S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

In re DIXON/WALLS, Minors.

UNPUBLISHED
April 11, 2017

No. 334074
Oakland Circuit Court
Family Division
LC No. 15-828828-NA

Before: O'CONNELL, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Respondent-mother pleaded to statutory termination grounds. The circuit court thereafter conducted a separate best-interests hearing and terminated respondent's parental rights to her four children: KD (born March 3, 2007), JW (born April 22, 2013), PW (born February 12, 2014), and AW (born February 28, 2015). Respondent contends that termination was premature as she was given insufficient time to benefit from services and she had recently secured family support. We affirm.

I. BACKGROUND

The Department of Health and Human Services (DHHS) took respondent's four children into care on March 4, 2015. Respondent had used marijuana and cocaine while pregnant with her youngest child and received no prenatal care. The newborn's meconium tested positive for the substances. Moreover, respondent was homeless and traveled between the homes of friends and family members. Young JW and PW lacked safe sleeping arrangements. And respondent had repeatedly violated a no-contact order entered after she committed domestic violence against the father of her three youngest children.

Respondent pleaded to jurisdictional grounds on April 28, 2015, and the DHHS began providing services. KD was placed with her father. The youngest three children were separated; JW was placed with one nonrelative foster parent and PW and AW another.[1] Respondent entered a parent-agency treatment plan and agreement with the DHHS on May 13, 2015. Respondent was required to address her substance abuse and domestic violence issues, attend

---

[1] The father of the three younger children opted not to participate in services and his rights were terminated without challenge.

parenting classes, find employment and housing, and attend supervised visits with her children three times each week.

Over the next several months, respondent made very little progress. Respondent applied for low income housing but was ultimately denied because there was an outstanding warrant for her arrest. She moved in with a male friend, but that home was deemed an inappropriate placement for the children. Respondent was terminated from her position at a restaurant and remained unemployed. Respondent was discharged from parenting classes for lack of attendance. The DHHS experienced difficulty finding an affordable domestic violence program for respondent as she was the perpetrator rather than the victim in her relationship. Respondent also failed to submit to random drug screens. However, respondent attended the majority of her scheduled parenting time sessions and the supervisor reported a strong bond between mother and children.

Based on respondent's lack of progress, the DHHS filed a supplemental petition seeking termination in November 2015. On February 18, 2016, respondent pleaded no contest to allegations supporting termination under MCL 712A.19b(3)(c)(*i*), (g), and (j). The court referred respondent for a psychological evaluation pending a best-interest hearing. However, respondent rushed through the personality inventory, leading to invalid results. Respondent also admitted to the evaluator that she continued to use marijuana on an almost daily basis. In the month leading up to the April 22, 2016 hearing, respondent attended only one parenting time session. She submitted for a scheduled drug screen in mid-April and tested positive for marijuana. Respondent asserted that she was working for a family member's cleaning business and had earned $315 thus far. However, she provided no proof of employment or income. And respondent claimed that two weeks before the hearing her maternal aunt offered her and her children a home and promised to assist respondent in turning her life around. Given the brevity of notice, the caseworker had insufficient time to conduct a background check for this relative.

Ultimately, the circuit court found that termination of respondent's parental rights would be in the children's best interests. Respondent appeals that decision.

II. ANALYSIS

"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), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error the court's decision that a preponderance of the evidence supports termination. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); MCR 3.977(K).

The lower court should weigh all the evidence available to it in determining the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). If parental rights to more than one child are at stake and the bests interests of the individual children differ significantly, the court must decide the best interests of each child individually. *White*, 303 Mich App at 715; *Olive/Metts*, 297 Mich App at 42. Relevant factors in considering a child's best interests include "the child's bond to the parent, the parent's parenting ability, [and] the child's

need for permanency, stability, and finality. . . ." *Olive/Metts*, 297 Mich App at 41-42 (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, [and] the children's well-being while in care. . . ." *White*, 303 Mich App at 714. A parent's substance abuse history is relevant, *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001), as are the advantages of the child's foster placement over placement with the parent, *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009). Placement with relatives weighs against termination, however. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "With respect to the trial court's best-interests determination, we place our focus on the child rather than the parent." *In re Schadler*, 315 Mich App 406, 411; ___ NW2d ___ (2016), citing *Moss*, 301 Mich App at 87.

We discern no error in the circuit court's decision. Respondent's appellate challenge is built on speculation and her hope that she would rectify the conditions that led to court involvement with the newfound assistance of her aunt. However, respondent did little to nothing to comply with her parent-agency agreement from May 13, 2015 until April 22, 2016. Even in the month leading up to the best-interest hearing, at which respondent knew her parental rights were at stake, respondent was uncooperative at a psychological evaluation and admitted to daily marijuana use. Respondent had recently been discharged from services again due to poor attendance and was still awaiting readmission. Respondent attended only one parenting time session in the entire month of April. Although respondent claimed she had secured employment, she provided no proof to her caseworker or the court. And respondent waited until two weeks before this pivotal hearing to contact her maternal aunt to seek out assistance. As a result of respondent's tardy attempt to find family support, the caseworkers could not verify the appropriateness of this plan in time. Accordingly, respondent has not established that the court clearly erred in describing her overall performance as poor.

Respondent also challenges the brevity of these proceedings. The DHHS had provided services for less than a year by the time of the best-interest hearing. In *In re Boursaw*, 239 Mich App 161, 176-177; 607 NW2d 408 (1999), overruled in part on other grounds in *Trejo*, 462 Mich at 353-354, this Court lamented that termination of the respondent-mother's parental rights was premature given the "significant strides" she had made "toward remedying the problems" that led to court intervention. In that case only eight months had passed. Here, the DHHS provided services and made reasonable efforts to reunify respondent with her children as required by MCL 712A.19a(2). However, respondent failed to meet her "commensurate responsibility . . . to participate in the services that [were] offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Therefore, although respondent was only offered services for an 11-month period, termination of her parental rights was not truly premature.

Moreover, a preponderance of the evidence supported the court's decision. The court considered KD's placement with her father in weighing the child's interests. KD was thriving in her father's care. Yet, respondent's missed and cancelled visits were emotionally difficult for KD. Given respondent's lack of participation in her services plan, the court could determine that she would not remedy her deficits to become a more active and stable parent for KD in the future. As such, the court could determine that the parent-child bond standing alone was insufficient to maintain respondent's parental rights.

In relation to the other children, JW was removed from his mother's care at the age of 2, PW at 1, and AW had never resided with her mother. Although supervised visits went well, the children really did not have a relationship with respondent. Reports indicated that all three children were doing very well in their foster placements and that the foster parents were interested in adoption. Given respondent's failure to benefit from services, we can discern no error in the circuit court's conclusion that termination of respondent's parental rights was in these children's best interests.

We affirm.

/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra