STATE OF MICHIGAN

COURT OF APPEALS

In re N. V. SPALDING, Minor.

UNPUBLISHED
September 16, 2014

No. 320379
Ingham Circuit Court
Family Division
LC No. 12-001313-NA

Before: FITZGERALD, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

The circuit court terminated the respondent-mother's parental rights to her six-year-old son, NS, based on respondent's failure to adequately address her mental health issues and alcoholism, as well as her abandonment of the child partway through the proceedings. On appeal, respondent challenges only the court's conclusion that termination of her parental rights was in the child's best interests. Because a preponderance of the evidence supported the court's conclusion, we affirm.

I. BACKGROUND

From NS's birth in 2007 through October 2011, his parents lived together and raised him. Unfortunately, the parents' alcohol abuse interfered with their ability to parent and there were bouts of domestic violence in the home. In October 2011, the Department of Human Services (DHS) first intervened with the family and took NS into care. Services were provided to both parents and the father eventually regained custody of the child. The child's father continued contact with respondent, however. Three months after regaining custody, the DHS stepped in again and removed the child based on the parents' alcoholism and domestic violence. NS has been a ward of the state since August 2012.

During the 2011 and 2012 child protective proceedings, the DHS offered respondent many services, including three psychological evaluations, a parent support partner, parenting classes, four separate individual counseling referrals, drug and alcohol screens, two substance abuse evaluations, and parenting time. Yet, respondent only participated in one psychological evaluation, one substance abuse evaluation, and 21 parenting-time sessions. Respondent said she had difficulty in participating in services due to financial and transportation problems, but refused transportation assistance.

The termination hearing was conducted on January 27, 2014. Respondent was then incarcerated because she had become intoxicated and resisted and obstructed a police officer.

She was on probation at the time of the incident and her conduct was deemed a violation of her probationary terms. Respondent admitted at the hearing that she had failed to participate in any treatment for her alcoholism before her incarceration. Yet, respondent claimed that she had been sober for about a year in 2011 when NS was first taken into care, and had been sober during her incarceration and several weeks preceding it. Respondent indicated that she was participating in services while in jail and had completed the first phase of a substance-abuse program, a parenting class, and 20 hours of anger-management therapy.

Respondent claimed to be bipolar, although the psychologist who conducted her psychological evaluation rejected that diagnosis. Respondent testified that she was taking medication for her condition while in jail, but had to stop her medication during part of the proceedings because she could not afford it. Respondent admitted that the case worker had attempted to assist her in securing her medication, but that she had resisted those offers of aid.

The counselor assigned to respondent's case in jail corroborated respondent's testimony that she had made progress while incarcerated. Respondent had been attending individual and group counseling sessions addressing stress management, coping skills, additional triggers, and relapse prevention. The counselor rated respondent's accomplishments at a 7 or 8 on a 10-point scale, stating that she is engaged in sessions and does her homework. According to the counselor, respondent needed continuing services but would have a good probability of remaining sober if she continued her treatment and went to self-help groups.

However, respondent admitted that she had not seen NS since July 2013. Respondent indicated, "I'm not sure of the dates," but stated that she engaged in parenting time sessions between March and July 2013. Respondent said she had "some" visits with NS, during which they played with blocks, colored, played cars, played dinosaurs, read books together, and talked about school and the problems he was having there. Respondent claimed to have brought NS school supplies, and that they talked about why he was acting out, his foster-care environment, his father, and what he liked and did not like. According to respondent, they also kissed and hugged and had a bond.

At the conclusion of the termination hearing, the court found termination supported under MCL 712A.19b(3)(a)(*ii*) (desertion for 91 days), (c)(*i*) (conditions leading to adjudication continue to exist with no reasonable chance of rectification within a reasonable time), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm to the child if returned to his parent's care). The court also found that termination of respondent's parental rights was in NS's best interests as follows:

> Now, the question is, is it clearly in the child's best interests to terminate parental rights.
>
> As it relates to the mother, there is no question. She had no bond with this child whatsoever, none. It's my impression from the report, he's done with her, and it's my impression from her actions, she's done with him. So there's nothing to benefit. And so it's clearly, I find by clear and convincing evidence her parental rights should be terminated.

II. BEST INTERESTS OF THE CHILD

Pursuant to MCL 712A.19b(5), "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." A circuit court must determine by a preponderance of the evidence that termination is in the child's best interest. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). "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, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 701 (2014).

We first note that the circuit court found that termination was in the child's best interests based on the clear and convincing evidence standard. The best-interest hearing was conducted in January 2014, seven months after this Court indicated in *Moss* that the lesser preponderance of the evidence standard is applicable at the best-interest phase. Respondent benefitted from the circuit court's error because it unnecessarily imposed upon itself a steeper hurdle against termination of respondent's parental rights.

Respondent contends that the circuit court erred in failing to consider the wide range of factors listed in *Olive/Metts*, focusing solely on the lack of a bond between mother and child. Respondent failed to support or analyze this claim. We are therefore not required to consider it. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). However, we noted that MCL 712A.19b(5) simply references determining a child's best interests without limitation on how the determination should be made. And while this Court has spoken of "consider[ing] a wide variety of factors" when determining the best interests of the child, *White*, 303 Mich App at 713, this does not mean that each factor need be given equal weight. For example, in *In re Smith*, 291 Mich App 621; 805 NW2d 234 (2011), this Court affirmed a circuit court's decision that termination of parental rights was in a child's best interests on the sole basis that there was no bond between the respondent and the child. *Id.* at 624 ("[G]iven the absence of any bond between respondent and the child, the trial court did not clearly err by finding that termination of respondent's parental rights was in the child's best interests."). See also *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998) (stating that the best-interest factors under the Child Custody Act "need *not* be given equal weight") (emphasis in original).[1]

[1] *In re JS & SM*, 231 Mich App 92, 102-103; 585 NW2d 326 (1998), overruled on other grounds *In re Trejo Minors*, 462 Mich 341; 612 NW2d 407 (2000), states that it is "entirely appropriate" for courts to consider the best-interest factors under the Child Custody Act, MCL 722.23, when deciding whether the termination of parental rights is in a child's best interests under the Juvenile Code.

Respondent also challenges the court's conclusion that no bond existed. Respondent complains that she had a strong bond with NS, as demonstrated by her testimony that before going to jail, she played with NS, talked with him, brought him school supplies, and hugged and kissed him. However, there was ample evidence supporting the circuit court's conclusion that NS lacked a sufficient bond with respondent. Notably, respondent had minimal contact with NS from August 2012 to November 2013, and NS's therapist testified that NS would not talk about respondent and had expressed interest in being placed with his father or his foster-care mother, not respondent.

Moreover, the circuit court did not limit its best-interest determination to the lack of a parent-child bond. The court additionally concluded that respondent's actions demonstrated that she was "done with him." This finding is strongly supported by evidence that respondent refused assistance in obtaining treatment for her bipolar disorder. Further, other than her time in jail, respondent had not remained sober for any appreciable period since 2011. Respondent repeatedly refused to participate in many offered services and was not consistent with her drug and alcohol screens. Respondent even admitted that despite being ordered to complete a psychological evaluation in December 2012 as a condition to seeing NS, she waited four months to secure testing. And according to respondent's psychological evaluator, respondent arrived late to her appointment and was uncooperative during various portions of the evaluative process. Taken together, these circumstances underscored respondent's lack of concern for her relationship with NS and supported the circuit court's findings.

Although respondent was participating in services during her incarceration, and her counselor testified that respondent would have a good probability of becoming sober if she continued her treatment, the overwhelming evidence suggested that respondent was nevertheless still only in the beginning stages of rectifying the conditions leading to NS's removal, and there was no evidence suggesting that respondent would be willing and able to continue her efforts after her release from jail. Accordingly, the circuit court properly determined that it was in NS's best interests to terminate respondent's parental rights.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause