STATE OF MICHIGAN

COURT OF APPEALS

In re BUTTERFIELD, Minors.

UNPUBLISHED
April 11, 2017

No. 334473
Huron Circuit Court
Family Division
LC No. 14-004394-NA

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

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to her two minor children, LB 1 and LB 2, pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continues to exist) and (g) (failure to provide proper care or custody). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent is the mother of two minor children.[1] The younger child, LB 2, was born with hydrocephalus, i.e., an abnormal accumulation of cerebrospinal fluid in the brain that impacted the child's brain development. LB 2's head was filled with fluid and required a drainage tube. The extent of his stunted brain development was unknown, but the doctor believed that LB 2 would never walk or talk and perhaps would not see or hear. LB 2 required extensive 24-hour supervision and regular medical appointments.

On September 8, 2014, a petition was filed to remove the children from respondent's custody and care. At a preliminary hearing before an attorney referee, the assigned Child Protective Services (CPS) worker, Monica Evans, testified that Jared Butterfield, the children's father, had an extensive criminal record and that respondent was on probation and had violated that probation by harboring an escapee (Butterfield); a bench warrant for her arrest had been issued. Evans stated that respondent did not have any income and that she was concerned about respondent's emotional state because she had previously agreed to release LB 2 for adoption but had changed her mind at the urging of her family. Evans testified that it was difficult to contact respondent after LB 2's birth. Respondent did not return text or voice messages. Evans stated

[1] Jared Butterfield, the biological father of both children, voluntarily released his parental rights to the children on August 27, 2015. He is not a party to this appeal.

that respondent had periods where she did not see LB 2 in the hospital for several days, including a four-to-five day period during which she had no contact with the child or hospital staff. Evans also testified that respondent had reported that her family would support her financially but that she did not have the money to buy phone minutes and did not have her own transportation. Additionally, although respondent was attentive during a meeting with the doctor regarding LB 2's medical needs, she had not demonstrated the necessary responsible behavior to properly care for him. Evans stated that the charge nurse and the hospital social worker were greatly concerned with respondent's lack of consistency when with LB 2. Finally, Evans testified that respondent's relationship with Butterfield was also an issue because of his excessive criminal history and a substantiated domestic violence incident that occurred in LB 1's presence.

The court followed the referee's recommendation and authorized the removal petition. Petitioner was ordered to make reasonable family reunification efforts. Respondent was ordered to undergo a psychological evaluation and comply with its recommendations, submit random drug screens, comply with the FIP (Family Independence Program) and other case assistance programs, and attend LB 2's doctor appointments on a regular basis. Petitioner was granted discretion regarding parenting time and the placement of LB 2 with Amanda Cummings (a maternal aunt) or in non-relative foster care. LB 1 was returned to respondent's care on September 24, 2014.

On November 12, 2014, the court acquired jurisdiction over the children after respondent pleaded to allegations in the amended petition related to her criminal history, her relationship with Butterfield, her use of marijuana while pregnant with LB 2, and her violation of no-contact orders regarding Butterfield.

Respondent was given a service plan and granted supervised parenting time with LB 2. From December 2014 to March 2015, respondent minimally complied with her treatment plan. She did not appear at the December 2014 review hearing and her attorney's efforts to contact her were unsuccessful. She had numerous missed and positive drug and alcohol screens. Her parenting time with LB 2 was first reduced to four or five days two days per week because of transportation issues; nonetheless respondent missed two parenting time sessions in December with LB 2 even though LB 2 had been transported to her for her convenience. Respondent's parenting time was later suspended because of missed drug screens. Kenzie Williams, the assigned caseworker, testified at a December review hearing that LB 2 had been released from the hospital and placed in non-relative foster care. He required in-home therapy, physical therapy, and heart apnea monitoring. He also needed constant monitoring because of his heart condition and because he was being fed by a feeding tube. LB 1 remained in respondent's custody but he primarily resided with Cummings because of respondent's work schedule. Respondent had not complied with the trial court's order to cooperate in establishing Butterfield's paternity over the children.

On March 12, 2015, respondent tested positive for cocaine. On March 26, 2015, respondent tested positive for THC. Respondent did not attend counseling in March. Her parenting time with LB 2 was again suspended.

LB 1 was again removed from respondent's home in April 2015, after respondent admitted to Williams that she had allowed friends to smoke marijuana in her home and after an

unannounced home visit revealed that several men with criminal histories were living in respondent's home. At the removal hearing, respondent told the court that she had not spoken with two of the men since she had turned them in to law enforcement for "passing out drugs" and that she had ended her relationship with the third.

Williams also testified at the removal hearing that LB 2 had been diagnosed with blindness that could be temporary, that respondent had attended weekly counseling and provided weekly drug screens that were negative, that she was working and had successfully completed parenting classes, that she was visiting LB 2 twice weekly for two-hour sessions, but that respondent did not attend LB 2's medical appointments even though she was given two notices of the dates and times and had her own transportation. The court ordered petitioner to continue making family reunification efforts.

On May 20, 2015, petitioner filed a supplemental petition to terminate respondent's parental rights because she had not made adequate progress in her treatment plan. However, the court gave respondent additional time to comply with the plan. She continued to receive petitioner's family reunification services and was granted parenting time while the supplemental petition was pending.

From May 20, 2015 to May 2016, the court held 90-day periodic review hearings. At multiple hearings, the court denied petitioner's renewed requests for the court to authorize the termination petition. Petitioner continued to make family reunification efforts. The court clearly told respondent that she was expected to strictly comply with her treatment plan. Parenting time was to be suspended if she missed a visit, and she needed to attend all medical appointments. Respondent made some progress with her treatment plan during this time period, complying with all drug and alcohol screens. However, respondent continued to miss parenting time visits, medical appointments, and counseling, and had financial difficulties.

At the September 23, 2015 review hearing, the court noted that it had observed respondent and Butterfield interacting during the August 27, 2015 hearing at which Butterfield voluntarily released his parental rights, and stated its concern regarding those interactions. The court advised respondent that she had 90 days to completely comply with her treatment plan and make substantial progress or else the court would move forward with a termination petition.

As of early October 2015, respondent was living with her great-grandmother, Barbara Stimson, in Sandusky. This was respondent's fourth residence since September 2014. She was employed as of September 13, 2015 but had recently lost her job. Williams testified in December 2015 that she had discovered that respondent had maintained communication with Butterfield throughout the course of the proceedings and had visited him in prison several times. Williams also had concerns about respondent's veracity when reporting her housing and employment. Respondent had not provided proof regarding the reason she had lost jobs with various employers.

LB 2's pediatrician, Dr. Nancy Wade, testified at a review hearing in December 2015 that respondent in early 2015 was initially an unconnected and unsure parent, but currently had an intellectual grasp of LB 2's medical issues, feeding requirements and the therapy he would need to grow and thrive. However, Wade concluded that respondent did not have an understanding of

what it actually would mean to care for LB 2 because she had not spent time caring for him and did not have an understanding of the effect that caring for him would have on her own life. Wade said that it was unknown whether respondent, if given the opportunity, would have the will and the organizational skills to develop a relationship with LB 2 and manage his complex medical needs, but that LB 2 felt safe with the people who had cared for him since birth. Wade noted that LB 2 required constant care, particularly during the critical period before age four, to train his brain to control his body, especially his oversized head.

Amy Elliott, respondent's parenting coach, testified that respondent had not yet completed the parenting program, but did very well in parenting both children during four one-hour sessions. She said that respondent took full responsibility for her past mistakes, was very open-minded and cooperative, and responded immediately to Elliott's directions. She noted that respondent had a voluminous plan for day care providers, backup providers and services.

Respondent testified that she finally realized in November 2015 that Butterfield was holding her back from parenting LB 2 and LB 1. She said that she had attempted to keep the relationship together, "through thick and thin," as she had observed with her parents, but acknowledged that she had chosen the wrong person. Respondent reported that she was aware of LB 2's needs and had acquired skills that would help her care for LB 2. She testified that the boys interacted well with each other during visits, and that she had strong family support. Respondent believed that she had benefited from counseling with Elliott and had a better understanding of the effects of domestic violence on children, that she had learned how to make better and less impulsive decisions, and that she understood the court's concern about having Butterfield and other criminals near her children. Respondent had begun treatment with a psychiatrist for attention deficit/hyperactivity disorder (ADHD) and depression. She testified that she was more focused and organized and felt dramatically different after beginning the proper medication to address those issues. Respondent admitted that she had attempted to keep Butterfield involved in the children's lives after he had released his parental rights and that she was angry with Butterfield for releasing his parental rights.

The trial court ordered petitioner to continue family reunification services and to expand parenting time so that respondent could establish a workable and realistic family setting. Petitioner was granted the discretion to expand parenting time and to file a termination petition if respondent did not comply with services.

As of the April 13, 2016 permanency planning hearing, respondent had made some recent progress. Her residence was safe and appropriate; however, Williams was unable to verify respondent's employment. Respondent had successfully completed a parenting education in-home program. Respondent did well when visiting with the children and Stimson had accompanied her to almost every visit. Respondent's therapist reported extreme concern that she had not disclosed during therapy her 2015 contacts with Butterfield.

Despite respondent's recent progress, petitioner recommended terminating her parental rights because she had continued her contact with Butterfield and did not report it to her therapist or caseworker and because that contact had stopped only when respondent was confronted with it in court. Also, respondent had not demonstrated throughout the case that she could make all of LB 2's appointments and meet the needs of both children. Respondent had missed visits with

both children and had been unavailable to give consent for a necessary medical procedure for LB 2 after he was hospitalized in April 2016. Respondent testified that she was in fact at the hospital but had not responded to LB 2's foster mother's text regarding the need for her consent.

Elliot continued to opine that respondent had benefited from all services, including counseling, and that returning the children to respondent's home would not cause a substantial risk of harm. Stimson testified to her willingness to assist respondent in caring for her children and to provide a support system for respondent while respondent resided in her home.

The trial court authorized a termination petition and ruled that no further family reunification efforts be made.

The termination hearing began in August 2016. Officer Matt Blaine of the Ubly Police Department testified that on February 5, 2016, the police stopped Mark Christenson and Alexis Christensen (Stimson's son and granddaughter) while they were driving Stimson's car and that marijuana and 110 Vicodin pills were found inside the car's venting. Stimson admitted that the marijuana was hers. Mark's cell phone was seized and a search revealed that on December 25, 2015, respondent had sent a text asking to buy a controlled substance to sell to another person. Stimson and her husband had medical marijuana cards and she was also his caregiver. However, a search of a home owned (but not resided in) by Stimson revealed 28 plants about five to six feet tall and 22 plants about three to four feet, along with marijuana wax, extraction equipment, digital scales, tally sheets, pre-packaged marijuana, prescription pills, and a large amount of cash. Blaine testified that it was illegal to sell and possess marijuana wax, as well as possess the amount of seized marijuana plants. Additionally it was illegal to possess without a valid prescription and to sell the pills seized. Stimson and the Christensens were awaiting trial on a felony charge of possession with intent to deliver and Stimson was charged with maintaining a drug house.

Williams testified that during a July 11, 2016 home visit, Stimson's house was damp, muggy and smelled of urine. Williams observed seven small dogs and two cats in the home, opined that the home was not clean enough for a child, and expressed concern about the growing of marijuana in the home, even if legal, without an appropriate safety plan.

Williams testified that respondent was provided with all available services, and that respondent was expected to learn about how to care for LB 2 by attending medical appointments and to move from supervised to unsupervised visitation where she could employ her learned skills. Williams testified that respondent did not have adequate housing or employment, was not honest with service providers, struggled with attending visitation and medical appointments for LB 2 and being available when needed, and had told Williams that she planned to stay at home and had adequate income from her boyfriend, her brother and Stimson. Respondent had not seen LB 1 since May 2016 and had missed two of 15 visits in March and two of 14 visits in April.

Williams further testified that she was never told that Stimson or her husband had a medical marijuana card and that they were growing, legally or illegally, marijuana. A safety plan could have been implemented if it had been disclosed. Williams stated that Stimson was presented as being available to provide 24/7 care for the children, including driving them to medical appointments, but that no one had disclosed that Stimson had been arrested and charged

with a felony, even though a home visit had been conducted after the raid, the search and Stimson's arrest.

Karen Olson, a nurse practitioner, testified regarding respondent's psychiatric care. Olson testified that respondent was evaluated on November 18, 2014 and that respondent was receiving medication for several disorders but had not disclosed that she had previously abused illegal substances.

LB 2's foster mother described LB 2's daily care routine, including feedings that take up to an hour to complete, physical, occupational and speech therapy, and various weekly appointments. The foster mother testified that she would be willing to consider adopting LB 2 if necessary. The trial court found sufficient evidence to terminate respondent's parental rights pursuant to MCL 712A 19b(3)(c)(*i*) (conditions that lead to adjudication continue to exist) and (g) (inability to provide proper care and custody). The court also concluded that termination was in the children's best interests. This appeal followed.

II. STANDARD OF REVIEW

On appeal, respondent challenges the trial court's determination that at least one of the statutory grounds set forth in MCL 712A.19b(3) was proved by clear and convincing evidence, as well as the determination that terminating parental rights was in the children's best interests. We review these determinations for clear error. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009); *In Re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists "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).

III. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court clearly erred by terminating respondent's parental rights to the children pursuant to MCL 712A.19b(3)(c)(*i*) and (g). We disagree.

Pursuant to MCL 712A.19b(3), a trial court may terminate a parent's parental rights if it finds that at least one of the statutory grounds has been established by clear and convincing evidence. Petitioner bears the burden of proving at least one statutory ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000).

MCL 712A.19b(3) provides in pertinent part:

> (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:
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> * * *

> (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 . . . 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.

We conclude that the trial court did not clearly err by finding sufficient evidence to support the statutory grounds for terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*) and (g).

With regard to MCL 712A.19b(3)(g), the lower court record shows that respondent was unable to provide the children with proper care or custody and would not be able to do so within a reasonable time. Respondent's children were removed in 2014 because of respondent's inadequate parenting, emotional instability, her relationship with Butterfield (who had abused her physically both before and after the children's births), harboring a fugitive, and substance use. After LB 2 was born, respondent did not demonstrate her ability to care for his special needs. She did not see him for several days during a hospitalization following his birth, and medical staff and caseworkers were unable to contact her.

Respondent agreed to a treatment plan with goals that included: achieving emotional stability; maintaining a lifestyle free of domestic violence and substance abuse; acquiring appropriate parenting skills, including time management; and maintaining employment and legal income sufficient to meet the family's needs. Respondent was also to maintain appropriate housing, participate in individual counseling, provide random drug screens, attend parenting education classes, consistently participate in parenting time, effectively budget her income, be open and honest with all service providers, and attend all of LB 2's doctors' appointments and follow through with all of the medical recommendations.

The proofs show that petitioner made reasonable family reunification efforts for more than two years. Respondent was psychologically and psychiatrically evaluated in November 2014. She was referred for individual counseling, random drugs screens, and parenting classes. Petitioner also provided her with transportation and employment assistance, along with supervised parenting time and case management. Respondent received additional mental health evaluations in 2016. Williams testified that respondent had been given all of the reunification services that were available.

Nonetheless, after more than two years, respondent had not made adequate progress with her treatment plan. Respondent missed counseling and parenting time, had positive drugs

screens, admitted to having drugs in her home, and allowed men with criminal and/or drug-related histories to be in her home with LB 1, resulting in his removal again after he had been returned to her care.

The evidence was clear and convincing that respondent would be unable to provide her children with proper care or custody within a reasonable time considering the children's young ages. Respondent made some progress with her treatment plan after June 2015. She provided weekly negative drug screens for more than one year prior to the termination hearing and did not have any further incidents of domestic violence, although Butterfield was incarcerated during this time. However, respondent did not make adequate progress in maintaining consistent employment and appropriate housing. She changed jobs frequently and the reasons she gave for losing jobs often could not be verified. Throughout the case, she was financially unstable and had trouble paying her rent. Respondent was unemployed at the time of the termination hearing and completely dependent on Stimson, her newly acquired young boyfriend, and her brother, for financial support. Respondent also moved four times in little more than a year, and in October 2015 was living in Stimson's home, which smelled of urine and housed seven small dogs and two cats. Regardless of the source of the lack of hygiene, the court reasonably concluded that the home was not suitable for children, especially LB 2, whose extreme medical needs required scrupulous hygiene. Moreover, given respondent's failure to consistently participate in counseling, it did not appear that she had achieved the necessary emotional stability to parent either child. Contrary to respondent's argument that the court's findings of fact were vague, the court adequately stated its findings on the record. Lack of progress in a treatment plan is evidence of continued neglect. *In Re JK*, 468 Mich at 214.

Respondent argues that she substantially complied with her treatment plan and that she is a capable parent. We disagree. Respondent points to her parenting instructor's testimony that she was attentive to LB 2's needs during short parenting visits and had successfully passed parenting education tests. She argues that the court refused to accept testimony from informed and trained service providers. See *In Re JK*, 468 Mich at 202. It is undisputed that respondent behaved well during supervised parenting visits but there is no evidence that the court gave this improper weight. The trial court properly considered the skills needed to properly care for the children beyond short supervised visits. Further, LB 2's primary physician described his "devastating" needs and unequivocally stated that raising both children would require tremendous support from an extended family. LB 2's foster parents also testified regarding his 24-hour care, including regular feedings lasting one hour each, daily speech, physical and occupational therapy, and weekly medical appointments. The physician testified that although respondent was attentive to his special needs during short visits, she did not have a realistic understanding of how caring for him, along with his brother, would impact her life. The caseworker's, foster parents' and trial court's myriad attempts to get respondent regularly involved with care were unsuccessful. Respondent lacked consistency and never progressed beyond relatively short supervised visits with both of her children.

Further and contrary to respondent's argument, the record shows that petitioner consistently attempted to engage respondent in services. Even when the termination petition had been pending for several months, Williams recommended that services and parenting time continue because respondent had made some progress since the previous reporting period. In December 2015, respondent testified that Williams and LB 2's foster mother were helpful in

scheduling appointments so that she could remain employed. Further, respondent's argument that petitioner mischaracterized Stimson as a "drug lord" ignores the fact that Stimson's second home was raided by police and that large amounts of marijuana, Vicodin, cash, marijuana extracting equipment, wax, and digital scales were seized and Stimson and several of her family members were charged with drug-related felonies. The trial court correctly considered the impact of this evidence on respondent's claims to possess a strong support system.

Further, respondent was not honest with the court and service providers about having terminated her relationship with Butterfield when, in fact, she had continued the relationship notwithstanding that he posed a safety risk to her children. Respondent also was not truthful about having allowed other people into her home who posed a safety risk, and made no mention of Stimson's marijuana growing operation or arrest.

In sum, respondent's choices and lack of progress established that she would not be able to provide proper care within a reasonable time. Although petitioner need prove only one statutory ground for termination by clear and convincing evidence, See *Trejo*, 462 Mich at 350, we note that the record also supports the trial court's findings that the conditions that led to the children's removal continued to exist for more than 182 days and that there was no reasonable likelihood that they would be rectified within a reasonable time considering the children's young ages. Respondent was given more than two years and numerous opportunities to show that she could adequately parent her children and provide a safe environment for them, yet issues related to her inability to parent both children and keep them safe remained. We conclude that the trial court did not err by determining that at least one statutory ground for termination was proven by clear and convincing evidence.

IV. BEST-INTEREST DETERMINATION

Respondent also argues that the trial court erred by determining that termination of her parental rights was in the children's best interests. We disagree.

If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the children's best interests, the court must order termination of parental rights. MCL 712A.19b(5); *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010). The trial court's findings regarding the children's best interests must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). The trial court may consider various factors in addition to the children's bond to the parent, *In re BZ*, 264 Mich App at 301, including the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), and the child's need for permanency, stability and finality, *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992). 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 701, 714; 846 NW2d 61 (2014).

The record shows that respondent was tenuously bonded with both of her children. She considered relinquishing her parental rights to LB 2 before his birth and in December 2014 and July 2015. Respondent missed numerous parenting time visits with both children and medical appointments for LB 2. Further, the record shows that respondent lacked the stability and family

support system needed to provide for her extremely medically fragile child or his brother. The children needed permanency, which respondent was unable to provide within a reasonable time considering their ages. Respondent made minimal progress with her treatment plan for nearly two years. She exposed LB 1 to persons with criminal histories who were involved in the production and sale of drugs, and at the time of the termination hearing had missed visits with LB 1 and had not rescheduled them. Respondent was not available when needed to provide consent for a necessary medical procedure for LB 2. Finally, LB 2 was attached to his foster parents, who had cared for him since birth and would consider adopting him. Accordingly, we conclude that the trial court did not clearly err by determining that termination of respondent's parental rights was in the children's best interests.

Affirmed.

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