STATE OF MICHIGAN

COURT OF APPEALS

In re J. S. WEGLARZ, JR., Minor.

UNPUBLISHED
November 17, 2016

No. 331264
St. Clair Circuit Court
Family Division
LC No. 14-000050-NA

Before: M. J. KELLY, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

Respondent argues that the trial court clearly erred in finding that statutory grounds for termination were established by clear and convincing evidence. "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 35, 41; 823 NW2d 144 (2012) (quotation marks and citation omitted). "Clear error signifies a decision that strikes [this Court] as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). "Due regard is given to the trial court's special opportunity to judge the credibility of witnesses." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008); see also *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000) and MCR 2.613(C).

"Termination of parental rights is appropriate when the [Department of Health and Human Services (DHHS)] proves one or more grounds for termination by clear and convincing evidence. It is only necessary for the D[H]HS to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights." *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012) (citations omitted). "If a statutory ground for termination is established and the trial court finds '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.' " *In re Ellis*, 294 Mich App 30, 32-33; 817 NW2d 111 (2011), quoting MCL 712A.19b(5).

One ground for termination was MCL 712A.19b(3)(c)(*i*), which provides for termination where:

> (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.

It is undisputed that more than 182 days had elapsed since the issuance of an initial dispositional order.

Further, the trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist. The evidence showed that the child was removed from respondent's care due to numerous issues, including unsuitable housing, anger issues, substance abuse, and improper supervision. On the basis of respondent's admissions, the trial court assumed jurisdiction and ordered respondent to comply with a case service plan that required him to maintain a legal source of income, to provide paystubs, to maintain safe and suitable housing, to complete a psychological evaluation, to participate in counseling, to complete a substance abuse assessment and treatment, to refrain from alcohol or drug use, and to submit to random drug and alcohol screens. Respondent failed to adequately comply with his case service plan. Respondent often disappeared for a month to six weeks at a time, and the foster care worker was unable to get in contact with respondent during these periods. Sara Biscorner, who took over as foster care worker in May of 2015, received only one paystub from respondent. Respondent was incarcerated from August 2014 to October 2014 related to alleged domestic violence against his live-in girlfriend, Holly Brown. According to DHHS, it was a struggle to get respondent to complete the psychological evaluation; he received multiple referrals, including in June of 2014, before finally completing it on April 9, 2015. He often was unavailable to do the assessments or even receive a referral. The psychological assessment indicated that respondent tries to present a socially acceptable front but resists admitting personal shortcomings.

Also, respondent eventually completed a substance abuse evaluation and was ordered to complete drug screenings. The previous foster care worker, Tracee Anderson, reported that respondent would sometimes miss his drug screens and then be compliant for a short amount of time. When Biscorner took over the case on May 29, 2015, she referred respondent for drug screens, but he did not attend his first screen until June 30, 2015, given her inability to get ahold of him. Respondent's failure to complete some of his screens was concerning to Biscorner given the reports of respondent's past substance abuse. Anderson referred respondent to counseling on March 19, 2015, but he did not start it. When Biscorner took over the case, respondent and Brown said they wanted to do counseling together with Brown's in-home therapist, and Biscorner told them to let her know if respondent needed another referral. The next month, respondent said that he needed his own referral. Despite two referrals, respondent did not participate in counseling. In short, respondent often did not participate in his drug screens, he did not participate in counseling, and it took him a significant amount of time to complete his psychological and substance abuse assessments. Given the evidence of respondent's failure to adequately comply with the court-ordered service plan developed to address the issues that led to

the adjudication, the trial court did not clearly err in finding clear and convincing evidence to support termination under MCL 712A.19b(3)(c)(*i*).

Respondent asserts that the DHHS did not make reasonable efforts to provide services to him. "While the DH[H]S has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. According to DHHS, it was often difficult to refer respondent for services given that he frequently made himself unavailable for periods of a month to six weeks at various points throughout the pendency of this case. The foster care workers made numerous efforts to contact respondent during the periods that he disappeared. When respondent was available, he was referred for numerous services. As discussed, respondent did not participate in counseling despite referrals and despite having assured the foster care worker that he would engage in counseling through Brown's therapist. Respondent did not consistently participate in the random drug screens, and he initially gave Biscorner a difficult time about the screens, expressing the view that he did not need to complete them. In light of these facts, respondent's claim that the DHHS failed to make reasonable efforts to provide services is devoid of merit.

Because at least one ground for termination existed, we need not consider the additional grounds on which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). We will nonetheless address the additional grounds.

Another ground for termination was MCL 712A.19b(3)(g), which requires a court to find by clear and convincing evidence that "[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." "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014); see also *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *In re Trejo Minors*, 462 Mich at 360 n 16. As discussed, respondent failed to comply with his service plan, and failed to consistently visit the child. During one period of six or seven months, respondent only visited the child once. The trial court did not clearly err in finding clear and convincing evidence to support termination on this ground.

The final ground for termination was MCL 712A.19b(3)(j), which requires a court to find by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Harm includes both physical harm and emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App at 711. As discussed, respondent failed to comply with many of the terms and conditions of his service plan. When the child was removed from respondent's care, they were living in an unfit home that had recently been raided for drugs. There were continuing concerns about substance abuse given respondent's failure to consistently participate in the court-ordered random drug screens. Respondent's failure to participate in counseling was also a concern given his anger issues. At the time of the termination hearing, respondent continued to live with Brown, despite their shared history of domestic violence and

the allegations that Brown had sexually abused the child. Brown's parental rights to her own child, of whom respondent was the putative father, had recently been terminated. The trial court did not clearly err in finding that termination was warranted on the basis of MCL 712A.19b(3)(j).

Respondent next argues that the trial court clearly erred in finding that termination of respondent's parental rights was in the child's best interests. This Court reviews the trial court's best-interest determination for clear error. *In re Olive/Metts Minors*, 297 Mich App at 40. Whether termination is in a child's best interests is determined by a preponderance of the evidence standard, rather than the clear and convincing evidence standard used to determine whether a statutory ground for termination has been met. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App at 40, citing MCL 712A.19b(5). "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." *Id*. at 41-42 (quotation marks and 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 at 714.

Respondent and the child had a good bond, but the child had stopped talking about respondent. Respondent failed to consistently visit the child until relatively recently in the pendency of the case. Respondent would disappear for a month to six weeks at a time and then show up at the office. During one period of six or seven months, respondent only visited the child once. The trial court still had concerns about substance abuse and domestic violence, and found that the child needed stability in his life. At the time for trial, Brown was still respondent's girlfriend, and there were domestic violence issues between them. Brown's parental rights were terminated with respect to Brown's child of whom respondent is the putative father, and part of the reason for that termination was Brown's violent relationship with respondent. Again, respondent did not complete many services and thus was unable to learn new tools to parent the child. The trial court did not clearly err in finding that termination was in the child's best interest.

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Stephen L. Borrello