STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 14, 2012

In the Matter of A. MCBURNEY, Minor

No. 306747
St. Clair Circuit Court
Family Division
LC No. 11-000214-NA

Before: DONOFRIO, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(*ii*), (g), and (j). We affirm.

Respondent is the adoptive mother of the child at issue. The child was removed from respondent's care after it was discovered that the child had been sexually abused by Daryl Zimmer numerous times on multiple occasions on his property. Several boys had been molested by Zimmer. The boys had been allowed to spend overnights on Zimmer's property. Although it was respondent's discovery of pornographic videos in Zimmer's home that began the chain of events that ultimately led to Zimmer's conviction for sexually abusing 12 different boys of various ages over a period of years, petitioner sought termination of respondent's parental rights under MCL 712A.19b, primarily alleging a failure to protect, because respondent had been either willfully ignoring or dangerously unable to recognize the warning signs of abuse that she personally witnessed.

Respondent knew that Zimmer went swimming with the child and other boys while all were nude and that Zimmer gave the boys naked or nearly naked massages. Further, she knew that the boys would sleep naked in Zimmer's bed. She also saw Zimmer and the boys nude while engaging in other activities such as fishing and shooting BB guns.

A jury found that the evidence sufficiently supported statutory grounds to assume jurisdiction over the child. Subsequently, the trial court concluded that the evidence in the record supported termination of respondent's rights under MCL 712A.19b(3)(b)(*ii*), (g), and (j) and that termination was in the child's best interests under MCL 712A.19b(5).

Respondent first alleges that the trial court clearly erred in terminating her parental rights because the evidence failed to clearly and convincingly establish a reasonable likelihood that the child would suffer injury, abuse, or harm in the foreseeable future if returned to respondent's home, as required for termination under §§ 19b(b)(*ii*) and (j) and that there was no reasonable

expectation that she would be able to provide proper care and custody for the child within a reasonable time as required for termination under § 19b (g). We disagree.

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 under MCL 712A.19b(3) has been established. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). We review for clear error both a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence and whether termination is in the child's best interest. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357 (best interests); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004) (grounds for termination). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297.

Reviewing respondent's brief, she never actually argues that there was not clear and convincing evidence to support at least one of the grounds. Rather, respondent seems to focus on the failure to receive a parent agency agreement and argues that she should have been given an opportunity for reunification rather than immediate termination. However, termination at an initial dispositional hearing is mandated if the following are met: termination is requested in the initial petition; jurisdictional grounds are established by a preponderance of the evidence; at least one statutory ground for termination is established by clear and convincing, legally admissible, evidence; and termination is in the child's best interests. MCR 3.977(E); see also *In re Utrera*, 281 Mich App 1, 16; 761 NW2d 253 (2008). Here, termination was sought in the initial petition and respondent has not contested the jury's determination of jurisdiction. Accordingly, so long as the trial court did not clearly err in determining that at least one statutory ground for termination was established by clear and convincing evidence or that termination was in the child's best interests, there is no error in not giving respondent an opportunity for reunification.

Respondent relies on the facts that DHS gave her permission to adopt the child and that she had been his parent for 10 years. However, whether respondent was a fit parent 10 years ago and the duration of her parenthood have little bearing on whether in the present the statutory grounds for termination were shown by clear and convincing evidence. In addition, respondent either mischaracterizes evidence or neglects to present important details in her argument. Notably, none of the other parents that testified indicated that they had the knowledge respondent did regarding the nude swimming, naked or nearly naked massages, and boys sleeping naked in the same bed with Zimmer, and all the parents who testified indicated that they would have pulled their children from the property the moment they had any of that information. Respondent's persistent failure to question Zimmer's behavior in the interest of protecting her child even though these actions were going on right before her, and her continued inability to see and understand her own behavior support the court's conclusions.

Respondent notes that Kelly Pavel, an outpatient therapist with Community Counseling and Mentoring Services, testified that the child at issue wanted to see her and was struggling emotionally from having been away from his mother for two months. However, respondent fails

to note that that was the child's state at his first meeting with Pavel. Pavel went on to explain that the child had made significant progress in four months, including huge strides in confidence and self-esteem, and that he was flourishing in school and getting much better grades. Pavel attributed the changes to the trust in his current caregiver and the supportive atmosphere in the household and the structure and activity that was involved in that placement.

Respondent also continues to minimize her actions post-removal that lead to the child being emotionally victimized and asserts that "much ado" was made about her solicitation of legal funds through the placement of canisters is various businesses. Contrary to respondent's counsel's assertion at the best-interest hearing, the minor child's name was on the donation can along with his picture, and the picture permitted people at school to recognize him and ask him about it, causing him further harm. In addition, respondent contacted multiple news outlets and provided information resulting in additional publicity.

Moreover, respondent's lack of credibility based on altered versions of events cannot be excused simply because she did not want to lose custody of the child. All parents have the same desire. Ultimately, respondent continually placed her desire to retain custody of the child over the need to tell the truth and avoid further harm and embarrassment to the child.

Respondent also argues that the trial court erred in concluding that termination was in the child's best interests. MCL 712A.19b(5) provides, "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." Thus, termination is mandatory unless it is not in the best interests of the child. *In re Trejo*, 462 Mich at 350-351.

In rendering its opinion, the trial court found respondent's testimony totally unbelievable. As noted previously, respondent's argument that she "may have" changed her story to prevent removal would support termination because it is evidence that respondent is more concerned with herself than the truth. Respondent cites testimony that she always put her children first and that one could not ask for a better mother than respondent. However, on the record, it is clear that the trial court gave this testimony little, if any, weight and that determination does not appear erroneous. The child testified at trial that he was doing as well as he could and that he was happy in his placement. Indeed, he asked his guardian ad litem to ask those questions so he could tell that to the jury. That the child was well-mannered certainly speaks to some parenting ability on respondent's part, but it simply does not overcome her ignorance, willful or not, of the evidence that Zimmer was molesting the child.

Respondent argues that there is no way to determine whether the child's improvement is the result of being removed from respondent or simply because he is no longer being abused. However, in light of the child's statements that he is happy in his placement and doing as well as he could, Pavel's statement that the child trusted his current caregiver, respondent's actions that caused emotional harm to the child after his removal, and respondent's continued belief that she was the victim and had not done anything wrong was sufficient evidence from which the trial court could conclude that the child would not have made the same progress in respondent's care.

Taking into consideration the trial court's special opportunity to observe the witnesses, the trial court's conclusion that termination was in the child's best interests was not clearly erroneous. *In re Trejo*, 462 Mich at 356-357; *In re BZ*, 264 Mich App at 296-297.

In sum, the evidence before the trial court supported termination of respondent's parental rights.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro