home. Significantly, HB's foster parents expressed interest in adopting HB. Adoption would provide HB the stability, permanency, and finality that he needed to secure an opportunity to meet his long-term needs and progress to adulthood.

The record also indicates that return of HB to the family home would risk further harm. Evidence established that petitioner investigated the appropriateness of relative placements, and the trial court thoroughly considered whether a suitable relative placement existed. The trial court specifically considered whether placement of HB with his maternal grandmother would serve his best interests. The record indicates that she failed to come forward and seek HB's placement with her until the very end of the case. HB's maternal grandmother admitted that she never bothered to inquire about having HB placed with her. The record established that she had no plan for providing HB care and custody within a reasonable time.

Of greater importance, HB's maternal grandmother testified that she believed respondent-mother was a loving mother despite knowing of her third-degree criminal sexual conduct conviction. The trial court correctly observed that her testimony called into question her judgment and ability to provide a safe home for HB because she failed to understand that a loving parent would not sit idly by while her child was sexually abused. The evidence in this case did not establish that placement with HB's maternal grandmother served HB's best interests.

We conclude that not only did the DHHS make reasonable efforts to place HB with a relative throughout these proceedings, but also that there was clear and convincing evidence that it was in HB's best interests to terminate respondent-mother's parental rights.

Affirmed.

/s/ Mark T. Boonstra
/s/ Kathleen Jansen
/s/ Michael F. Gadola