STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 22, 2015

In re S.M.L. PFEIFFLE, Minor.

No. 322312
Washtenaw Circuit Court
Family Division
LC No. 2013-000185-NA

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

PER CURIAM.

Respondent-mother appeals as of right the May 13, 2014 trial court order terminating her parental rights to the minor child SMLP under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (3)(j) (reasonable likelihood of harm if child is returned to parent).[1] We affirm.

The genesis of the instant proceedings can be traced to respondent's involvement with Child Protective Services (CPS) regarding her eldest daughter, SLEP. On February 1, 2012, CPS received a complaint that one of respondent's friends had put vodka in SLEP's milk in order to make her fall asleep; a pediatric emergency room physician subsequently reported that SLEP had suffered alcohol poisoning. Respondent had a history of substance abuse and mental health issues. In March 2012, SLEP, then 13 months old, was taken into care after CPS received complaints that the child was living in a home without heat and that respondent had left the one year old home alone for up to 40 minutes while she went to visit a friend. There were further allegations that SLEP was found in "wet and inadequate clothing" and that respondent did not realize that the child was cold. Finally, there was evidence that SLEP had been bitten by a dog and respondent refused to remove either SLEP or the dog from the home. A trial court subsequently assumed jurisdiction over SLEP and respondent was provided with the "most intensive services" offered by the Department of Human Services (DHS).

[1] Contrary to petitioner's arguments on appeal, the trial court did not terminate respondent's parental rights pursuant to MCL 712A.19b(3)(i) and (3)(l), which pertain to termination of a parent's rights to another child.

Despite these services and provision of therapy and psychotropic medication, there was little if any improvement. As of October 2012, Dr. Joshua Ehrlich who performed a psychological evaluation indicated that he had "grave" concerns about respondent's ability to parent given her impulsivity, chronic lapses in judgment, and demonstration of behaviors that were not in the best interests of herself or her child. Indeed, Dr. Ehrlich could not identify any services that he believed would help respondent improve. In November 2012, respondent stopped attending therapy and later discontinued taking psychotropic medication for a period of time. As of April 1, 2014, respondent had only completed one of the offered services and the record indicates that she did not benefit from that service. She refused to comply with schedule drug screening. On April 1, 2014, respondent's parental rights to SLEP were terminated.[2]

In November 2013, during the pendency of the case concerning SLEP, SMLP, the subject of the instant proceedings, was born. Five days after her birth, the trial court ordered her removed from respondent's care as a result of respondent's failure to demonstrate improvement in SLEP's case after nearly two years. See *Matter of Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993) (holding that "evidence of mistreatment of one child is probative of the treatment of [an]other child[] of the party"). On April 11, 2014, petitioner filed a petition to terminate respondent's parental rights to SMLP and, on April 30, 2014, a combined adjudication trial and termination hearing was held. In a written opinion, the trial court took jurisdiction over SMLP and terminated respondent's parental rights under MCL 712A.19b(3)(g) and (3)(j).

Respondent argues that the trial court erroneously found statutory grounds to terminate her parental rights.[3] "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We conclude that the trial court did not clearly err by termination respondent's parental rights pursuant to MCL 712A.19b(3)(g), which provides that termination is proper where "[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."

Although services were not ordered in the instant case, the extensive services ordered in respondent's other case were provided during the pendency of this case. Accordingly, respondent's poor response to those services is relevant. Moreover, respondent did not consistently attend scheduled parenting time visits and when she did, she would sometimes not interact with SMLP or would talk on the telephone. She did not comply with drug screening and she has not attended counseling. She was non-compliant with prescribed psychotropic

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[2] A separate appeal of that termination is pending before this Court.

[3] "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." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "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." *Id*.

medication and moved in with a new boyfriend who behaved aggressively towards her in the courtroom.

Respondent's sole source of support was Social Security Income; and, testified that after paying rent she would only have $500 remaining each month. Because of her history of substance abuse, respondent was required to have a payee, and she named SMLP's father. As of April 30, 2014, respondent had not yet received her May 2014 payment, did not have money saved, and did not have appropriate clothes or a crib for SMLP. If respondent and SMLP were unable to live with respondent's new boyfriend, who, as noted, was aggressive during these proceedings, respondent planned to move in with SLEP's father, who had a history of substance abuse.

At the termination hearing, respondent did not take responsibility for her past poor parenting. And although Dr. Ehrlich's 2012 psychological evaluation was 1-1/2 years old at the time of the hearing, based on respondent's behavior following the evaluation, he testified that did not believe that she had demonstrated improvement, noting that she was "impulsive," demonstrated chronic lapses in judgment, lacked "self-reflexiveness," and "often behave[d] in ways that [were] not in her best interests or the best interests of her children." He testified that respondent's circumstances at the time of the termination hearing were "consistent with the tumult around the time that [he last] saw her." To the extent respondent did engage in services, her caseworker testified that, in her opinion, she did not demonstrate a benefit from the services designed to address her parenting skills. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Respondent also argues that termination was premature because she was not provided with a case service plan in relation to SMLP. However, because respondent's parental rights to SMLP were terminated at the initial dispositional hearing, she was not entitled to reasonable reunification services. See MCL 722.638(3); MCL 712A.18f(1)(b). Moreover, MCL 712A.19a(2)(c) provides that, "Reasonable efforts to reunify the child and family must be made in all cases except if . . . [t]he parent has had rights to the child's siblings involuntarily terminated[,]" and respondent's rights to SLEP were terminated over a month before the instant termination of her rights to SMLP. There is also no evidence that respondent would have complied with services to the point where she would have been "able to provide proper care and custody within a reasonable time considering" the minor child's age. MCL 712A.19b(3)(g). Respondent demonstrated a lack of commitment to completing and benefitting from services in relation to SLEP and continued to demonstrate poor judgment at the time of SMLP's termination hearing. Dr. Ehrlich was unable to think of any services that would help respondent improve. At the time of termination, SMLP was five months old and had been in care for all but five days of her life. Accordingly, the trial court did not clearly err by finding that statutory grounds to

terminate respondent's parental rights under MCL 712A.19b(3)(g) had been established by clear and convincing evidence.[4]

Respondent next argues that the trial court erred by ruling that termination of her parental rights was in SMLP's best interests. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding 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." *In re Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted). In *In re VanDalen*, 293 Mich App at 141, when reviewing best interests, we also looked at evidence that the children were not safe with respondents, were thriving in foster care, and that the foster care home could provide stability and permanency.

SMLP was removed from respondent's care when she was five days old. Respondent was unable to articulate why she believed SMLP was bonded to her and, as described above, did not fully engage in parenting time. When asked why it was in SMLP's best interests to be returned to her care, respondent only indicated that she did not "want some other people raising [her] daughter." In sum, the record provides little indication that respondent and SMLP shared a parent-child bond. The record also does not support that respondent possessed necessary parenting skills or that SMLP would be safe in her care. At the termination hearing, respondent was unable to financially care for the child, lacked appropriate clothing and a crib, and the two housing possibilities that respondent proposed were improper. Respondent was not regularly taking psychotropic medication at the time of termination, acknowledged that she had anger issues, and an infant mental health worker had classified respondent as "one of the most disturbed mothers" with whom she had ever worked. Respondent also did not take responsibility for her poor parenting in relation to SLEP at the time of the instant termination hearing and Dr. Ehrlich continued to have "grave" concerns about respondent's parenting abilities. Moreover, the five-month-old SMLP had been out of respondent's care for all but five days of her life and was thriving in foster care, with foster parents who were willing to adopt her. Accordingly, the trial court did not clearly err in finding that termination of respondent's parental rights was in SMLP's best interests.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause

[4] Because we have concluded that at least one statutory ground for termination existed, we need not consider the additional ground upon which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).