STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
December 6, 2012

In the Matter of WILLIAMS/THOMPSON, Minors.

No. 309706
Macomb Circuit Court
Family Division
LC Nos. 2009-000273-NA;
2011-000355-NA

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). For the reasons set forth below, we affirm.

I. STATUTORY GROUNDS FOR TERMINATION

Respondent contends that the trial court erred by holding that clear and convincing evidence established grounds for termination.

> A petitioner must establish by clear and convincing evidence at least one statutory ground for termination of parental rights. This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. [*In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011) (citations omitted).]

"To be clearly erroneous, a decision must be more than maybe or probably wrong. Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011) (citations omitted).

> To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court

> erred in finding sufficient evidence under other statutory grounds. [*In re Ellis*, 294 Mich App at 32 (citations omitted).]

The trial court ruled that respondent's parental rights should be terminated pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). Those provisions provide:

> (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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> * * *
>
> (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. [MCL 712A.19b(3)(c)(*i*), (g), (j).[1]]

We hold that the trial court did not clearly err in finding at least one statutory ground for termination was established by clear and convincing evidence. See *In re Hudson*, 294 Mich App at 264.

A. MCL 712A.19b(3)(c)(*i*) – CONDITIONS THAT LED TO ADJUDICATION CONTINUE TO EXIST

Petitioner established clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*i*). See *In re Hudson*, 294 Mich App at 264. This ground is only applicable to DJW because petitioner sought termination at the initial disposition regarding

[1] MCL 712A.19b was amended in May 2012, but the amendments did not alter any of the provisions at issue in this case.

DT. Therefore, more than 182 days could not have elapsed since the issuance of an initial dispositional order and this ground was not applicable to DT. See MCL 712A.19b(3)(c)(*i*).

The trial court acquired jurisdiction over DJW based on respondent's admissions to the allegations in the amended petition. The amended petition alleged that (1) respondent was smoking marijuana while DJW was present, (2) respondent had untreated mental health issues, (3) respondent was unemployed, (4) respondent's house was in foreclosure, was infested with rats, and there were pit bulls in the home, (5) respondent was selling marijuana and her house was raided while DJW was present, and (6) respondent had a criminal history. Respondent pleaded no contest to the amended petition and stipulated to the petition as a factual basis for her plea. The trial court focused on respondent's housing and unemployment, which were two of the conditions that led to the adjudication, according to the amended petition. The trial court did not specifically address the other conditions. The trial court found that respondent failed to provide a suitable home and could not demonstrate legal, reliable, continuous, and sufficient income.

Respondent's house was found to be safe and suitable. However, respondent planned to live with C. Thompson, which concerned the Child Help worker, Jonathan Cywick. C. Thompson has a criminal history, a doctor found that he has a propensity for domestic violence, he has failed to comply with numerous requirements of the Parent Agency Agreement, and he has warrants for his arrest. Respondent indicated that she was willing to plan without C. Thompson, but had no plans to live anywhere else and C. Thompson provided her with financial support. Respondent also failed to consistently provide proof that she paid her rent. The trial court did not err in finding clear and convincing evidence that this condition continued to exist and that there is no reasonable likelihood it will be rectified within a reasonable time. See MCL 712A.19b(3)(c)(*i*); *In re Hudson*, 294 Mich App at 264.

With regard to employment, respondent was unemployed at the time of the trial. Respondent has a job planned for when she is released from jail. The job would pay $8 to $8.50 an hour. According to respondent, she would work 30 hours a week, but according to the employer, Walter Williams, she would work 24 to 27 hours a week at first. Respondent believes her income will be sufficient to support herself and the children. Respondent also believes she will be eligible for food stamps and cash assistance. However, evidence showed that she relies on C. Thompson for half of the rent and that he will be going to jail when she is released from jail. Respondent will also be unable to work in her former vocation as a dog groomer for three years after she is released from jail because a condition of her sentence on a plea for animal cruelty is that she cannot be around animals for three years. Because respondent was not employed at the time of the trial and the uncertainty regarding whether her future employment would be sufficient to support herself and the children, the trial court did not clearly err in finding that this condition continued to exist and that there is no reasonable likelihood it will be rectified within a reasonable time. See MCL 712A.19b(3)(c)(*i*); *In re Hudson*, 294 Mich App at 264.

B. MCL 712A.19b(3)(g) – FAILURE TO PROVIDE PROPER CARE OR CUSTODY

The trial court did not clearly err in finding that there was clear and convincing evidence to terminate respondent's parental rights to both children under MCL 712A.19b(3)(g). See *In re Hudson*, 294 Mich App at 264. The trial court found that the children were bonded with other

people and respondent makes reckless decisions and puts the safety of herself and her children at risk.

At the time of the trial, respondent was in jail and would be released on May 6, 2012. As discussed, respondent had a suitable home, but would be living with C. Thompson. Although she indicated she was willing to leave C. Thompson, she was not likely to be able to support herself and the children alone. She was also not likely to be able to support herself and the children while C. Thompson was in jail, because he pays half of the rent. Cywick also believed respondent's legal issues showed a pattern and he was concerned about subjecting the children to her future criminal issues. In addition, respondent failed to comply with various aspects of her treatment, including some visits, required drug screens, and compliance with the legal system. "[A] parent's failure to substantially comply with court-ordered treatment plans is indicative of neglect." *In re BZ*, 264 Mich App 286, 300-301; 690 NW2d 505 (2004), citing *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000). Accordingly, the trial court did not clearly err in finding that respondent failed to provide proper care or custody for the children and there is no reasonable expectation that she will be able to provide proper care and custody within a reasonable time. See MCL 712A.19b(3)(g); *In re Hudson*, 294 Mich App at 264.

C. MCL 712A.19b(3)(j) – REASONABLE LIKELIHOOD CHILDREN WILL BE HARMED

The trial court also correctly ruled that clear and convincing evidence supported termination of respondent's parental rights to both children under MCL 712A.19b(3)(j). See *In re Hudson*, 294 Mich App at 264. The trial court found that respondent did not make the care of her children a priority and could not provide a safe and stable environment no matter how much time passed. The trial court was concerned that DJW was taught to lie to case workers and the court also questioned the safety of the children's environment.

Again, respondent planned to live with C. Thompson and a doctor found that C. Thompson has a propensity for domestic violence. As discussed, it is not clear respondent will be able to support herself and the children. Also, respondent has a pattern of legal and criminal trouble. There was also evidence that respondent told DJW to lie and that he had problems telling the truth. Therefore, the trial court did not clearly err in finding that there is a reasonable likelihood that the children will be harmed if they are returned to respondent. See MCL 712A.19b(3)(j); *In re Hudson*, 294 Mich App at 264.

II. BEST INTEREST OF THE MINOR CHILDREN

Respondent contends that there was no evidence that termination was in the children's best interest and the trial court failed to address the best interests of the children. We disagree.

> A petitioner must establish by clear and convincing evidence at least one statutory ground for termination of parental rights. This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. [*In re Hudson*, 294 Mich App at 264 (citations omitted).]

"To be clearly erroneous, a decision must be more than maybe or probably wrong. Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App at 33 (citations omitted).

"If a statutory ground for termination is established, and the trial court finds '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.'" *In re Ellis*, 294 Mich App at 32-33, quoting MCL 712A.19b(5). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's 'need for permanency, stability, and finality,' and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 42; ___ NW2d ___ (2012) (citations omitted). In considering the best interest of the children, the trial court is permitted to consider the whole record. See *In re Trejo*, 462 Mich at 356.

Contrary to respondent's assertion, there was testimony at the termination trial regarding the best interests of the children. Further, a separate dispositional hearing for DT was not required because petitioner sought termination at the initial disposition, and the trial court is permitted to enter an order terminating parental rights at the initial dispositional hearing. MCL 712A.19b(4). Also, respondent's incarceration was not the only barrier to reunification. Respondent was given an opportunity at the termination trial to present evidence that termination was not in the best interest of either child. Respondent specifically testified at the trial that it was in the children's best interest to live with her. The trial court also explicitly addressed the best interests of the children on the record. The trial court found that the children needed a place of safety, permanency, and stability that respondent could not or would not provide.

Evidence showed that DJW needs consistency, safety, and structure, and that respondent was not stable, reliable, or credible. There was a likelihood of respondent having future criminal issues in light of her behavior, to which the children would be subjected. Although there was evidence that both respondent and the grandmother, J. Chisholm, told DJW to lie, there was evidence that Chisholm was otherwise a good foster parent and adequately provided for the children. Remaining with Chisholm was also better for the children because Cywick was not in favor of respondent planning with C. Thompson. Contrary to respondent's assertion, there was little, if any, evidence of a bond between her and her children. Moreover, Cywick believed that any compliance with the Parent Agency Agreement was undermined by respondent's lack of stability, reliability, and credibility. Accordingly, the trial court did not clearly err in finding that termination was in the best interests of the children.[2] See *Hudson*, 294 Mich App at 264.

[2] We note that this Court recently stated that "[a] trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best interests determination and requires reversal." *In re Olive/Metts*, __ Mich App at __ (slip op at 4). Although the trial court did not explicitly address this, respondent does not raise this argument or argue that reversal is warranted on this basis.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter