STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
October 16, 2012

In the Matter of JUHOLA/VOGEL, Minors.

No. 307680
Eaton Circuit Court
Family Division
LC No. 08-016864-NA

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

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her two children, GLJ and ERV, pursuant to MCL 712A.19b(g), (j), and (*l*). We affirm.

I. REASONABLE EFFORTS TOWARD REUNIFICATION

Respondent first claims that the trial court erred in finding that petitioner made reasonable efforts toward reunification. We review a trial court's finding of fact in a termination proceeding for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A finding is 'clearly erroneous' if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

Before terminating parental rights, "'[r]easonable efforts to reunify the child and family must be made in *all* cases' except those involving aggravated circumstances." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), quoting MCL 712A.19a(2) (emphasis in original). However, under MCL 712A.19a(2)(c), "the prior involuntary termination of parental rights to a child's sibling is a circumstance under which reasonable efforts to reunite the child and family need not be made." *In re Smith*, 291 Mich App 621, 623; 805 NW2d 234 (2011). The evidence showed that respondent previously had her parental rights to a different child involuntarily terminated in California in 2003. However, as noted below, we conclude that the trial court erred in finding that statutory grounds for termination existed due to the California termination. We therefore conclude that petitioner was required to make reasonable efforts at reunification.

The record establishes that petitioner provided respondent with a multitude of services between 2008 and 2011. Respondent essentially argues that she was not given a continuing support network sufficient to enable her to avoid relapse after she completed the "ESAP" program and "SAFE-T Court". However, the record indicates that respondent was provided with mental-health counseling, medication monitoring, Families First, AA meetings, and other

educational classes. These services were designed to assist respondent with her alcoholism, substance-abuse problems, mental illness, and parenting skills. Additionally, the record indicates that when respondent began to struggle in 2010, she deliberately refrained from relying on these services out of fear that various support persons were "digging up dirt" on her. The trial court did not clearly err by finding that petitioner made reasonable efforts at reunification.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent claims that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We review a trial court's decision that a ground for termination has been proven by clear and convincing evidence for clear error. *In re Trejo*, 462 Mich at 356-357.

In this case, the trial court found that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(g), (j), and (*l*):

> (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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> * * *
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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.
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> * * *
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> (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.
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> * * *
>
> (*l*) The 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.[1]

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

We conclude that the trial court did not clearly err by finding that grounds for termination based on MCL 712A.19b(3)(g) were proven by clear and convincing evidence. Respondent demonstrated an inability to control her substance-abuse and mental-illness problems despite

[1] We note that, contrary to respondent's contention, the trial court did not terminate her parental rights pursuant to MCL 712A.19b(3)(*i*).

years of treatment. Specifically, respondent was unable to maintain sobriety and mental stability for extended periods of time without relapsing. The trial court found that respondent had three "major" relapses since 2008, including her 2011 relapse, which involved respondent's use of methamphetamine and resulted in her being involuntarily hospitalized and later jailed for attacking a trauma nurse.

Witnesses testified that respondent would be unable to control her problems in the future, and any additional treatment would be of minimal value. A Families First service worker estimated that respondent had a "moderate to high" risk of future issues because of her substance-abuse problems. Witnesses also noted her distrust of support workers and respondent's consistent failure to maintain sobriety or a medication regimen when not constantly monitored. A child of any age lacks proper care or custody when his or her parent abuses illicit drugs and fails to take medication for a serious mental illness. And, respondent's failure to control her substance-abuse problem despite treatment supports grounds for termination under MCL 712A.19b(3)(g). See *In re Conley*, 216 Mich App 41, 43-44; 549 NW2d 353 (1996). The trial court did not clearly err by finding that there was no reasonable expectation that respondent would be able to provide proper care and custody for the children within a reasonable time given the children's ages.

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

We conclude that the trial court did not clearly err by finding that grounds for termination based on MCL 712A.19b(3)(j) were proven by clear and convincing evidence. Respondent's previous relapses and poor prognosis for the future supported the trial court's finding that respondent would have a high risk of relapse in the future. Contrary to respondent's argument, respondent's history of serious relapses provides strong support for the trial court's determination that a similar relapse would be likely to occur in the future, thus justifying termination under MCL 712A.19b(3)(j). See *In re Utrera*, 281 Mich App 1, 25; 761 NW2d 253 (2008) ("Any rational evaluation of the evidence must take into account respondent's lengthy history of instability as relevant to her current capacity to provide proper care for the child."). MCL 712A.19b(3)(j) only requires a "reasonable likelihood" of harm, not an absolute certainty.

Respondent observes that there was no evidence to indicate that the children had ever been physically harmed in her home. However, for the purposes of MCL 712A.19b(3)(j), "harm" includes not only physical harm but emotional harm as well. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Emotional harm includes the deprivation of a normal childhood home. See *id*. For the reasons previously stated, respondent had a significant risk of a future relapse. Such a relapse would not only compromise the existing home but would likely result in the children having yet another foster-care placement, thus causing the children emotional harm. The trial court did not clearly err by finding that there was a reasonable likelihood that the children would be harmed if returned to respondent's home.

C. MCL 712A.19b(3)(*l*)

We conclude that the trial court clearly erred by finding that MCL 712A.19b(3)(*l*) was proven by clear and convincing evidence. By its plain language, MCL 712A.19b(3)(*l*) requires a comparison of MCL 712A.2(b) with the applicable termination law of the foreign jurisdiction.

When the law of the foreign jurisdiction is "similar" to MCL 712A.2(b), the statutory ground has been proven. MCL 712A.19b(3)(*l*). In this case, however, the record contains no evidence or testimony indicating the California law under which respondent's parental rights were terminated in 2003. Without identifying the applicable California law, it is impossible for this Court to determine whether respondent's parental rights were terminated "as a result of proceedings under . . . a similar law of another state." MCL 712A.2(b). It was petitioner's burden to identify the California statute under which respondent's parental rights were terminated. Cf. *People v Gaines*, 129 Mich App 439, 442-443; 341 NW2d 519 (1983) (to establish that the law of a foreign jurisdiction corresponds to Michigan law, the prosecutor has the burden of identifying specific procedures of the foreign jurisdiction). Nevertheless, reversal is not warranted because at least one other statutory ground was proven by clear and convincing evidence. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

III. BEST INTERESTS

Respondent claims that the trial court erred in finding that termination of her parental rights was in the children's best interests. We review a trial court's decision regarding a child's best interests in a termination proceeding for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

MCL 712A.19b(5) provides as follows:

> 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.

Under the statute, "termination of parental rights may occur only if the court finds a statutory ground for termination *and* finds that the termination of parental rights is in the child's best interests." *In re Hansen*, 285 Mich App 158, 164; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010) (emphasis in original).

We conclude that the trial court did not clearly err by finding that termination of respondent's parental rights was in ERV's best interests. Testimony indicated that ERV was successfully functioning in her new foster home. In contrast, respondent's household situation was unstable and had a serious risk for the presence of illicit drugs. A trial court may compare households and consider the child's success in the new foster home when considering the child's best interests. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). Moreover, given respondent's high potential for relapse, ERV would again be at risk if returned to respondent's household. The fact that ERV has only lived a small part of her life in respondent's home further supports the trial court's finding. See *In re Jones*, 286 Mich App at 129-130 ("Because the child was removed from respondent's custody shortly after birth . . . respondent had not established a relationship with [the child]."). The trial court did not clearly err by finding that termination was in ERV's best interests.

Although the trial court noted that respondent had a strong emotional connection with GLJ, the other factors identified by the trial court applied equally to GLJ. Although GLJ appears

to be a responsible high-school student, he is still a minor who requires the supervision of a parent or guardian. Respondent is unable to provide this supervision because of her relapses and failure to maintain her medication regimen and mental-health treatment. The trial court found that GLJ had not had any continuity in his living environments, but that the only satisfactory living environments he had experienced had been in foster care. Although GLJ has, unfortunately, not experienced permanency to date in his foster care placements, we cannot conclude that the trial court erred in determining that the best hope for permanency for GLJ lay away from his mother.

Affirmed. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Mark T. Boonstra