STATE OF MICHIGAN

COURT OF APPEALS

In re T.B. KENYON, Minor.

UNPUBLISHED
November 8, 2016

No. 332922
Newaygo Circuit Court
Family Division
LC No. 11-007955-NA

Before: SAWYER, P.J., and MARKEY and O'BRIEN, JJ.

PER CURIAM.

Respondent mother appeals by right the trial court's order terminating her parental rights to the minor child, TBK, under MCL 712A.19b(3)(c),[1] (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). We affirm.

On appeal, mother argues that there was not clear and convincing evidence to terminate her parental rights and that termination was not in TBK's best interests. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). This Court reviews the trial court's determination for clear error. *Id.*; MCR 3.977(K). Moreover, "whether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews the trial court's decision regarding the minor child's best interests for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). A trial court's decision terminating parental rights must be more than just maybe or probably wrong to be clearly erroneous. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Further, this Court gives "deference to the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App at 459.

[1] The trial court summarily concluded that "subparagraph (c)" was proven by petitioner but did not further specify whether its ruling applied to (c)(*i*) (conditions that led to adjudication continue to exist), (c)(*ii*) (other conditions exist), or both.

Initially, we note that mother's argument relating to the statutory grounds is not properly presented to this Court because her statement of the question presented only raises the best-interest issue. See *Harper Woods Retirees Ass'n v Harper Woods*, 312 Mich App 500, 515; 879 NW2d 897 (2015) (declining to address and issue and stating, "Issues not specifically raised in an appellant's statement of questions presented are not properly presented to this Court"). Nevertheless, we have considered the issue.

Termination is appropriate under (j) when "[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." MCL 712A.19b(3)(j). The likelihood of harm to the child under (j) may be physical or emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Here, there was testimony that mother delayed feeding her children and would need reminders about feeding them, that mother was not concerned after failing to cover TBK, who was quite sunburned from the sun, and that mother was found asleep in a playpen when TBK and his sister were outside unsupervised. Mother had an extensive history with Children's Protective Services (CPS) that included four substantiated incidents of her being the perpetrator of neglect or abuse. Psychologist Sandra Terwillegar testified that mother lacked judgment, was very limited cognitively, and was unable to attain insight. Terwillegar concluded that it would be very dangerous for a child to be in mother's care. Based on mother's CPS history, her lack of insight and judgment, and her failure to benefit from services, there was a reasonable likelihood based on mother's capacity that TBK would be harmed if returned to mother's care. Therefore, we are not left with a definite and firm conviction that a mistake has been made, *In re HRC*, 286 Mich App at 459, and the trial court did not clearly err in finding that there was sufficient evidence to establish this statutory ground, *In re VanDalen*, 293 Mich App at 139.[2]

"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*, 297 Mich App 35, 40; 823 NW2d 144 (2012). The minor child—not the parent—is the focus of the best-interest stage. *In re Moss*, 301 Mich App at 87. In making its determination, the trial court may consider factors such as "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 Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

Here, although it was clear that mother loved TBK, the record demonstrates that he would be at a risk of harm in her care. Mother had a CPS history which included improper supervision, physical abuse, and having two children die in a fire for which she never called 9-1-1. Psychologist Terwillegar testified that it would be very dangerous for a child to be in mother's care and that mother lacked insight, judgment, and executive functioning. Psychologist

[2] Because termination of parental rights needs only to be supported by a single statutory ground, we decline to address the additional grounds. See *In re HRC*, 286 Mich App at 461 ("Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision.").

Terwillegar further testified that services would not be able to fix these deficiencies, which was also established by the fact that mother failed to benefit from services. Moreover, TBK's school reported that his behavior escalated in the months when he was spending time with mother in violation of the court order outlining her parenting time. TBK required permanence and stability, which mother could not provide.

Despite these facts, mother argues on appeal that petitioner should have sought a guardianship, which would allow mother to see TBK, instead of terminating her parental rights. However, mother's argument ignores the facts that mother requested placement of TBK at the December 23, 2014 preliminary hearing and that the previous parenting time and custody order was no longer tenable because, along with hers, father's parental rights were also terminated. Moreover, mother did not present a proposed guardian at the termination hearing, and she does not identify one on appeal. There is simply no evidence that there was a person willing to act as a guardian. In addition, mother often talked about when TBK was coming home, which confused him. Although mother was repeatedly told that the goal was not reunification with TBK, she persisted in talking about when she was getting TBK back. As explained above, TBK required permanency and stability, and mother was simply unable to provide safe and effective parenting—despite the fact that she loved TBK. On this record, the trial court did not clearly err in finding that termination of mother's parental rights was in TBK's best interests. *In re Moss*, 301 Mich App at 90.

We affirm.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Colleen A. O'Brien