

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 9, 2012

In the Matter of SMITH/TURPIN/HAFLEY,
Minors.

No. 310248
Branch Circuit Court
Family Division
LC No. 10-004372-NA

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Respondent-mother, A. Hafley (formerly A. Turpin), appeals as of right the trial court's order terminating her parental rights to her four minor children. The trial court determined that MCL 712A.19b(3)(c) and (g) provided statutory grounds for terminating her parental rights, and that termination would be in the children's best interests. The trial court also terminated the parental rights of the children's fathers, including B. Hafley, who is the father of the two youngest children but is not a party to this appeal. We affirm.

I. FACTS

A. BACKGROUND FACTS

A. Hafley and B. Hafley had a lengthy history with Child Protective Services, and the Department of Human Services (the Department). In 2003, the trial court placed one of the couple's mutual children with B. Hafley's mother because of the child's severe medical difficulties; the Department opened the case because A. Hafley could not provide a "clean and safe home" for her children. In 2006, Child Protective Services substantiated an allegation that B. Hafley physically abused the middle son and smoked marijuana in front of the children. In 2007, Child Protective Services substantiated an allegation that A. Hafley was not providing safe home conditions for the children. In 2008, Child Protective Services substantiated an allegation that B. Hafley physically and emotionally abused the oldest and middle sons. In 2010, Child Protective Services substantiated an allegation that the Hafleys were not providing a clean and safe home for the children; this case was open at the time of the instant petition.

On May 2, 2010, A. Hafley reported that the Hafleys smoked marijuana every day, and B. Hafley reported that they used mushrooms on a weekly basis. During a home visit, the Department discovered that there were no beds for the children, there was a hole in the floor, and the living conditions were "marginal." The Department also discovered that the Hafleys had no income and no way to provide for the children.

On the evening of May 28, 2010, the Hafleys left the youngest two children with S. Vanlandingham. Vanlandingham told the Department that the Hafleys left them with her because they intended to “get high on Mushrooms.” Vanlandingham informed B. Hafley through a text message that evening that the youngest son had been burned, and she again tried to contact the Hafleys on May 29. Vanlandingham told the Department that she received a voicemail message from B. Hafley around noon on May 29, instructing her to treat him with gauze and cream. The Department later filed a supplemental report, in which Detective Jim Karbon of the Michigan State Police indicated that he interviewed another resident at Vanlandingham’s house about the incident. The resident told him that Vanlandingham had deliberately burned the youngest son with chemicals after he peed on Vanlandingham’s couch.

On May 29, the youngest son fell off a six-foot-high embankment when Vanlandingham was not supervising him. Emergency medical services transported the son to the hospital, where he was diagnosed with a closed head injury, deep burns on his buttocks and lower extremities, and several other injuries in various stages of healing. He was air-flighted to the Toledo Children’s Hospital and placed in the intensive care unit. A. Hafley went to Toledo to stay in the hospital with the youngest son; when Child Protective Services interviewed her there on May 30, she did not know where her daughter was.

In June 2010, the Department filed a petition to remove the children from the home. The trial court found that it would be contrary to the welfare of the children to remain in the home because of the parents’ “[p]lacing their children with inappropriate caregivers, the parents[’] lack of response to [the youngest son’s] medical needs, the parents[’] past and current drug use and the home conditions where said juveniles resided.” It placed the children in foster care, but the trial court shortly moved the oldest son’s placement for an assessment at St. Vincent’s Children’s Home, after he acted out in his foster home. At the August 2010 adjudication hearing, the Hafleys pleaded to the allegations.

The trial court ordered A. and B. Hafley to provide a safe and stable home environment for the children, to obtain employment, and to submit to and pass random drug testing. The trial court returned the three youngest children to the Hafley’s care. The trial court returned the oldest son to the Hafley’s care in December 2010, but again removed him in January 2011 because he continued to act out. The trial court placed the oldest son in St. Vincent’s Children’s Home.

In February 2011, the middle son witnessed a domestic violence incident between A. and B. Hafley. After the incident, B. Hafley moved out, and A. Hafley could not maintain the home. B. Turpin moved into the home, but the daughter’s school officials reported that he made inappropriate statements to the daughter while picking her up from school after she soiled her pants, including that “he should stick his boots up her butt[,] . . . she was messed up in the head and needed help[, and] . . . he wished he could go back in time a [sic] shoot himself in the head so he would not have to deal with these kids.” After the statements were brought to her attention, A. Hafley had continued to let Turpin live in the home because he “paid the bills.” However, A. Hafley returned to B. Hafley’s residence in April 2011.

B. THE FIRST TERMINATION PETITION

In August 2011, police searched the Hafley's property and found methamphetamine manufacturing components in a boat and shed near the children's toys and bikes. During a forensic interview, the youngest children indicated that the Hafleys spent time in the shed on a daily basis. The trial court again removed the children from A. Hafley's care.

Also in August 2011, the Department petitioned the trial court to terminate the Hafley's parental rights to the oldest son because A. Hafley did not contact or visit him, despite the Department's financial assistance to enable her to do so. In September 2011, the Department supplemented the petition to include all the children. The petitions alleged that A. Hafley had not maintained a safe and stable home environment, that her parenting counselor indicated that she did not satisfactorily complete a parenting program, that her outreach counselor indicated that she was not receptive to services, that she did not attend her substance abuse counseling, and that she was unable to secure or maintain employment.

The trial court held a termination hearing in November 2011. B. Hafley did not attend the hearing. A. Hafley indicated that she no longer lived with B. Hafley and that she wanted to have the children returned to her care without him. The trial court determined that it was not clearly in the children's best interests for it to terminate A. Hafley's parental rights, and allowed her a further opportunity to show that she could provide a safe and stable home for the children. It ordered the Department to follow up on a suitable home that it had made inquiries into on A. Hafley's behalf. However, it found that B. Hafley was not involved in services and had clearly shown that he did not intend to become involved in efforts to reunite him with the youngest children.

C. THE SECOND TERMINATION PETITION

The Department filed a supplemental petition to terminate the Hafley's parental rights on March 6, 2012. The second petition included the allegations from the first petition, and added that A. Hafley had stopped participating in drug screening on November 21, 2011, and had been asked to leave two different households since January 2012.

The trial court held the second termination hearing on April 20, 2012. B. Hafley again did not attend the hearing.

A. Hafley testified that she married B. Hafley on March 24, 2012. She testified that the Hafleys were currently living in a motel room, but planned to move into an apartment shortly. She testified that she had just started new employment. A. Hafley admitted that she had never successfully located housing or employment without B. Hafley's help.

Paul Keller, A. Hafley's children's services specialist, testified that A. Hafley had lived in four locations since August 2011. He testified that none of the locations were suitable for children. Keller testified that the Department attempted to help A. Hafley obtain suitable housing, but that the Department's efforts to assist A. Hafley were unsuccessful. A. Hafley testified that although the Department had attempted to help her secure housing, it had been unsuccessful because A. Hafley was now living with B. Hafley. The trial court asked A. Hafley

whether she “had a choice to get your kids or get involved with Mr. Hafley. And you chose Mr. Hafley. Am I understanding that correctly?” She responded that she had chosen B. Hafley.

Keller testified that A. Hafley could not provide the children with a safe and stable home environment while living with B. Hafley, because B. Hafley would not participate in services. A. Hafley testified that even though B. Hafley did not participate in services, it was “not a problem” because he earned money. She testified that she was now attending church, and believed that the home conditions would improve.

Keller testified that, although the children loved A. Hafley and she loved them, he believed it was in their best interests for the trial court to terminate A. Hafley’s parental rights because it was unlikely that she could provide them with a safe and stable home, and although the State could not promise immediate stability for the children, there was a higher probability that the State could provide them with stability than that A. Hafley could. Keller admitted that the children were in different foster homes, and that it was likely that if the trial court terminated A. Hafley’s parental rights, they would remain separated.

Jennifer Rodgers, the foster care worker for the younger three children, testified that the middle son was doing better in school but would benefit from permanency. She testified that the youngest son’s school determined that he had speech and language delays, but that his school had put an Independent Education Plan into place to address the issues. Rodgers testified that she believed it would be in the children’s best interests for the trial court to terminate A. Hafley’s parental rights.

Marcia Metzger testified that she met A. Hafley at the church that A. Hafley began to attend regularly in February 2012. She testified that she believed the intervention of God and the support of the church community would make a difference in A. Hafley’s life.

D. THE TRIAL COURT’S FINDINGS AND ORDER

The trial court determined that the Department proved the elements of MCL 712A.19b(3)(c) and (g). It noted that it was uncertain whether stable housing or a drug free environment had been an original condition leading to the petition, but that even if it had not been, the lack of stable, suitable housing was another condition that became a condition during the pendency of the case and that A. Hafley had been given opportunities to address those conditions. It found that she was not likely to rectify these conditions within a reasonable time given the children’s ages because she was “not able to provide a safe and stable home environment for herself, let alone her children.” It also supported its finding with A. Hafley’s history, that she continued to make poor choices, and that she did not benefit from services.

The trial court extensively considered the children’s best interests, and concluded that the evidence clearly and convincingly established that it was in the children’s best interests to terminate A. Hafley’s parental rights. It found that the children loved A. Hafley. However, the trial court was concerned that A. Hafley would not visit her oldest son and that she chose B. Hafley over her children. The trial court outlined the children’s emotional and developmental delays, and found that the children had needs that the Hafleys were not meeting. It expressed its concern that the state would be able to meet those needs, but found that it was “the only hope

they have, because Mom's not ever going to be able to do that." The trial court ordered termination of A. Hafley's parental rights.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

To terminate a parent's parental rights, the trial court must find that the Department has proved at least one of the statutory grounds for termination by clear and convincing evidence.¹ This Court reviews for clear error a trial court's decision to terminate a parent's parental rights.² A finding is clearly erroneous when there is evidence to support it, but after reviewing the record, we are definitely and firmly convinced that the trial court made a mistake.³

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

MCL 712A.19b(3)(c) provides that the trial court may terminate a parent's rights if either of the following exist:

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he 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.

¹ MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

² MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

³ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

A parent's failure to participate in and benefit from a service plan is evidence that that parent will not be able to provide a child with proper care and custody.⁴

D. ANALYSIS

A. Hafley argues only that the trial court erred when it determined that clear and convincing evidence supported its conclusion that she could not rectify the conditions within a reasonable time—an element of both statutory grounds.

A. Hafley had an extensive history with Child Protective Services, from 2003 to the present case. This history included that she had been unable to provide a safe and stable home for the children, and that drug use affected their care. Contrary to A. Hafley's assertion in her brief on appeal that she was only unable to provide her children with a proper home starting in August 2011, this case arose in June 2010, when the youngest son was seriously burned after A. and B. Hafley left him in Vanlandingham's care so that they could take drugs. Although the trial court returned the children to the Hafleys' care for a period of time, it removed them *again* in August 2011, after police discovered a methamphetamine manufacturing operation on the Hafleys' property.

After the children were removed from A. Hafley's home the second time, she was unable to maintain stable housing. A. Hafley lived in four locations in a span of eleven months, and Keller testified that none of these locations were suitable for children. The trial court and the Department attempted to arrange a suitable home for A. Hafley and the children after the first termination hearing, when A. Hafley indicated that she would no longer rely on B. Hafley and that she intended to provide the children a home on her own. A. Hafley subsequently refused the home, and instead insisted on continuing to live with B. Hafley. A. Hafley admitted that she chose B. Hafley over her children, though he had not participated in the case. Further, the Department presented evidence that A. Hafley did not participate in services, and did not benefit from the services that she did participate in.

On this record, we conclude the trial court did not clearly err when it found that there was no reasonable likelihood that A. Hafley would be able to provide the children with a safe and stable home within a reasonable time considering their ages. Thus, these statutory grounds supported its termination of A. Hafley's parental rights.

III. THE CHILDREN'S BEST INTERESTS

A. STANDARD OF REVIEW

If the Department has established a statutory ground for termination by clear and convincing evidence, and the trial court finds from evidence on the whole record that termination

⁴ *In re JK*, 468 Mich at 214.

is in the child's best interests, the trial court must order the parent's rights terminated.⁵ We review for clear error the trial court's decision regarding the child's best interests.⁶

B. LEGAL STANDARDS

To determine whether termination is in a 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."⁷

C. APPLYING THE STANDARDS

A. Hafley argues on appeal that the trial court clearly erred when it determined that terminating her parental rights was in the children's best interests, because (1) it is unlikely that her special needs children will be adopted, and (2) her children are in separate foster homes and are unlikely to be adopted together. We note that our Courts have never clearly decided whether a child's likelihood of being adopted may affect his or her best interests,⁸ but Michigan courts have certainly never held that the "adoptability" of a child is an overriding consideration to determine a child's best interests. The advantages of a foster home—or, by implication, the advantages of potential adoption—are only one factor that the trial court may consider when determining a child's best interests.

The trial court weighed the chances that the children might be adopted given their ages and difficulties, and ultimately determined that adoption or a better life in foster care was more likely than that A. Hafley would be able to provide them with a safe and stable environment. The evidence established that A. Hafley was *not* able to provide a safe and stable environment, and that her care was "not conducive to allowing [the children] to grow as human beings." The majority of the children were exhibiting developmental and emotional delays. Rodgers and Keller testified that the youngest children were doing better in foster care. Though the oldest child was not, the Department also established that A. Hafley had refused to visit him or provide him with emotional support. Keller testified that, though the State could not immediately guarantee the children safe and stable homes, he believed that it was more likely to do so than A. Hafley. The trial court agreed. After a careful review of the record, we are not definitely and

⁵ MCL 712A.19b(5); MCR 3.977(H); *In re Trejo Minors*, 462 Mich at 351.

⁶ *Id.* at 356-357.

⁷ *In re Olive/Metts*, ___ Mich App ___, slip op p 3; ___ NW2d ___ (2012) (internal quotations omitted).

⁸ See *In re McBride*, 483 Mich 1095, 1097 n 8; 766 NW2d 857 (2009) (Corrigan, J. dissenting).

firmly convinced that the trial court's determination that termination was in the children's best interests was a mistake.

We affirm.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Michael J. Kelly