

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 15, 2012

In the Matter of SCHMALL, Minors.

No. 304319
Ionia Circuit Court
Family Division
LC No. 2010-000043-NA

In the Matter of M. G. SCHMALL, Minor.

No. 304320
Ionia Circuit Court
Family Division
LC No. 2010-000122-NA

In the Matter of C. SCHMALL, Minor.

No. 305711
Ionia Circuit Court
Family Division
LC No. 2011-000086-NA

Before: METER, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother C. Larsen appeals the termination of her parental rights to her four children. In Docket Nos. 304319 and 304320, she appeals as of right from the trial court's May 2011 order terminating her parental rights to her three older children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). In Docket No. 305711, she appeals as of right from the trial court's August 2011 order terminating her parental rights to the youngest child pursuant to MCL 712A.19b(3)(l). We affirm.

I. DOCKET NOS. 304319 AND 304320

Respondent-mother argues that her right to due process was violated by the trial court's exercise of jurisdiction over the three older children on the basis of the father's pleas of admission, thereby depriving her of an opportunity for a jury determination concerning whether a statutory basis for jurisdiction existed. We disagree.

A child protective proceeding consists of an adjudicative phase, at which the trial court determines whether it may exercise jurisdiction over the child, and a dispositional phase, at which the court determines what action should be taken on behalf of a child within its jurisdiction. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). During the adjudicative phase, unless waived by a respondent's plea of admission or of no contest, a trial is held to determine if grounds for jurisdiction under MCL 712A.2(b) have been proven by a preponderance of the evidence. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). If a trial is held, the respondent is entitled to a jury trial. *Id.*; MCR 3.911(A).

A challenge to a trial court's exercise of jurisdiction must be raised in a timely fashion. See *In re Mays*, 490 Mich 993, ___ n 1; 807 NW2d 307 (2012); see also MCL 712A.21. Where, as in this case, termination occurs following the filing of a supplemental petition for termination, the court's prior exercise of jurisdiction cannot be collaterally attacked. *In re SLH, AJH & VAH*, 277 Mich App 662, 668-669; 747 NW2d 547 (2008). "Matters affecting the court's exercise of jurisdiction may be challenged on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights." *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005).

Respondent-mother was present at both hearings at which the trial court accepted the father's pleas of admission to establish the court's jurisdiction over the children, but she failed to raise any objection to the trial court proceeding at that time or in subsequent hearings, or to the court's authority to enter dispositional orders affecting her rights to the children. Because respondent-mother's argument on appeal is, in essence, a collateral attack of the trial court's exercise of jurisdiction after termination of her parental rights pursuant to a supplemental petition, the issue is not properly before this Court. Further, the fact that jurisdiction was not acquired on the basis of respondent-mother's circumstances is not material because, as explained in *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002), the court's jurisdiction is tied to the child, not to the parent.

Next, respondent-mother challenges the trial court's finding that grounds for termination were established under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We review the trial court's findings of fact for clear error, giving deference to the trial court's superior opportunity to judge the weight of evidence and the credibility of the witnesses who appeared before it. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Questions of law involving the applicability of a statute or court rule are reviewed de novo. *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008); *In re RFF*, 242 Mich App 188, 198; 617 NW2d 745 (2000).

Child protective proceedings are treated as a single, continuous proceeding, so evidence admitted at one hearing may be considered at all subsequent hearings. *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). Because respondent-mother's circumstances were not the basis for the adjudications of the three older children, petitioner was required to prove the statutory grounds for termination with respect to respondent-mother by clear and convincing legally admissible evidence. MCR 3.977(F)(1)(b).

We agree that termination of respondent-mother's parental rights under § 19b(3)(c)(i) (conditions that led to the adjudication continue to exist) was improper because the trial court did

not acquire jurisdiction over the children on the basis of respondent-mother's circumstances, but rather pursuant to the father's pleas of admission. See MCR 3.977(F)(1)(b)(ii) (excluding § 19b(3)(c)(i) as a basis for termination when termination is sought pursuant to a supplemental petition that seeks to terminate parental rights on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction).

Nonetheless, only one statutory ground for termination is required, *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000), and the trial court did not clearly err in finding that §§ 19b(3)(c)(ii), (g), and (j) were each established by clear and convincing evidence. The trial court appropriately considered the evidence regarding respondent-mother's relationship with the children's father, including the past domestic violence and respondent-mother's lack of truthfulness regarding their continued contact, in evaluating respondent-mother's emotional makeup and its effect on her parenting abilities. Further, the trial court appropriately gave weight to the testimony of Thomas Spahn, the psychologist who conducted two psychological evaluations of respondent-mother during the proceedings. While Spahn acknowledged that he did not have information regarding respondent-mother's two psychiatric hospitalizations during the proceedings, there was evidence that he used respondent-mother's statements to him to evaluate her upbringing, reach his diagnosis of her mixed personality disorder and major depression, and assess her prognosis for change. Respondent-mother's own statements were not hearsay under MRE 801(d)(2)(A).

The trial court did not commit clear error in relying on respondent-mother's continued emotional instability to find that §§ 19b(3)(c)(ii) and (g) were both established by clear and convincing evidence. Respondent-mother's compliance with many services, including her counseling at Community Mental Health, did not preclude a finding that these statutory grounds were established. A parent must sufficiently benefit from services to enable the court to find that he or she can provide a home for the child where there is no longer a risk of harm. *In re Gazella*, 264 Mich App at 676-677. The evidence supports the trial court's finding that, although respondent-mother made some progress, it was insufficient to demonstrate that she reasonably would be able to reach a point emotionally where she could provide a proper home environment for the children. She refused to sign certain releases and had communication problems with DHS workers, and Spahn testified that she had severe and longstanding problems and that the prognosis for her becoming an effective parent was not good. Spahn initially diagnosed respondent-mother as "borderline and schizotypal" and later as "avoidant and dependent," and he indicated that the "borderline and schizotypal" characteristics would likely become more severe in times of high stress, such as during the raising of children.

In light of the evidence presented, we also find no basis for disturbing the trial court's determination that § 19b(3)(j) was established by clear and convincing evidence. Although the trial court's finding that all three children were harmed emotionally while in respondent-mother's care is debatable, considering that the youngest child was placed in foster care immediately after his birth, § 19b(3)(j) does not require proof of past harm. Instead, § 19b(3)(j) is concerned with whether "[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." Thus, the focus of the statute is the likelihood of future harm. Considering the evidence regarding respondent-mother's continuing emotional instability, the trial court did not clearly err in finding that there was a reasonable likelihood that the children would be emotionally harmed

if returned to respondent-mother's home. Therefore, we uphold its finding that § 19b(3)(j) was established.

Under MCL 712A.19b(5), once the court finds that a statutory ground for termination has been established, it shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests[.]" We review the trial court's best-interests decision for clear error. MCR 3.977(K); *In re JK*, 468 Mich at 209.

We reject respondent-mother's request that this Court adopt specific factors to be considered by a trial court when evaluating a child's best interests. A trial court is to consider the entire record in evaluating a child's best interests. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). Even the advantages of a foster-care placement, *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009), or placement with a relative, see, generally, *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), may be considered in an appropriate case.

Here, the children were not placed with a relative, and it is clear from the trial court's decision that it considered several factors in its evaluation of the children's best interests. The court found that several factors were favorable to respondent-mother, such as her strong bond with the children and her interaction with them during supervised parenting time. However, the court also found that respondent-mother's past history and continued emotional instability, her poor prognosis for change, and the children's need for permanency favored termination. The court also found that respondent-mother did not sufficiently attempt to work with petitioner, despite its reasonable efforts to provide reunification services, and that the time required to enable respondent-mother to expand her role with the children was too long for them to wait. Considering the trial court's decision in light of the entire record, we find no clear error in its determination that termination of respondent-mother's parental rights was in the children's best interests.

II. DOCKET NO. 305711

Similar to her argument in Docket Nos. 304319 and 304320, respondent-mother contends that her right to due process was violated by the trial court's exercise of jurisdiction over the youngest child on the basis of the father's circumstances. Because respondent-mother's parental rights to the youngest child were terminated at the initial dispositional hearing, and respondent-mother's counsel challenged the trial court's adjudicative authority during closing arguments at the hearing, we conclude that this issue is properly before us. See *In re SLH, AJH & VAH*, 277 Mich App at 669 n 13. Nonetheless, because jurisdiction is tied to the child, and not the parent, and respondent-mother does not challenge the trial court's finding of jurisdiction based on allegations against the father, respondent-mother has not established error. See *In re CR*, 250 Mich App at 205.

With regard to the trial court's decision to terminate respondent-mother's parental rights to the youngest child, we note that respondent-mother does not challenge the trial court's finding that § 19b(3)(l) was established by clear and convincing evidence. Instead, her argument is directed at the trial court's consideration of the child's best interests. Once again, we reject respondent-mother's request that this Court adopt specific factors to be considered by a trial court in evaluating a child's best interests. We also reject respondent-mother's suggestion that

the trial court's decision is inadequate because the court failed to sufficiently address all of the evidence. While the trial court did not comment on all of the testimony at the earlier hearing regarding termination of respondent-mother's parental rights to the child's siblings when evaluating the youngest child's best interests, the trial court's findings were sufficient to comply with MCR 3.977(I)(1). Our review of the record and the various factors considered by the trial court, including evidence that respondent-mother was still dealing with crises, and not long-term needs, in therapy, leads us to conclude that the trial court did not clearly err in finding that termination of respondent-mother's parental rights to the youngest child was in that child's best interests. MCR 3.977(K); *In re JK*, 468 Mich at 209.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey