

STATE OF MICHIGAN
COURT OF APPEALS

In re G. L. LIVINGSTON, Minor.

UNPUBLISHED
November 29, 2016

No. 332535
St. Clair Circuit Court
Family Division
LC No. 15-000467-NA

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

PER CURIAM.

Respondent-mother appeals as of right a circuit court order terminating her parental rights to the minor child GL (d/o/b December 16, 2015) pursuant to MCL 712A.19b(3)(g) (unable to provide proper care and custody), (i) (rights to another child terminated due to serious and chronic neglect or abuse) (j) (child likely to be harmed if returned to the parent’s home), and (l) (parental rights to another child involuntarily terminated). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Petitioner filed a petition for permanent custody of GL in January 2016. As amended, it alleged that respondent had “extensive CPS history that includes Substance Abuse and Domestic Violence.” Respondent’s parental rights to three other children had previously been terminated in Oakland County. More recently, respondent tested positive for cocaine on December 16, 2015. After GL was born, respondent left the hospital for about an hour without notifying hospital staff. Respondent tested positive for methadone (for which she had a prescription) on December 17, 2015. At birth, GL tested positive for cocaine, morphine, and methadone and remained in the hospital for observation due to “tremors.”

A referee conducted a hearing on January 21, 2016. According to the court, at the hearing,¹ respondent was present and consented to the court taking jurisdiction over GL. The

¹ The January 21, 2016, hearing transcript is not included in the lower court file; however, at the termination hearing, the court provided a summary of what happened at the January 21, 2016 hearing and respondent cites the court’s summary of events in her brief on appeal.

court made GL a temporary court ward and placed him in foster care “pending the outcome of the termination trial.”

The court conducted a termination hearing on March 16, 2016. Respondent did not attend the hearing. Counsel for respondent indicated that she had not had any contact with respondent since the January 21, 2016 hearing. Counsel provided respondent her telephone number and address and told respondent to call to set up an appointment. Respondent never contacted counsel and respondent no longer resided with her father who passed away in January 2016.

Jennifer Miller, the Children’s Protective Services (CPS) worker, testified that respondent had “a previous Protective Service involvement” in Oakland County and was provided with services. Substance abuse was an issue in the Oakland County case as it was in this case. Miller obtained records showing that respondent’s parental rights to respondent’s two other children PW and LR had been terminated. The records were admitted into evidence. They showed that petitioner filed a petition for temporary custody of the children in May 2011. It alleged that respondent had a substance abuse problem and LR tested positive for cocaine at birth. It was further alleged that respondent “was under the influence of substances while caring for her children.”

Following a preliminary hearing, the petition was authorized and the children were placed in foster care. Petitioner filed a supplemental petition for termination of respondent’s parental rights in November 2012. As amended, it alleged that respondent had failed to comply with services, had been involved in another incident of domestic violence with the father of one of the children in July 2012, and had tested positive for opiates in September 2012. Termination was requested pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Respondent’s parental rights were terminated by an order entered on October 7, 2013. Miller noted that the circumstances leading to court involvement in the Oakland County case were similar to those in this case.

Miller expressed concern regarding respondent’s substance abuse problem. She noted that respondent received substance abuse treatment in the Oakland County case; the fact that her parental rights had been terminated suggested that “those services were not successful[.]” Miller had no evidence that respondent had received any additional services since her parental rights to PW and LR were terminated.

Miller recommended termination of respondent’s parental rights, believing it to be in GL’s best interests “[d]ue to [respondent’s] history with substance abuse. She’s not able to provide stable housing at this time and she has had very limited contact with myself to try to make any efforts as far as work with CPS or foster care.” Miller believed that adoption was in GL’s best interests because a stable home environment was essential for his well-being and respondent could not provide such an environment.

Melissa Hazen, the foster-care worker, testified that GL was thriving in his foster home and his foster parents were willing to adopt him. She believed termination of parental rights and adoption were in GL’s best interests. Hazen testified that she had a telephone conversation with respondent on February 29, 2016, at which time respondent gave her “updates of her life.” They spoke again in early March, at which time respondent said “she knows she has stuff to do.” She

wanted to meet the foster parents and asked if they would adopt GL “if she lost her rights” to him.

The trial court ruled as follows:

The evidence is clear that the respondent mother had parental rights terminated to two previous children in Oakland County. Further, the evidence is clear that the mother has a long history of substance abuse, [GL] in fact, was born . . . drug positive at the time of his birth on December 16, 2015.

The Court further finds that based upon the evidence there is clear and convincing evidence to establish that it would be in the best interest of the [sic] parental rights to be terminated at this time. . . . I would note that the child is placed in a non-relative foster care. Given the young age of the child there is a need for permanency. The mother showing no signs or evidence that she has, in any way, been able to address effectively her well documented substance abuse problem. And, therefore, the Court will enter an order for termination of her parental rights.

The court entered a written order on March 17, 2016. This appeal ensued.

II. ANALYSIS

Respondent argues that the trial court erred in finding that the evidence supported a statutory ground for termination.

The burden is on petitioner to prove a statutory ground for termination under MCL 712A.19b(3) by clear and convincing evidence; it is only necessary to establish the existence of one statutory ground for termination. *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012). The trial court’s finding that at least one statutory ground for termination has been established is reviewed for clear error. *In re Laster*, 303 Mich App 485, 491; 845 NW2d 540 (2013); MCR 3.977(K). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court did not clearly err in finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence. MCL 712A.19b(3)(g) provides that termination is proper where:

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.

Evidence showed that respondent had a history of substance abuse, failed to provide proper care for GL because she used illegal drugs during her pregnancy, thus exposing him to a risk of harm. “[A] child has a legal right to begin life with a sound mind and body” and prenatal drug use is evidence of neglect. *In re Baby X*, 97 Mich App 111, 115-116; 293 NW2d 736 (1980). The documentary evidence showed that respondent’s substance abuse contributed to the

removal of two other children in 2011. Respondent was offered substance abuse treatment while those children were wards of the court and she did not sustain lasting benefit from it because she was using drugs again while pregnant with GL. This evidence showed that respondent's substance abuse problem was not reasonably likely to be remedied within a reasonable time, and thus respondent would not be able to provide proper care and custody within a reasonable time, given the child's age. Respondent's prenatal drug abuse showed that her addiction took precedence over her child's needs and thus the child was reasonably likely to be harmed if returned to respondent's home. Furthermore, respondent had limited contact with the caseworkers, did not have any contact with her lawyer after entering the plea, and did not appear for the termination hearing. Respondent's lack of involvement did not support that she was able to provide proper care and custody of GL.

Respondent cites *In re Gach*, ___ Mich App ___; ___ NW2d ___ (2016) (Docket No. 328714), to support that the trial court improperly terminated her parental rights simply because she previously had the rights to other children terminated. In *Gach*, this Court held, in part, that a prior termination alone cannot justify termination under MCL 712A.19b(3)(l). Slip op. at 6-9. However, unlike in *Gach*, in this case the circuit court did not terminate respondent's rights solely because of the prior terminations. Instead, in this case, the evidence supported that respondent had not ameliorated the issues that led to the prior terminations in that she did not benefit from services in the prior proceedings and continued to have problems with substance abuse. This evidence supported the trial court's conclusion that there was no reasonable likelihood that respondent could provide proper care and custody of GL within a reasonable amount of time. MCL 712A.19b(3)(g).

In sum, because the circuit court did not clearly err in finding grounds to terminate under MCL 712A.19b(3)(g), we need not address the other grounds on which the court terminated respondent's rights. *In re Frey*, 297 Mich App at 244.

Respondent also challenges the trial court's determination that termination of her parental rights was in the child's best interests.

"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). Whether termination is in the child's best interests is to be determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's decision regarding the child's best interests is also reviewed for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); MCR 3.977(K).

The trial court found that respondent had "a long history of substance abuse" and showed no signs of having addressed the problem effectively and that GL needed permanency. The evidence showed that respondent continued abusing drugs while pregnant with GL, despite that her substance abuse contributed to the termination of her rights to two other children. Respondent received services to assist her in overcoming the substance abuse issues and those services did not benefit respondent. In addition, respondent failed to contact her attorney to set up a meeting and only had limited contact with the social workers in this case. GL was thriving

in his foster home and the foster parents were prepared to adopt. The court did not clearly err in finding that termination of respondent's parental rights was in GL's best interests.

Respondent notes that DHHS did not "offer or provide any services" to work toward reunification. "Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). However, reasonable efforts to reunify a parent and child are not required if "[t]he parent has had rights to the child's siblings involuntarily terminated." MCL 712A.19a(2)(c). Here, as noted above, respondent previously had the rights to GL's siblings terminated; thus, DHHS was not required to provide services.

Affirmed.

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