

STATE OF MICHIGAN
COURT OF APPEALS

In re Z. L. BROWN, Minor.

UNPUBLISHED
June 21, 2016

No. 328041
Wayne Circuit Court
Family Division
LC No. 12-510956-NA

In re Z. L. BROWN, Minor.

No. 328042
Wayne Circuit Court
Family Division
LC No. 12-510956-NA

In re Z. L. BROWN, Minor.

No. 328798
Wayne Circuit Court
Family Division
LC No. 12-510956-NA

Before: M. J. KELLY, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

In Docket Nos. 328041 and 328042, respondent-mother and respondent-father, respectively, appeal the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). In Docket No. 328798, respondent-mother appeals by delayed leave granted the trial court's earlier order requiring the Department of Health and Human Services to file the supplemental petition for termination of parental rights. Because we conclude that the trial court did not err, we affirm in all three appeals.

The minor child was born to respondents in Arizona. Respondent-mother moved to Michigan with the child, but respondent-father remained in Arizona. The Department investigated respondent-mother in December 2012, after someone alleged that she did not properly supervise the child while staying at a homeless shelter. Respondent-mother had no housing or income, and she showed signs of mental illness. The trial court exercised jurisdiction over the child on the basis of respondent-mother's admissions of homelessness and lack of

income. Respondent-father came to Michigan in June 2014 to make efforts toward reunification. The trial court took jurisdiction to consider his fitness as a parent on the basis of his admission that his housing was unsuitable. Respondents' treatment plans required them to establish safe and suitable housing and a legal source of income, and to resolve mental health problems that were barriers to reunification.

Respondent-mother never established safe and suitable housing. She stayed with unsafe persons or with friends in temporary arrangements. She delayed complying with a psychological evaluation, and subsequently with a psychiatric evaluation, although her visitation with the child was suspended pending compliance with these requirements. When her visitation was reinstated after two years, she attended visitation but did not interact with the child. Respondent-father also never established suitable housing in Michigan. He stayed in rented bedrooms in houses where he shared bathroom and kitchen facilities with other renters. Although he attended individual counseling, his therapist reported that he did not make progress because he was verbally combative and he blamed others for his problems. Respondent-father evinced an obsessive and domineering attitude toward respondent-mother.

In February 2015, the trial court ordered the Department to file a supplemental petition for permanent custody of the child. Following a termination hearing, the trial court found that respondents' failure to rectify their housing and mental illness problems supported termination of their parental rights, and further found that termination was in the child's best interests.

Respondents then appealed in this Court.

I. RESPONDENT-MOTHER

Respondent-mother argues that the evidence was insufficient to establish a statutory ground to terminate her parental rights. The Department bears the burden to prove by clear and convincing evidence that at least one statutory ground for termination under MCL 712A.19b(3) exists. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). This Court reviews for clear error the trial court's finding that the Department has established a ground for termination. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). "[T]his Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005); MCR 2.613(C).

MCL 712A.19b(3) provides that a trial court may terminate parental rights to a child "if the court finds, by clear and convincing evidence, 1 or more" of the enumerated grounds. The trial court terminated Alawy's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g), which permit termination under the following circumstances:

- (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.

There was ample evidence to support the trial court's finding that the Department proved both grounds for termination by clear and convincing evidence.

The trial court asserted jurisdiction over the child on the basis of respondent-mother's admission that she was homeless and had no income. The Department presented evidence that respondent-mother made no progress toward resolving her inability to provide safe and suitable housing for the child. Her housing circumstances over the course of the proceedings alternated among temporary arrangements with friends, cohabitation with a registered sex offender, and residence in Arizona with respondent-father, who allegedly abused her. She did not avail herself of the Department's services in resolving her lack of housing. This evidence clearly established that she failed to rectify the conditions leading to adjudication, and her lack of progress over the course of the proceedings demonstrated that there was no reasonable likelihood that she would find housing within a reasonable time. MCL 712A.19b(3)(c)(i).

Respondent-mother's unstable housing also constituted failure to provide proper care and custody. MCL 712A.19b(3)(g). The Department also offered evidence that respondent-mother's mental illness would prevent her from providing proper care. Respondent-mother delayed completing the psychological evaluation, and then delayed completing the psychiatric evaluation, although resumption of visitation was conditional on her satisfying these requirements. She refused to participate in counseling or to initiate the process for obtaining medication. Her anemic efforts at reunification over the lengthy course of the proceedings strongly suggested that she would be unable or unwilling to provide proper care within a reasonable time.

Respondent-mother also argues that the trial court erred in finding that termination of her parental rights was in the child's best interests. The trial court's best-interest decision is reviewed for clear error. *In re Brown/Kindle/Muhammad*, 305 Mich App 623, 637; 853 NW2d 459 (2014). Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5). The Department bears the burden to prove by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In considering whether termination of parental rights is in a child's best interests, a court may consider a variety of factors, including the existence of a bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the child's

well-being, and the possibility of adoption. *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014).

The foster care worker testified that there was no indication of a parent-child bond between respondent-mother and the child. She minimally interacted with the child, and disregarded the worker's advice to engage the child during visitation. The child did not appear to realize that respondent-mother was her mother. The child's foster parents were interested in adopting her. They met her needs, and she was developing properly in their care. This evidence clearly supports the trial court's best-interest finding.

In her consolidated appeal, respondent-mother asserts that the trial court improperly ordered the Department to petition for permanent custody at the hearing on February 10, 2015. Although she filed a request for review of the referee's recommendations entered after the February 2015 hearing, the request for review did not challenge the referee's order to file the permanent custody petition. We review unpreserved issues for plain error affecting the party's substantial rights. *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014). Questions concerning the trial court's compliance with statutes and court rules are questions of law that we review de novo. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

Respondent-mother argues that the trial court erred in ordering the Department to petition for permanent custody. Because the child had been in foster care for more than 15 of the previous 22 months, the trial court was required to order the filing of the permanent custody petition under MCL 712A.19a(6), given that none of the exceptions in subsections (6)(a) through (c) were applicable. Additionally, there is no statutory or procedural requirement that a permanent custody petition cannot be filed unless ordered by the trial court. MCL 712A.19b(1) provides that the trial court "shall hold a hearing to determine if the parental rights to a child should be terminated" if any of the enumerated parties, including the prosecuting attorney or the "agency," files the petition. MCR 3.977(F) and (H) govern proceedings to terminate parental rights where parental rights were not terminated at the initial disposition. Neither of these rules prohibited the Department from filing a petition for permanent custody unless ordered by the court. Nothing would have prevented it from filing the termination petition in the absence of the trial court's order.

There was no plain error.

II. RESPONDENT-FATHER

Respondent-father argues that the trial court erred in finding that the Department proved statutory grounds to terminate his parental rights. The trial court did not clearly err when it found that the Department had proved by clear and convincing evidence grounds to terminate respondent-father's parental rights under MCL 712A.19b(3)(c)(i) and (g). The trial court took jurisdiction to consider respondent-father's parental rights on the basis of his lack of suitable housing. By the time of the termination hearing, respondent-father was no closer to finding housing than he was when he arrived in Michigan. His failure to establish suitable housing for the child supported both statutory grounds for termination. Respondent-father's mental illness, especially his problems with aggression and domestic violence, also supported termination under § 19b(3)(g). He did not benefit from therapy to resolve his aggression. He minimized the

incidents with which he was involved, or blamed other persons. Although respondent-father satisfied some aspects of his treatment plan, he did not fully invest himself in therapy. “[I]t is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent’s custody.” *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

Respondent-father also argues that the trial court clearly erred in finding that termination of his parental rights was in the child’s best interests. Although he interacted affectionately with the child at visits, he remained unable to provide a stable home. The child enjoyed respondent-father’s visits, but she did not evince a strong emotional bond. The trial court did not clearly err in finding that the child’s need for permanency and stability justified terminating respondent-father’s parental rights instead of requiring the child to continue living in uncertainty. Respondent-father never demonstrated any realistic likelihood that he could and would be able to meet the child’s needs.

The trial court did not err when it terminated his parental rights to the child.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly