STATE OF MICHIGAN

COURT OF APPEALS

In re M D ANDERSON, Minor.

UNPUBLISHED
January 12, 2016

No. 327868
Kalkaska Circuit Court
Family Division
LC No. 15-004378-NA

Before: BOONSTRA, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Respondent-mother appeals by right the order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(d) (failure to comply with a limited guardianship placement plan), MCL 712A.19b(3)(e) (failure to comply with a court-structured guardianship plan), and MCL 712A.19b(3)(f) (failure to provide regular support to and communication with a minor for whom a guardian has been appointed), and determining that termination was in the child's best interests.[1] We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In July 2010, the child began residing with her maternal aunt, who had previously been hosting the child for a visit. According to the aunt, respondent was supposed to pick up the child in Ohio but failed to meet them there as scheduled. In September 2010, the aunt was granted guardianship over the child. In July 2011, respondent, then living in West Virginia, filed a petition to terminate the guardianship, which was denied by the court. In conjunction with that denial, the trial court ordered that respondent comply with numerous terms and conditions as part of the guardianship plan, including maintaining weekly telephone contact with the minor child, having face-to-face contact with the minor child every two to three months, completing domestic violence counseling regarding her current relationship, maintaining stable housing and employment, obtaining counseling on age appropriate child development, setting up a physician and a counselor for the child in the area where she would be living, participating in a substance abuse assessment and drug screenings, and providing verification of employment, housing, and counseling. Respondent was also ordered to learn the signs and symptoms of child sexual abuse and the parenting skills necessary to support a child with a history of child sexual abuse. Erin

[1] The rights of the child's unknown father were also terminated.

Merchant, a Child Protective Services (CPS) investigator, testified that this was necessary because the child had previously been sexually abused while in respondent's care and, although respondent was not responsible, she may have failed to recognize signs of sexual abuse.

In 2014, Megan Parvineum, the guardianship investigator for the child's case, contacted respondent, who was then living in Georgia. Parvineum stated that respondent wanted the guardianship terminated and her daughter returned to her. Parvineum said that they then discussed respondent's compliance with the guardianship plan. According to Parvineum, respondent stated that she had stable housing and employment, and had completed a parenting class that also addressed domestic violence. Parvineum said that she told respondent that she would need to verify those assertions; respondent failed to do so.

Regarding respondent's contact with the child, Parvineum testified that respondent told her that she had not spoken with the child in two months and had not seen her since April 2012. Parvineum testified that respondent told her that the child's guardian was preventing her from communicating with the child. Parvineum also stated that respondent had not been participating in drug screens, nor had she completed a substance abuse assessment. Parvineum said that she advised respondent to contact a human services agency where she was living for assistance with those matters.

Merchant conducted a CPS investigation in February of 2015. Merchant testified that she determined from a review of the child's file that respondent had failed to provide any verification of her compliance with the guardianship plan. Merchant explained that she tried numerous times to contact respondent regarding her compliance but never received a response. Merchant testified that when she spoke to the child in February 2015, the child said that she had not spoken to respondent on the phone in over three months. Merchant described the history of respondent's phone communication with the child as sporadic. Merchant also testified that her review of the past guardianship reviews indicated that respondent physically visited the child approximately twice a year for the first two years of the guardianship; however, contact diminished after that point.

In March 2015, petitioner filed a petition to terminate respondent's parental rights due to her failure to abide by the terms of the guardianship. A termination hearing was held in May 2015. The child's guardian testified that respondent's contact with the child for the first few years "was really good." The guardian stated that respondent would call the child a couple of times a week or every other week, and that respondent came to Kalkaska to visit the child a couple of times during those years, and during the first two years sent Christmas and birthday presents. However, the guardian testified that in the past three years respondent had called "very seldom," estimating that there would sometimes be two months between phone calls. The guardian further stated that respondent had not sent the child a present during that time.

The guardian testified that although the child has anxiety issues and ADHD, she had been doing well, passing her classes in school and being involved in extracurricular activities such as 4-H, Girl Scouts, and horseback riding. The child had also been attending counseling with Child and Family Services (CFS) since September 2010. The guardian testified that the child had expressed a desire to be adopted by her and her husband, and that she (the guardian) had the goal of adopting the child. She described the child as "thriving" while living with her and her

husband. The child's lawyer guardian ad litem (LGAL) confirmed that the child had expressed the desire to be adopted.

Respondent testified that she had taken a one-day parenting class in 2011 in West Virginia. Respondent stated that she lacked the final resources to comply with many requirements of the guardianship plan, including making face-to-face visits, although she admitted that she had not contacted an agency comparable to petitioner in another state and did not have an explanation for not doing so. Respondent admitted that she had last seen the child in person in April 2012. Respondent testified that her living situation was stabilizing and that she was employed. Respondent claimed that the child's guardian had prevented her from speaking to the child, because she had left phone messages that were not returned. The child's guardian admitted that she did not pick up the phone when respondent called but allowed the child to choose whether to answer the phone; she denied that respondent had ever left a message.

The trial court terminated respondent's parental rights as described above. This appeal followed.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred in finding that a statutory ground for termination had been proven by clear and convincing evidence. We disagree. We review for clear error a trial court's factual finding that a statutory ground for termination has been proven by clear and convincing evidence. *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). "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, 263; 817 NW2d 115 (2011).

A court may terminate parental rights under MCL 712A.19b(3)(f) if it finds by clear and convincing evidence that the minor has a guardian and both of the following have occurred:

> (*i*) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.
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> (*ii*) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition. [MCL 712A.19b(3)(f)(*i*) and (*ii*).]

Respondent does not dispute that she had the ability to provide support and failed to do so; rather, respondent's argument focuses on the issue of phone contact. But § 19b(3)(f)(*ii*) also speaks of "the ability to visit," and the record shows that respondent had not physically visited the child in the past two years. Respondent said she could not afford to visit the child every two to three months, and that geographical obstacles should be considered when determining whether there has been a substantial failure to visit. See *In re Martyn*, 161 Mich App 474, 482; 411

NW2d 743 (1987). However, the testimony showed that respondent had visited the child about twice a year for the first two years of the guardianship, and there was no explanation given as to why she could no longer afford to visit her at all, or otherwise arrange for face-to-face contact of some sort.

There was conflicting testimony regarding how often respondent attempted to contact the child by phone. While respondent admitted that she had not recently spoken to the child, she testified to calling the child about four times a week until the last year. A CPS worker testified that respondent did not always call two to three times a week, and the child's guardian testified that respondent "very seldom" called from 2012 to 2014, and that she would sometimes go months between calls. To the extent the trial court did not find respondent's testimony credible, that decision must be given deference. *In re BZ*, 264 Mich App at 296-297.

The evidence supports the trial court's finding with respect to MCL 712A.19b(3)(f), and "[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights . . . ." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

Because only one statutory ground for termination must be proven, see *In re Trejo*, 462 Mich at 356, we need not address the trial court's findings concerning the guardianship plan. However, we note that sufficient evidence existed for the trial court to conclude that respondent had failed to abide by the terms of the guardianship plan, whether the child was placed in a guardianship under MCL 700.5204 with a court-structured guardianship plan or a limited guardianship under MCL 700.5205.[2]

III. BEST-INTEREST DETERMINATION

Respondent also argues that the trial court erred in finding that termination of parental rights was in the child's best interests under MCL 712A.19b(5). We disagree. A court's best-interest determination is also reviewed for clear error. MCR 3.977(K); *In re Utrera*, 281 Mich App at 15.

"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

[2] The record before this Court does not indicate whether the child was placed in a guardianship, MCL 700.5204, or a limited guardianship, MCL 700.5205. Generally, limited guardianships require that a guardianship placement plan be developed as a prerequisite to the appointment of a limited guardian. MCL 700.5205(2). Here, testimony indicates that a guardianship plan was not enacted until 2012, two years after the child's aunt was appointed guardian. Thus, the record supports the inference that the plan at issue was a court-structured guardianship plan, rather than a guardianship placement plan under a limited guardianship. Regardless of the form of the child's guardianship, the trial court did not clearly err in determining that the plan was not complied with, and thus did not clearly err in determining that the applicable ground was proven, regardless of whether that ground was MCL 712A.19b(3)(d) or (e).

be made." MCL 712A.19b(5). The petitioner must prove by a preponderance of the evidence that termination of parental rights is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include 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 White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (internal quotation marks and citations omitted).

In this case, numerous factors support the trial court's finding that termination of parental rights was in the child's best interests. First, testimony from Merchant, Parvineum, the child's guardian, and even respondent herself supported the conclusion that the child's bond with respondent diminished over the course of the guardianship. Further, Merchant, Parvineum, and the LGAL all testified that the child wishes to be adopted. Moreover, the record shows that the child has been doing well with her aunt and uncle. She has been passing her classes in school and is involved with extracurricular activities and counseling.

Conversely, the record shows that respondent's life over the past five years has been relatively unstable. Respondent gave explanations for her mobile lifestyle, stating that she and her boyfriend go where he can find work and that they also had to move to Florida to take care of his sick mother. Respondent's situation does appear to be stabilizing, as she testified that she and her boyfriend would soon be marrying and then would buy his grandmother's home. She also said that she was currently employed and undergoing manager training at a restaurant. However, respondent never learned to identify the signs of sexual abuse or how to parent a child that has been a victim of sexual abuse, or obtained counseling on age appropriate child development. Further, respondent had a history of not following through on her promises to the child. In sum, there was sufficient evidence to find it was in the child's best interests to terminate respondent's parental rights.

Affirmed.

/s/ Mark T. Boonstra
/s/ David H. Sawyer
/s/ Jane E. Markey