STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 16, 2012

In re WEAVER/MULLEN, Minors.

No. 308428
Macomb Circuit Court
Family Division
LC Nos. 2010-000166-NA
2010-000167-NA
2011-000212-NA

Before: GLEICHER, P.J., and OWENS and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (g), and (j). We vacate the termination order and remand for further proceedings.

I. STANDARD OF REVIEW

In order to terminate parental rights, the court must find that at least one of the statutory grounds set forth in MCL 712A.19b has been proven by clear and convincing evidence. *In re Terry*, 240 Mich App 14, 21-22; 610 NW2d 563 (2000). If grounds for termination are established, and the court further finds that termination is in the child's best interests, the court must order termination of parental rights, and order that additional efforts for reunification of the child with the parent not be made. MCL 712A.19b(5); *In re Ellis*, 294 Mich App 30, 32-33; ___ NW2d ___ (2011). We review the trial court's findings for clear error. *In re Trejo*, 462 Mich 341, 356-367; 612 NW2d 407 (2000).

II. STATUTORY GROUNDS FOR TERMINATION

Respondent does not directly challenge the trial court's finding that statutory grounds exist for the termination of her parental rights pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to the adjudication continue to exist), (g) (without regard to intent, failure to provide proper care or custody), and (j) (risk of harm to child if returned to parent). Instead, respondent contends she was not provided reasonable services directed toward unification, in light of her cognitive deficiencies. We disagree.

A claim that the respondent was not provided reasonable services directed toward reunification is relevant to the sufficiency of the evidence for existence of statutory grounds for termination. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005); *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991). "In general, when a child is removed from the parent['s] custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *Fried*, 266 Mich App at 542.

Respondent relies on *Newman*, in which this Court reversed a termination decision based, in part, on the fact that the respondents were hampered by lack of education and, in the case of the respondent mother, by mild mental retardation, and thus should have been provided with more hands-on help with regard to personal hygiene and household cleanliness. *Newman*, 189 Mich App at 66-70. *Newman* is distinguishable from the instant case. In *Newman*, the workers consistently reported that the respondents "demonstrated . . . an ability and willingness to learn, . . . had been very cooperative, had entered into parenting classes, and had maintained visitation." They had "improved the home, cleaned it up and kept it clean, remedied all the conditions listed in the . . . petition, and kept the home appropriately furnished and stocked with food." *Id*. at 66. Here, by contrast, the reports from the workers and therapists revealed a noncompliant and uncooperative client who, in addition, never had income or a home for herself or the children. In addition, respondent demonstrated that she would not do what was required to "detox" from methadone, took additional controlled substances while on methadone, and was incarcerated twice during this case for criminal behavior. Most importantly, and contrary to respondent's assertions, the fact of her lower IQ was taken into consideration. The record shows that she was given additional help, including services not ordinarily provided to clients, and that the workers took special care to make sure that she understood what she was required to do in order to regain custody of her children. The trial court specifically noted that it was taking into consideration the numerous referrals and "special services" provided to respondent by numerous agencies. We therefore find no error requiring reversal in the trial court's finding that respondent did not benefit from the services offered to her.

III. BEST INTERESTS ANALYSIS

Respondent also argues that the trial court clearly erred when it found that termination of her parental rights was in the best interests of the children, MCL 712A.19b(5), because the court failed to consider that the children were placed with relatives, and cites *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010) and MCL 712A.19a(6)(a). We agree.

In *Mason*, our Supreme Court stated:

> Indeed, a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), which expressly establishes that, although grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required when the children are "being cared for by relatives." Thus the boys' placement with respondent's family was an explicit factor to consider in determining whether termination was in the children's best interests, yet placement with relatives was never considered in this regard. [*Id.* (footnote omitted).]

Our Supreme Court reaffirmed the requirement of explicit consideration of placement with relatives at the time of termination in *In Re Mays*, 490 Mich 993, 933; 807 NW2d 307 (2012), stating that the trial court's failure to consider the children's placement with relatives at the time of the termination rendered the factual record "inadequate to make a best interests determination." And this Court recently spoke on this issue in *In Re Olive/Metts*, ___ Mich App ___, ___ NW2d ___ (2012), slip op at 4, stating that "the trial court was required to consider the best interests of each child individually and was required to explicitly address each child's placement with relatives at the time of the termination hearing if applicable." Although reference was made to the two older children's placement with the paternal grandmother at the time of the termination hearing; the trial court did not address this placement in making its determination. Additionally, records of proceedings from 2011 indicate that the youngest child was placed in the care of respondent's sister; the trial court also did not address this placement in making its determination.

In light of clear precedent, we hold that the trial court committed clear error by failing to explicitly consider each child's placement with relatives in making its best interest determination. We therefore vacate the termination order and remand for further consideration of the best interest factors.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Donald S. Owens
/s/ Mark T. Boonstra

Court of Appeals, State of Michigan

ORDER

Elizabeth L. Gleicher
Presiding Judge

In the Matter of Weaver/Mullen, Minors

Docket No. 308428

Donald S. Owens

LC Nos. 2010-000166-NA, 2010-00167-NA, 2011-000212-NA

Mark T. Boonstra
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, we remand the case to the trial court to consider the effect of each child's placement with relatives as it relates to the best-interest analysis. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

COURT OF APPEALS OF THE STATE OF MICHIGAN
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A true copy entered and certified by Larry S. Royster, Chief Clerk, on

AUG 16 2012
Date

Chief Clerk