STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
September 20, 2012

In the Matter of GORE, Minors.

No. 308937
Lapeer Circuit Court
Family Division
LC No. 11-011409-NA

Before: MURPHY, C.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

Respondent appeals by right the order of the family division of the circuit court terminating her parental rights to VLG and ECG pursuant to MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (g), and (j). We affirm.

Respondent seeks reversal of the decision to terminate her parental rights to her two minor daughters, VLG and ECG. According to the initial petition, respondent gave birth to VLG in 2002, and at some point she decided to give up her parental rights in favor of her sister, with whom VLG had resided since she was 11 months old. However, while VLG continued to reside with respondent's sister, the proposed adoption was not completed and the adoption matter was dismissed in October 2007. Respondent was incarcerated when ECG was born, and respondent's sister took physical custody of her as well. Apparently, respondent had initially provided her sister with a written guardianship form for ECG. However, petitioner's caseworker testified that it had subsequently expired and had not been renewed. The caseworker testified that respondent had provided no other guardianship arrangements and had not made any attempt to contact the children "for the past several years." At some point, respondent approached her sister and requested custody of ECG.

The initial petition in the instant case was filed in February 2011. Throughout the following months, respondent attended only one hearing, where she pleaded no contest to the allegations in the amended petition. Following a number of review hearings, where petitioner's caseworker outlined her unsuccessful attempts to contact respondent, a petition to terminate her parental rights was authorized. Following a termination hearing, which respondent failed to attend, the trial court found that grounds for termination had been proven by clear and convincing evidence and that termination was in the children's best interests.

On appeal, respondent first argues that the trial court erred when it determined that petitioner had made reasonable efforts at reunification. She maintains that, due to her ongoing cancer treatment and difficulties obtaining transportation, petitioner's refusal to offer more

assistance caused her to fail at completing the goals in her parent/agency agreement. We disagree.

"Reasonable efforts to reunify the child and family must be made in all cases," except those involving aggravated circumstances not present in this case. MCL 712A.19a(2); see also *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Here, respondent's argument focuses on her ongoing treatment for cancer and her need to have adequate transportation provided so that she could attend her drug screens and the scheduled proceedings. The fact that respondent may have had transportation difficulties did not impact her ability to contact the caseworker to see if she could obtain assistance. As the testimony below supports, the caseworker did try to contact respondent, with no success. And the record indicates that respondent never even called her own sister to check on the children's welfare. Even acknowledging that respondent had cancer during part of the time these proceedings progressed, respondent never called the caseworker to inform her that she could not participate in her parent/agency plan due to her ongoing illness. At one point, the trial court informed respondent's attorney that if respondent wished to adjourn the proceedings, she should submit information from her doctors concerning her ability to appear personally. Respondent failed to do so. Given respondent's absolute lack of contact with anyone other than sporadic conversations with her attorney, we find that respondent has not shown error, plain or otherwise, requiring relief here. See *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).[1]

Respondent next maintains that the trial court erred when it found that grounds for termination had been proven by clear and convincing evidence. See MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 351; 612 NW2d 407 (2000). We review the trial court's findings under the clearly erroneous standard. MCR 3.977(K). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *Id.*; MCR 2.613(C). An order terminating parental rights need be supported by only a single statutory ground. MCL 712A.19b(3).

MCL 712A.19b(3) contains a number of grounds that can support termination of parental rights. Specifically, in the instant case the trial court found that petitioner had established the existence of the following grounds:

> (a) The child has been deserted under any of the following circumstances:
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> * * *

[1] Respondent also contends that the trial court failed to make a sufficiently-detailed finding that reasonable efforts had been made toward reunification. We disagree, as the lower court record reflects that the court made the required finding and that the court had repeatedly noted in various hearings that respondent failed to accept or take advantage of services offered to her.

(*ii*) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(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.

* * *

(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.

The trial court's findings were not clearly erroneous. With respect to § 19b(3)(a)(*ii*), the evidence supports a finding that respondent deserted her children for far more than 91 days both before the initial petition was authorized here, as well as during the pendency of the existing proceedings. During the preliminary hearing on February 10, 2011, petitioner's caseworker, Angelina Corthals, testified about respondent's lack of any contact with the children. Respondent had essentially given VLG to her sister. And while respondent now faults others for her misunderstanding that her sister had already adopted VLG, respondent made no efforts over the years to find out whether this really was the case. For purposes of § 19b(3)(a)(*ii*), there is no indication that respondent ever "sought custody" of VLG. As to ECG, respondent maintains that she acted responsibly, providing proper care to her where she gave respondent's sister a written guardianship for ECG. However, Corthals testified that it had subsequently expired and had not been renewed and that respondent had provided no other guardianship arrangements. Further, respondent had not made any attempt to contact ECG, or VLG for that matter, "for the past several years." Although not entirely clear from the record, it appears that respondent may have been released from prison shortly before the initial petition was filed; respondent's brief gives conflicting statements on the matter. Assuming that respondent had just been recently released, sometime in January 2011, there is no indication that she formally sought custody of ECG and, assuming that an informal demand sufficed, there had apparently been no effort to even communicate with ECG, by writing or phone, during the several years of imprisonment. Regardless and moreover, respondent certainly deserted the children during the pendency of these proceedings, a period that lasted much longer than 91 days. According to the record

below, it took months for her to even respond to the initial petition. And while she initially may have attempted to comply with the parent/agency agreement, she then disappeared. She did not contact the children either by writing them or calling them. While respondent blames her illness and lack of transportation, she made no attempt at contacting the caseworker to try and arrive at a resolution, nor did she even provide updated address or phone information. To the extent that respondent initially sought custody of ECG, she made no further efforts at pursuing the matter while the case proceeded. The trial court did not clearly err in finding that this ground for termination had been met.

As to whether the conditions that led to the adjudication continued to exist and were unlikely to be rectified within a reasonable time, § 19b(3)(c)(*i*), the evidence supports the trial court's decision. At the time of the petition, the barriers to reunification were respondent's past drug use, her lack of suitable housing, and her lack of parenting skills. Respondent showed no progress in any of these areas and did not perform anything in her parent/agency plan other than taking four drug screens. According to petitioner's caseworker, respondent did not complete a substance abuse evaluation, failed to follow any recommendations from any psychological evaluation, did not attend AA or NA meetings or domestic violence therapy, failed to find stable housing and report same, did not provide proof of employment or other benefits, and failed to provide the children with any support. And respondent did not visit the children during the pendency of the proceedings. The trial court thus did not err in finding that the circumstances that led to the adjudication continued to exist.

With respect to respondent's ability to provide proper care and custody, § 19b(3)(g), respondent argues that she provided proper care for the children by placing them in the care of her sister. Respondent is correct that a parent who places her children with an appropriate custodian does not render the children without proper care and custody. See *In re Nelson*, 190 Mich App 237, 241; 475 NW2d 448 (1991). However, petitioner's caseworker testified that respondent let the guardianship for ECG expire and did not renew it. And, from the record presented, respondent never provided one for VLG, ostensibly because she thought it unnecessary, a situation which she never verified. Thus, respondent cannot properly base her own ability to provide care and custody on the fact that her sister did provide such care in the face of respondent's apathy. In addition, respondent ignores the lack of progress on any portion of her parent/agency agreement, even as to being able to meet the children's basic needs of suitable housing. The trial court did not clearly err when it determined that respondent would not be able to provide proper care and custody within a reasonable time.

The trial court's decision concerning whether the children would likely be placed in harm if returned to respondent is somewhat closer but did not constitute clear error. See MCL 712A.19b(3)(j). Even if respondent's assertion that her drug use stemmed solely from her cancer treatment is accepted, she has not shown that she could provide stable safe housing for the children. She has also not shown that she has sufficient parenting skills. Under these

circumstances, we see no error in the court's finding that the children would likely come to harm if returned to respondent.[2]

Respondent next argues that the trial court erred when it found that termination was in the children's best interests.[3] Contrary to respondent's contention, we find the trial court's statements sufficient to show that it thoroughly reviewed the evidence presented and arrived at the proper decision. The trial court's comparison of the children's current placement was not erroneous. When reviewing the best-interest decision, the trial court may look at the current placement of the children and may consider the suitability of alternative homes. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). Here, given the evidence presented of the level of care respondent's sister has provided the children, and the fact that she is the only mother they have known, we do not find the trial court's decision clearly erroneous. And we do not fault the trial court for failing to sua sponte consider other arrangements, such as a permanent guardianship under MCL 712A.19a(7).

Respondent lastly argues that the trial court erred when it did not adjourn the termination hearing so that respondent could attend. Respondent contacted neither the court nor her attorney to state that she could not attend the hearing. Her statement that she had transportation problems in attending a previous meeting with counsel does not support her assertion that she could not have attended the hearing. A respondent has the right to be present at a dispositional hearing, either in person or through counsel. However, the trial court may proceed in her absence if she was provided proper notice of the proceeding. MCR 3.973(D)(2), (3). Respondent does not assert lack of proper notice. The trial court is not required to secure a respondent's presence. *In re Vasquez*, 199 Mich App 44, 48-49; 501 NW2d 231 (1993).

Affirmed.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ William C. Whitbeck

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[2] The trial court found that respondent's past criminal "lifestyle" would likely pose a harm to the children. Assuming that the finding was speculative at best, any error concerning this ground for termination is harmless because only one ground is needed. MCL 712A.19b(3).

[3] Respondent initially claims that the trial court failed to make an affirmative finding that termination was in the children's best interests. We reject this argument, as the record reflects that the court made the required finding and did so in a manner sufficient to satisfy MCR 3.977(I)(3).