STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 28, 2016

In re EASTER, MINORS.

No. 330059
Berrien Circuit Court
Family Division
LC No. 2014-00086-NA

In re DAVIS/EASTER, MINORS.

No. 330061
Berrien Circuit Court
Family Division
LC No. 2014-000086-NA

Before: STEPHENS, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

In Docket No. 330061, respondent-mother appeals as of right the order terminating her parental rights to the minor children A.D., A.E., and C.E pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). In Docket No. 330059, respondent-father appeals as of right the order terminating his parental rights to A.E. and C.E pursuant to the same statutory grounds. In both cases, we affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondents began receiving services in August 2013 after allegations of drug use surfaced. In July 2014, Child Protective Services received a complaint involving allegations of domestic violence. As a result of the domestic violence incident, petitioner filed a petition to which respondents pled no contest.

Respondents' participation in services during the beginning of the dispositional phase was poor and the trial court found that they failed to make any progress toward reunification during the first few reporting periods. For instance, both respondents missed required drug screens during the first few months of this case and often tested positive for controlled substances when they appeared for testing. In addition, they failed to attend counseling during the early reporting periods. Respondents attended parenting classes, but missed some parenting-time visits and were late for other visits.

In May 2015, foster care worker Molly Lautenslager reported that respondents made "partial progress" with the court-ordered case-services plan. In particular, respondent-mother started to attend counseling and began addressing her substance abuse issues. In addition, both respondents began to attend parenting time with more consistency. However, although both respondents' attendance at parenting time was more consistent, Lautenslager described parenting time as "very chaotic." Overall, Lautenslager opined that respondents had made very little progress, especially considering that services had been made available to respondents long before the children even came into care.

Because of respondents' lack of progress, petitioner filed a supplemental petition for termination of respondents' parental rights. Lautenslager testified at the termination hearing that respondents made some progress, but only "within the last reporting period." As far as progress, respondents obtained employment and housing, had recently started to attend counseling, and had not had any positive drug tests for a period of time. However, Lautenslager testified that respondents still failed to make progress in regard to their parenting skills and domestic violence. As to parenting skills, Lautenslager testified that, despite respondents' participation in parenting classes, parenting-time visits were "chaotic" and a parenting aid often had to step in to help redirect the children. Further, at an August 11, 2015 parenting-time visit, respondents got into an altercation that nearly led to respondent-mother slapping respondent-father in front of the children. Respondents also failed to acknowledge, despite requests from their respective counselors to elaborate on the matter, that domestic violence was an issue in this case. Respondent-mother repeatedly denied as much in her testimony at the termination hearing.

II. STATUTORY GROUNDS FOR TERMINATION

Respondents argue that the trial court clearly erred by finding statutory grounds for termination under MCL 712A.19b(3)(c)(*i*), (g), and (j). In order to terminate parental rights, the trial court must find that one or more grounds for termination under MCL 712A.19b(3) have been established by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012). This Court reviews for clear error the trial court's conclusion that a ground for termination has been established by clear and convincing evidence. *In re Payne/Pumphrey/Fortson Minors*, 311 Mich App 49, 63; 874 NW2d 205 (2015). "A trial court's decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Olive/Metts Minors*, 297 Mich App at 41 (citation, quotation marks, and emphasis omitted).

The trial court's conclusion as to MCL 712A.19b(3)(g) and (j) was not clearly erroneous. Respondents' behavior during parenting time demonstrates an inability to provide proper care and custody, as does their failure to benefit from the services offered in this case. Despite over two years of services for respondents, Lautenslager consistently described parenting time as "chaotic." Oftentimes an aid or helper would need to intervene in order to help respondents implement "time-outs" and other disciplinary measures. During a recent parenting-time visit,

respondent-mother and respondent-father got into a confrontation in front of the children.[1] Respondents had only supervised parenting-time visits, and Lautenslager did not believe, based on the children's behavior and respondents' respective performances during parenting time, that either respondent could safely parent the children during an unsupervised visit. Again, this was after approximately two years of services. Additionally, Lautenslager testified at the October 21, 2015 hearing that, although respondents had not tested positive for illegal drugs in recent drug screens, she had concerns about substance use, perhaps alcohol use, "[d]ue to continued erratic behaviors during parenting time and even during the court hearings . . . ." Respondents' inability to benefit from the services offered demonstrates an inability to provide proper care and custody. See *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

In addition, respondents showed inconsistency with other aspects of the court-ordered services plan throughout the proceedings. At times they failed to communicate with Lautenslager, they only obtained housing at the last instant, and they refused to even acknowledge one of the biggest issues in this case—domestic violence. On the issue of inconsistency, respondent-father only participated in a few counseling sessions despite being ordered to attend counseling on numerous occasions, and he missed a drug screen as recently as August 2015. And with regard to respondent-mother, the record reveals that she was informed of A.D.'s therapy appointments, but that she never attended a single appointment.

In sum, considering the length of the proceedings and the length of time that respondents began receiving services before the initial petition was even filed, there was no reasonable likelihood that respondents could provide proper care and custody within a reasonable time, considering the children's ages. See MCL 712A.19b(3)(g). Additionally, respondents' lack of consistency, as well as their lack of benefit in certain areas, demonstrates that termination was appropriate under § 19b(3)(j). See *In re White*, 303 Mich App at 713.[2]

III. BEST INTERESTS

"We review for clear error the trial court's determination regarding the children's best interests." *In re White*, 303 Mich App at 713.

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[1] Respondents argue for the first time on appeal that any testimony regarding the confrontation was inadmissible hearsay. The termination hearing in this case was held on a supplemental termination petition filed based on the same conditions that led to the court's exercise of jurisdiction. See MCR 3.977(H). Accordingly, the rules of evidence did not apply. MCR 3.977(H)(2). Respondents' reliance on MCR 3.977(F)(1)(b), which mandates that the rules of evidence do apply when a supplemental termination petition is filed "on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction," is inapposite.

[2] Only one ground for termination must be established, see *In re Olive/Metts Minors*, 297 Mich App at 41, hence, we do not elaborate on MCL 712A.19b(3)(c)(*i*). However, we find no error, let alone clear error, in the trial court's termination decision under § 19b(3)(c)(*i*).

"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." MCL 712A.19b(5). A best-interests determination focuses on the entirety of the available evidence. *In re White*, 303 Mich App at 713.

> 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. 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. [*Id*. at 713-714 (citations and quotation marks omitted).]

The record reveals that respondents, from the time they were first offered services in September 2014, and continuing until the termination hearing, lacked consistency in a number of areas and that they would be unable to provide permanence and stability for the children. They moved around repeatedly and only secured housing on the eve of the second termination hearing date. They struggled with substance abuse at times and struggled to consistently attend counseling. Both respondents denied domestic violence was an issue, in spite of a recent incident in front of the children at a supervised parenting-time visit in August 2015. In addition, they declined to address domestic violence when asked by their respective counselors, and respondent-mother even went so far as to testify that respondents did not have any issues with domestic violence.

Perhaps most importantly, respondents' parenting abilities and interactions with the children during supervised parenting-time visits did not improve during the course of these proceedings. Lautenslager even testified that she did not feel the children would be safe if respondents were given unsupervised parenting time. This is in spite of the fact that respondents completed two parenting classes. Parenting-time visits were consistently described as "chaotic." Respondents' inability to show progress in regard to their parenting skills demonstrates that they would not be able to offer the children permanence or stability.

In light of the totality of the evidence presented in this case, the trial court's best-interests determination was not clearly erroneous.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher