

STATE OF MICHIGAN
COURT OF APPEALS

In re FRENCH, Minors.

UNPUBLISHED
April 11, 2017

No. 335485
Barry Circuit Court
Family Division
LC No. 14-008713-NA

Before: BORRELLO, P.J., and WILDER and SWARTZLE, JJ.

PER CURIAM.

Respondent¹ appeals as of right from an order terminating her parental rights to three of her five children, KF, TF, and SF. We affirm.

I. FACTS

Respondent has a long history with methamphetamine. Her name had appeared on NPLEX logs² dating back to 2007 and petitioner alleged that respondent used methamphetamine “daily” in 2008. Petitioner became involved with respondent in March 2009 when items used to manufacture and use methamphetamine were found in a home where respondent’s older two children—MF and HF—and respondent-father were present. Child Protective Services (CPS) indicated that respondent “reported that she was unaware of the meth use/production in the home.” Accordingly, the children were released to respondent’s care and the trial court closed the case in August 2009.

The family had additional CPS involvement in 2014. Petitioner alleged that respondent tested positive for methamphetamine in July 2014, and she later admitted to using methamphetamine. An NPLEX log showed that respondent had purchased pseudoephedrine in

¹Reference to a singular respondent refers only to respondent-mother. Respondent-father is not a party to this appeal.

²According to the record, NPLEX stands for National Precursor Log Exchange, a system used “to track the sale of over-the-counter cold medicine” containing pseudoephedrine, an ingredient required to manufacture methamphetamine.

2014 and 2015. Accordingly, all of respondent's children were removed from her care. The youngest child tested positive for methamphetamine at the time of removal.

Petitioner recommended returning the children to respondent's care in June 2015. Respondent tested positive for methamphetamine in July 2015, and the children were removed again. They were returned to respondent in December 2015, and the trial court ended its jurisdiction over the children in March 2016.

The instant case began in July 2016. An NPLEX log showed that respondent purchased pseudoephedrine on July 26, 2016. Respondent-father's parole officer went to his home on July 28, 2016 and found respondent-father, a woman, and two children. It appears that respondent "force[d]" respondent-father to visit with the children. Respondent-father and the woman admitted to using methamphetamine, and "meth components" were found in the home. Moreover, the home was "completely filthy" and the only food found in the refrigerator was spoiled milk.

The following day, respondent "acknowledged" using marijuana and "her daughter's prescription Xanax." Drug test results from a sample collected that day established that respondent also tested positive for amphetamine and methamphetamine. Moreover, a "casing pill box that over-the counter cold medicine or pills containing pseudoephedrine are contained in originally" was found in her home. In addition, respondent discussed a man she was dating, who has previous convictions for alcohol and methamphetamine related offenses, including a conviction for operating or maintaining a controlled substance laboratory, MCL 333.7401c(2)(a). Petitioner filed a complaint on July 29, 2016 asking the trial court to take all five children into protective custody. The trial court ordered removal of all the children that same day.

Petitioner petitioned the trial court to take jurisdiction over all five children and to terminate respondent's parental rights to KF, TF, and SF under MCL 712A.19b(3)(g) and MCL 712A.19b(3)(j).³ The trial court took jurisdiction on September 19, 2016. It was established that respondent tested positive for amphetamine and methamphetamine on seven occasions from August 23, 2016 to October 10, 2016.

Petitioner filed a trial brief arguing that the trial court had statutory grounds to terminate respondent's parental rights to KF, TF, and SF under MCL 712A.19b(3)(g) and MCL 712A.19b(3)(j). At the subsequent termination hearing there was testimony that respondent had been discussing attending rehabilitation since her children "came into care," but that respondent had yet to enroll. Ultimately, the trial court terminated respondent's parental rights to KF, TF, and SF, finding that clear and convincing evidence of the statutory grounds for termination had been proven "for the reasons stated by [the petitioner] in his brief."

³ DHHS stated that because MF and HF were over 14 years old, it would "abide by" their "wishes" to not terminate respondent's parental rights as to them and seek only a juvenile guardianship. The trial court ultimately granted a juvenile guardianship over MF and HF.

The trial court then addressed the children’s best interests, noting that respondent “is still using methamphetamine,” chose “substances over the motivation that the children provide to . . . rid [her]self of that problem,” “ha[s] chosen men that use the substances,” “ha[s] chosen to have [her] kids in meth labs and have them test positive for methamphetamine,” and subjected her children to “nasty chemicals.” Finally, the trial court concluded that respondent is a “bad parent” because “[y]ou can’t be a good parent and still be on meth” and “you can not [sic] be an adequate parent using methamphetamine.”

II. ANALYSIS

Respondent argues that the trial court never specified whether it found statutory grounds to terminate her parental rights under MCL 712A.19b(3)(g) or MCL 712A.19b(3)(j), and that the trial court’s termination of her parental rights under either of those grounds was error. While we agree that a more explicit explanation would have aided appellate review, we conclude that the trial court’s adoption of petitioner’s reasoning in its trial brief was not error and that the trial court did not err by terminating respondent’s parental rights.

When a petitioner seeks termination of parental rights at the initial disposition, the trial court must determine whether there is clear and convincing evidence of a statutory ground for termination under MCL 712A.19b(3). MCL 712A.19b(4); MCR 3.977(E)(3); *In re AMAC*, 269 Mich App 533, 537; 711 NW2d 426 (2006). MCL 712A.19b(3) lists several grounds that could support termination. But the trial court need only find clear and convincing evidence of one. *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

“An order terminating parental rights . . . may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order.” MCR 3.977(I)(3). Such findings can be made “on the record or in writing.” MCL 712A.19b(1). “Brief, definite, and pertinent findings and conclusions on contested matters are sufficient.” MCR 3.977(I)(1). In this case, the trial court expressly indicated, on the record, that it was adopting the reasoning in petitioner’s trial brief.⁴ Accordingly, we must determine if that reasoning adequately supports the trial court’s termination of respondent’s parental rights.

Termination under subsection (g) requires two findings. First, the trial court must find that “[t]he parent, without regard to intent, fails to provide proper care or custody for the child.” MCL 712A.19b(3)(g). Second, the trial court must find “no reasonable expectation that the

⁴While not a recommended practice, we note that other panels of this Court have concluded that incorporating by reference the reasoning present in a trial brief, when that reasoning is accurate, is not sufficient grounds alone to remand an action. See, e.g., *Brennan v MidMichigan Med Ctr-Gratiot*, unpublished opinion of the Court of Appeals issued December 15, 2015 (Docket No. 323121), p 3 (“The trial court is undoubtedly free to adopt the position of one of the parties . . .”). Indeed, even in the context of a termination of parental rights, the trial court need only make “[b]rief, definite, and pertinent findings and conclusions on contested matters,” MCR 3.977(I)(1), on the record, MCL 712A.19b(1).

parent will be able to provide proper care and custody within a reasonable time considering the child's age." *Id.* A trial court may terminate parental rights under subsection (j) if it finds "a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if . . . returned to the home of the parent." MCL 712A.19b(3)(j)

Concerning subsection (g), petitioner argued below that respondent failed to provide proper care or custody in that 1) respondent had repeatedly used methamphetamine dating back to 2008, despite several removals of her children premised upon that use, 2) respondent had exposed the children to methamphetamine laboratories, 3) respondent's seven-month-old daughter tested positive for methamphetamine, 4) respondent had exposed the children to a known methamphetamine producer through her romantic relationship with him, 5) respondent had maintained a relationship with her ex-husband and his girlfriend and through that relationship exposed the children to methamphetamine use and possibly methamphetamine production, and 6) respondent had failed to benefit from her parent-agency agreement. Petitioner argued that respondent's failure to address her methamphetamine addiction and repeated positive testing indicate that there could be no reasonable expectation that respondent could provide proper care for the children within a reasonable time considering their ages. Regarding the children's ages, petitioner argued that the three children on whose behalf petitioner sought termination were too young "to leave the harmful situation or even know it is a risk to them" as evidenced when they were found unsupervised with respondent's ex-husband after he and his girlfriend had been using methamphetamine.

Concerning subsection (j), petitioner argued below that there was a reasonable likelihood that the children would be harmed if returned to respondent's care for the reasons supporting its argument under subsection (g). Additionally, respondent argued that the children were at risk of physical harm due to the dangers inherent in the production of methamphetamine. The trial court highlighted this argument stating that respondent had exposed her children to the danger of "explosions" and "nasty chemicals."

We conclude that the record adequately supports the factual arguments raised in petitioner's brief. Moreover, we conclude that these facts adequately support termination of respondent's parental rights under subsections (g) and (j). Accordingly, we find no error in the trial court's reliance on the reasoning underlying petitioner's well-prepared trial brief.

Concerning subsection (g), this Court has found no clear error in terminating a parent's parental rights when the parent abused alcohol for years despite multiple removals of the children, one child was born with fetal alcohol syndrome, and the parent cared for the children under the influence of alcohol. Similarly here, respondent failed to address her methamphetamine addiction despite years of CPS referrals and multiple removals of the children from her care. One child tested positive for methamphetamine. Respondent valued her relationships with methamphetamine users over the children's safety, often placing them around known methamphetamine producers or in the care of those under the influence of methamphetamine. That respondent failed to address this neglect despite seven years of intervention, only exposes her inability to provide proper care for the children within a reasonable time considering their age. Accordingly, we conclude that termination was appropriate under subsection (g).

Finding that termination was appropriate under subsection (g), we need not address the trial court's conclusions under subsection (j). *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000). Nonetheless, we conclude that the trial court did not err in finding statutory grounds to terminate respondent's parental rights under subsection (j). Generally, to terminate a parent's rights under subsection (j), the trial court must find record evidence of a reasonable likelihood of physical or emotional harm to the children. See *In re Mason*, 486 Mich 142, 165; 782 NW2d 747 (2010); *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). That standard is easily met in this case. The children to whom the trial court terminated respondent's parental rights were all seven years old or younger. The record indicates that respondent exposed these children to known methamphetamine producers and users and placed them in the direct care of persons under the influence of methamphetamine. Often harmful on their own, the chemicals used in methamphetamine production may become unstable when combined. Respondent's seven-year history of exposing not only herself, but her children, to these chemicals is sufficient to conclude that the children were at a reasonable risk of physical harm if returned to respondent's care. The emotional harm that may result from frequent interaction with such an environment is also clear.

Respondent does not challenge the trial court's best-interest finding. Accordingly, we reject respondent's claims of error and conclude that the trial court properly terminated respondent's parental rights as in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Brock A. Swartzle