

STATE OF MICHIGAN
COURT OF APPEALS

In re CLARK/WOODSON-CLARK, Minors.

UNPUBLISHED
January 19, 2017

No. 331062
Wayne Circuit Court
Family Division
LC No. 13-512458-NA

AFTER REMAND

Before: JANSEN, P.J., and FORT HOOD and BOONSTRA, JJ.

PER CURIAM.

This case returns to this Court following remand to the trial court to allow the trial court to further consider whether termination of respondent’s parental rights was in the best interests of the minor children given their placement with relatives. We affirm.

In our initial opinion in this case, we concluded that the trial court correctly found that statutory grounds for termination existed pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). *In re Clark*, unpublished opinion of the Court of Appeals, issued July 19, 2016 (Docket No. 331062), p 1. However, we remanded this case to the trial court for the limited purpose of allowing the trial court to address whether termination was proper where the minor children were placed with relatives. *Id.* at 3-4.

As this Court articulated in *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014):

The trial court must order the parent’s rights terminated if [petitioner] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children’s best interests. We review for clear error the trial court’s determination regarding the children’s best interests. [Footnotes and citations omitted.]

In our opinion before remand, we stated that “[i]n 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.” *In re Clark*, unpub op at 3, citing *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). We also recognized that, “[a] child’s placement with relatives weighs against termination, and the fact that a child is living with relatives is a factor to

be considered in determining whether termination is in the child's best interests." *In re Clark*, unpub op at 3, citing *In re Olive Metts*, 297 Mich App at 43.

After remand, the termination hearing was continued on September 9, 2016¹ to determine the best interests of the minor children, and the testimony of Stephanie Sears, the foster care supervisor assigned to this case since April 2015, was presented. Sears testified that respondent's minor son, JPC, had been living with his father since early 2016, and that a wardship over JPC had been dismissed in May 2016. Respondent's minor daughter, SEW, resided with her maternal grandfather and his significant other in a licensed foster care home. The maternal grandfather was in the process of taking steps to adopt SEW.²

While Sears acknowledged that the children were residing with relatives, she testified that termination of respondent's parental rights was in the best interests of the children in an effort "to obtain the highest level of permanency" for the children, which in this case was adoption. Specifically, Sears noted that reunification with respondent was not feasible because of respondent's failure to comply with her parent-agency agreement. According to Sears, "[respondent] was not an active member" in the lives of the children. When questioned why a guardianship would not be a more appropriate plan for the children as opposed to adoption or termination of respondent's parental rights, Sears stated as follows:

Well, first of all, adoption is a more appropriate plan for these children as it's a more permanent plan for these children specific to their young ages at the time of the termination. An adoptive home allows that child to have more permanence through their life.

Secondly, guardianships are absolutely rescindable and it was the Department's perspective that the permanency that adoption allowed is in their best interests.

The record evidence at the September 9, 2016 continued termination hearing confirmed that both JPC and SEW were thriving in the care of their relatives. Respondent, having had 2½ years as of the September 9, 2016 continued termination hearing to comply with her treatment plan had simply failed to do so. Specifically, Sears agreed with counsel for the children that respondent had shown "zero improvement in the issues that brought" the children into care. Sears also observed that she did not have reason to believe that respondent would be able to do anything to improve her situation for the better in the reasonable future.

¹ Respondent did not attend the continued termination hearing.

² The trial court's order after post-termination review/permanency planning hearing provides that with regard to SEW, "an adoption[] agency has been assigned, a preadoptive home has been identified, child and family assessments have been completed, subsidy and consent have been received." The order further provides that the only barrier to SEW's adoption was awaiting this Court's decision, and that SEW "is doing well in the preadoptive home."

In observing that termination of respondent's parental rights was in the best interests of the children, the referee stated the following, in pertinent part:

Even though [SEW has] been placed in a relative placement and she's been with her grandfather at this point now for the last three years of her life, he's provided her stability and the care that she desperately requires.

[Respondent] has failed to rectify the conditions that brought her children into care, she's failed to address her mental health needs and she didn't even visit with the children regularly. She would go months at a time without even seeing her children, so because of that, you know, [SEW] is thriving with her grandfather. He's come to every hearing where [respondent] didn't even come to hearings for at least a year. She wasn't coming, but grandfather was always here.

So, the Court finds [it] in the best interest to terminate Mom's parental rights as to [SEW] and I don't think the putative father was even an issue.

As far as [JPC], for at least two years, [he] was placed with the grandfather. And for the same reasons that I indicated for [SEW], the fact that he has been receiving stability and care that he desperately required, he received that from grandfather for over two years. During that time, [respondent] failed to address the issues that brought her children into care, failed to address her mental health issues, and failed again to visit with [JPC].

In addition, [JPC] was moved and he's now with his dad, same reason, [respondent] has just not provided [JPC] with the care he needed while she had the opportunity to be reunified with him. She didn't do anything.

Most importantly, there was concern that this Mom didn't have the cognitive ability to even parent her children.

So with that, with [JPC] being placed with his grandfather and his Father, the Court finds it in the best interest[s] to terminate Mom's parental rights because of those reasons. And so with that, the Court will terminate the Mother's parental rights.

After remand, the trial court considered the fact that both children were in the care of relatives when determining if termination of respondent's parental rights was in their best interests. *In re Olive Metts*, 297 Mich App at 43. The trial court ultimately concluded that termination of respondent's parental rights was nonetheless in the children's best interests. A review of the record evidence in this case supported the trial court's determination. While petitioner had explored the possibility of guardianships for the children during the lower court proceedings, respondent did not progress to the point that this was a safe and viable alternative for the children. Specifically, respondent failed to comply with her service plan, which required

her to participate in parenting classes, individual therapy, and mental health treatment,³ as well as to provide suitable housing and proof of income. Respondent had been terminated from her individual therapy and mental health services for lack of attendance, she did not comply with taking her prescribed medication that was necessary to treat her mental illness, and while she completed her parenting classes, record evidence demonstrated that respondent did not comprehend the lessons and was unable to confirm that she understood what was taught. Testimony from the December 9, 2015 termination hearing confirmed that respondent did not allow the foster care worker to assess her new home to determine if it was appropriate housing for the children and failed to provide the foster care worker with verification of her current income.

As of December 9, 2015, when the termination hearing was held, respondent had not visited her children since April 2015, and no reasons were given for her failure to do so. Both of the children have some form of special needs, and according to the foster care worker at the December 9, 2015 termination hearing, respondent had not been in the children's lives enough for the foster care worker, Dwana McGee,⁴ to evaluate whether respondent could address their special needs. McGee also stated that the children did not speak of their mother. In fact, the referee characterized respondent as having recently "abandoned" her children as of December 9, 2015.⁵ Additionally, respondent had not sent the children gifts or money, according to McGee. The record further indicated that when respondent visited with her children, she required redirection regarding how to take care of them appropriately, such as feeding them and changing JPC's diaper. At the September 9, 2016 continuation of the termination hearing, there was no indication that respondent had visited with the children. Moreover, as of the date of the December 9, 2015 termination hearing, respondent not only failed to attend the termination hearing, but five of the six previous review hearings.⁶ On this record, we conclude that the

³ The record reflects that respondent was diagnosed, following a psychiatric evaluation, with dysthymic depression and borderline intellectual functioning.

⁴ McGee had been assigned to this case since July 2015.

⁵ Earlier in the lower court proceedings, respondent had failed to visit her children. For example, at the March 30, 2015 dispositional hearing, testimony from the foster care specialist confirmed that respondent had not visited SEW since August 13, 2014, and, other than a visit in late March 2015, had not visited JPC since October 29, 2014. While respondent argues on appeal that her mental health issues raise no risk of harm to her children and that she would not neglect them, the fact that respondent failed to visit her children during the latter portion of the lower court proceedings belies this claim.

⁶ To the extent that respondent contends that her liberty interest in raising her children has been violated, it is well-settled that once petitioner has successfully presented clear and convincing evidence to support termination under at least one statutory ground, "the liberty interest of the parent no longer includes the right to custody and control of the children." *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000) (citation omitted).

determination that termination was in the children's best interests was correct and well supported by the record evidence.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Mark T. Boonstra