

STATE OF MICHIGAN
COURT OF APPEALS

In re RICHERT, Minors.

UNPUBLISHED
March 16, 2017

No. 333902
Macomb Circuit Court
Family Division
LC Nos. 2014-000267-NA
2014-000268-NA
2014-200269-NA

Before: RIORDAN, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent-mother¹ appeals as of right the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In November 2014, petitioner, the Department of Health and Human Services (“DHHS”), filed a petition pursuant to MCL 712A.2(b) for the removal of the minor children from respondent’s care. The petition alleged that respondent was actively using illegal substances, was evicted from her motel in November 2014, and was homeless. It also alleged that respondent had a lengthy substance abuse history, all of her children were born positive for marijuana, she had only partially complied with past services, and she failed to consistently take medication for her bipolar disorder. After holding a preliminary hearing, the trial court authorized the petition.

On the date set for a bench trial, respondent pleaded no contest to the allegations in an amended petition.² Accordingly, the trial court exercised jurisdiction over the children and

¹ The trial court also terminated the parental rights of the children’s father during the child protective proceedings, but he is not a party to this appeal.

² According to petitioner’s attorney, the amended petition did not include the previous allegations that respondent had a lengthy substance abuse history, that she had only partially participated in services in the past, and that she had refused previous substance abuse services. Petitioner also removed the allegation that respondent had been evicted from her motel and was

ordered respondent to comply with the requirements of the parent-agency treatment plan, under which respondent was required to obtain suitable housing and employment—for which the agency would provide referrals—and was required to participate in parenting classes, a psychological evaluation, psychological counseling, substance abuse assessment and treatment, and random drug screens.

Between May 2015 and June 2016, respondent made little progress on her parent-agency treatment plan, failing to comply with numerous services throughout the course of the proceedings. She also missed the majority of her drug screens and regularly tested positive for various substances, including cocaine, heroin, opiates, THC, alcohol, codeine, morphine, marijuana, and Suboxone.³ She was referred to a residential substance abuse treatment program and an inpatient substance abuse program, but she left both facilities. She also largely failed to comply with other substance abuse treatment, even though she ultimately attended some individual counseling and group therapy sessions late in the proceedings. She completed two psychological evaluations, which revealed, among other things, that she required significant treatment to address her substance abuse issues and that she was prone to relapse.

She frequently moved throughout the proceedings, living with friends, a new significant other, and her mother at various times. In April 2016, she moved into the home of her ex-boyfriend's father, but did not intend to stay there permanently. Although the ex-boyfriend's father intended to allow respondent to stay with him as long as necessary, he hoped that respondent would secure a home of her own.

Respondent also never secured consistent, lawful employment or income. Early in the proceedings, she worked as a prostitute. She then worked as an exotic dancer for eight months between April and November 2015. Between February and March 2016, she worked at “the Rec Bowl,” but was fired after she became sick. According to respondent, she interviewed for a waitressing job in May 2016 and began working as a waitress in June 2016.

Respondent repeatedly was re-referred for parenting classes, which she finally completed in April 2016. Although her interactions with the children were sometimes appropriate, the caseworker was concerned that respondent was overwhelmed and unable to care for the children on her own, especially the youngest children. She missed numerous visits, failing to show up entirely or showing up so late that the visits were canceled by the time she arrived. She also tested positive for illegal substances at the visits and frequently initiated inappropriate conversations or exhibited outbursts. Accordingly, in November 2015, the trial court suspended respondent's visits with the children. In February 2016, the court held that visits would be currently homeless. The petition still included allegations concerning respondent's unstable housing, specifically stating that she had nowhere to live. Additionally, the petition alleged that respondent tested positive for cocaine in November 2014, even though she denied current substance abuse.

³ Respondent testified that she had a prescription for Suboxone, but it is unclear whether she did, in fact, produce a copy of the prescription during the proceedings. She also stated that she was in the process of securing a medical marijuana card, but she did not obtain the card before her parental rights were terminated.

reinstated once (1) respondent had three clean drug screens, (2) respondent demonstrated progress in therapy, with a therapist's report, and (3) the guardian ad litem approved of the reinstatement. Respondent never complied with the requirements established by the court, and regular visits with the children never were reinstated. As a result, respondent only saw her children on two occasions after October 2015.

The trial court held a three-day termination hearing in May and June 2016. The court heard testimony from respondent, the foster care supervisor, respondent's mother, and the ex-boyfriend's father with whom respondent was staying at the time of the hearing. Ultimately, the trial court made numerous findings regarding the extent of respondent's noncompliance with the parent-agency treatment plan and concluded, *inter alia*, that respondent did not have a legal source of income, she did not have safe and suitable housing for the children, and she was "in complete denial about her substance abuse problem." Accordingly, the court found that there was clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), and that termination of respondent's parental rights was in the best interests of the children.

II. STATUTORY GROUNDS

Respondent first contends that the trial court clearly erred in finding clear and convincing evidence to support the statutory grounds for termination. We disagree.

A. STANDARD OF REVIEW

"This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "A decision qualifies as clearly erroneous when, '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 Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009), quoting *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A clearly erroneous decision must be "more than just maybe or probably wrong." *In re Williams*, 286 Mich App at 271. We must give due regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

B. ANALYSIS

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

* * *

(g) 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.

* * *

(j) There 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.

1. MCL 712A.19b(3)(c)(i)

First, the trial court did not clearly err in finding clear and convincing evidence to support termination under MCL 712A.19b(3)(c)(i). The original conditions leading to adjudication were respondent's unstable housing, lack of income, and illegal drug use. At the time of the termination hearing, respondent was temporarily living with an ex-boyfriend's father, after staying with several others. Although the father was willing to be supportive and provide a place for respondent to stay, he testified that he wanted respondent to find her own place to live. Accordingly, the record shows that respondent failed to secure stable housing for herself and her children. Likewise, throughout this case, respondent claimed various jobs, but never produced any documentation. At the termination hearing, she claimed that she had just started a waitressing job that week, but this last-minute assertion of employment—especially without any verification—is unconvincing in the face of respondent's consistent inability to maintain legal employment throughout the course of the child protective proceedings.

Furthermore, all three children were born positive for marijuana,⁴ and the record clearly demonstrates that respondent continued to use illegal drugs throughout the proceedings. Respondent missed most of her required drug screens. When she actually submitted to drug testing, the majority of the screens came back positive for various types of substances. Most significantly, she still was testing positive for illegal drugs at the time of the termination hearing. Despite these positive tests, respondent claimed that she was not using illegal drugs and disputed the findings of the drug screens. Further, at the termination hearing, she had completed just four substance abuse counseling sessions, and her counselor was unable to provide any conclusions

⁴ Although the record is unclear, the children also may have tested positive for opiates at birth.

regarding respondent's progress due to the fact that she had missed numerous sessions. She briefly attended drug rehabilitation programs during the proceedings, but ultimately discharged herself from the programs.⁵

Consistent with her frequent failure to attend or complete services, respondent received five referrals during the 19-month course of this case before she completed her parenting classes. Notably, respondent's visits with the children were discontinued in November 2015 because she had missed numerous sessions, she failed to produce clean drug screens, and she always brought someone with her to the visits, making it difficult to determine whether she was able to care for the children in light of her ongoing drug use and questionable parenting skills. The court ruled that it would reinstate visitation, with the guardian ad litem's approval, if respondent produced at least three clean screens and a report from her therapist that she was making progress, but respondent never complied with these requirements. As a result, although respondent ultimately completed her parenting classes, there was no evidence demonstrating that she had benefitted from the classes. Further, even though respondent completed two psychological examinations, she never followed through on the recommendations from these exams.

The trial court properly found that a statutory basis for termination existed under MCL 712A.19b(3)(c)(i). There was clear and convincing evidence that the conditions that led to the adjudication continued to exist, and given respondent's failure to substantially comply with the parent-agency agreement for over 19 months, there was no reasonable likelihood that the conditions would be rectified within a reasonable time given the ages of the children.

2. MCL 712A.19b(3)(g) and (j)

The trial court did not clearly err in finding clear and convincing evidence to support termination under MCL 712A.19b(3)(g) and (j). A parent's failure to comply with his or her service plan is evidence that the parent will not be able to provide a child with proper care and custody, and that the child will be harmed if returned to the parent's home. *In re White*, 303 Mich App at 710-711. Respondent failed to substantially comply with her parent-agency agreement for over 19 months even though she was repeatedly referred and re-referred for services and provided bus passes and other assistance from DHHS caseworkers. Instead, she continued to use illegal drugs, frequently providing positive drug screens or failing to appear for drug screens. Her only significant compliance with the parent-agency agreement was her completion of two psychological evaluations, her participation in some individual and group therapy sessions, and her completion of parenting classes. However, she failed to follow through on any of the recommendations from the evaluation, and she was never able to demonstrate whether she had benefitted from the parenting classes due to the fact that she never refrained from drug use long enough to reinstate visitation with her children. Further, as the trial court reasoned, respondent's "testi[mony] that even as a heroin addict without housing, income, or

⁵ Despite her own ongoing drug use throughout the course of the proceedings, respondent testified that she withdrew from these programs because patients were acquiring and circulating illegal substances at the facility.

mental health treatment she properly cared for her children” demonstrates that respondent “did not recognize the risk of harm that she created for [the children].”

Therefore, in addition to the circumstances previously discussed, respondent’s failure to comply with her case service plan provided clear and convincing evidence that, without regard to intent, respondent had failed to provide proper care or custody for her children, and there was no reasonable expectation that she would be able to do so within a reasonable time considering the ages of the children. MCL 712A.19b(3)(g). For the same reasons, there was a reasonable likelihood, based on respondent’s conduct, that her children would be harmed if they were returned to respondent’s care. MCL 712A.19b(3)(j).

The trial court did not clearly err in finding that clear and convincing evidence supported termination of respondent’s parental rights under MCL 712A.19b(3)(g) and (j).

III. BEST INTERESTS

Respondent contends that the trial court clearly erred in finding that termination of her parental rights was in the best interests of the children. We disagree.

A. STANDARD OF REVIEW AND APPLICABLE LAW

We review for clear error a trial court’s best-interest determination. *In re White*, 303 Mich App at 713, citing MCR 3.977(K). Pursuant to MCL 712A.19b(5), “[t]he trial court must order the parent’s rights terminated if the [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 child[’s] best interests.” *In re White*, 303 Mich App at 713 (footnotes omitted). When it makes a best-interest determination, the trial court should weigh all available evidence, *id.*, and the trial court’s focus should be on the child rather than the parent, *In re Moss*, 301 Mich App 76, 86-87; 836 NW2d 182 (2013).

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. [*In re White*, 303 Mich App at 713-714 (footnotes omitted); see also *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).]

Other considerations include the length of time the child has been in foster care or placed with relatives, and the likelihood that “the child could be returned to her parents’ home within the foreseeable future, if at all.” See *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

B. ANALYSIS

The available evidence clearly shows that termination of respondent's parental rights was in the best interests of the children. The record reveals that whatever bond between respondent and her children may have existed, it was seriously diminished by respondent's failure to regularly attend visits with her children when they were permitted by the court and her failure to comply with the requirements to reinstate visitation for the last seven months of this case. Even though respondent had completed parenting classes at the time of the termination hearing, her own failure to comply with the reasonable conditions imposed by the trial court to reinstate visitation made it impossible to determine whether she had benefited from the classes. Most significantly, respondent's behavior provided no indication that she could break her history of addiction to comply with the requirements of the parent-agency agreement and reach a point where she could adequately care for her children.

Furthermore, the children, who were all under five years old, may have enjoyed visiting with respondent at birthday and Christmas parties where they received presents and treats, but the evidence clearly demonstrates that they were bonded with their foster parents, who wanted to adopt them, and that the children looked to the foster parents to provide for their needs. The record shows that the children had multiple health and behavioral problems when they were first removed from respondent's care. Through the assistance, guidance, and love provided by the foster parents and other services, the children's health and behavior had improved, they were doing well in school, and they were thriving in their foster home.

Respondent also failed to show that, within the foreseeable future, she would be in a position to provide the children with the permanency, stability, and finality that they needed. After 19 months, respondent did not have a stable home for the children, she had no income to provide for their needs, and she was still using illegal substances on a regular basis. Therefore, the record shows that there were many advantages to the foster home.

At this stage in the proceedings, the interest of the child in having "a normal family home is superior to any interest the parent has." *In re Moss*, 301 Mich App at 89. "[T]he issue is whether parental rights *should* be terminated, not whether they can be terminated." *Id.* at 89. Given respondent's evident inability to safely and consistently care for the children, the trial court did not clearly err in finding, by a preponderance of the evidence, that termination of respondent's parental rights was in the best interests of the children.

IV. CONCLUSION

Respondent has failed to establish that the trial court clearly erred in finding that a statutory basis for termination of her parental rights had been proven by clear and convincing evidence, and that termination was in the best interests of the children.

Affirmed.

/s/ Michael J. Riordan
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood