STATE OF MICHIGAN

COURT OF APPEALS

In re W J PFEIFFLE, Minor.

UNPUBLISHED
October 19, 2017

No. 337526
Washtenaw Circuit Court
Family Division
LC No. 16-000001-NA

Before: BOONSTRA, P.J., and METER and GADOLA, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's order terminating her parental rights to her minor child, WP, under MCL 712A.19b(3)(g) (failure to provide proper care or custody). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent-mother gave birth to WP in the bathroom of her home; respondent-father[1] testified that he heard the child "plop" into the toilet. Respondent-mother and WP were taken to the hospital that night by emergency personnel.

On January 4, 2016, the day that respondent-mother was released from the hospital, petitioner filed a petition seeking the removal of WP and the termination of respondent-mother's parental rights. The petition alleged that respondent-mother had had numerous prior contacts with Children's Protective Services (CPS), that she had been offered numerous services in the past, and that her parental rights to three other children had previously been terminated.[2] The petition further alleged that respondent-mother and respondent-father were then living together, that there was a history of physical aggression between respondent-mother and respondent-father, and that respondent-mother had lived in a tent with a registered sex offender in May 2015. Further, respondent-mother "gave birth to the child at home while [respondent-father] was

[1] WP's father (and respondent-mother's husband) was also a respondent in the proceedings below, but because those proceedings remained pending as to respondent-father, his parental rights were not terminated by the trial court's order terminating respondent-mother's rights. He is not a party to this appeal.

[2] The most recent of the three prior terminations occurred in November 2015.

outside smoking a cigarette and drinking a Pepsi," and respondent-father "admitt[ed] to hearing the baby 'plop' into the toilet." The petition also alleged that a home visit was conducted on December 30, 2015, and that the home conditions were unsuitable because there was "dried up amniotic fluid and blood in the bathroom still present 3 days after [WP's] birth, clothing all over the home, a foul odor in the home, and no baby clothing, diapers, formula, or any other items necessary to care for the baby." Further, the petition alleged that respondent-mother had longstanding mental health issues, including depression, posttraumatic stress disorder (PTSD), and borderline personality disorder.

Adrienne Lee, a CPS caseworker, testified that CPS had received a referral because of a threat of harm to WP given respondent-mother's three prior terminations. Lee further testified that she took respondent-mother home from the hospital on January 4, 2016, that the conditions of the home were concerning, and that WP was removed from the home and placed in licensed foster care.

The trial court authorized the petition on January 8, 2016, and suspended respondent-mother's parenting time. At a January 29, 2016 pretrial hearing, the trial court denied respondent-mother's request for visitation, and it later denied further motions for visitation on February 19, 2016 and April 22, 2016.

The termination trial was adjourned several times for various reasons, including that, in April 2016, respondent-mother's counsel could not locate respondent-mother for three or four weeks and had been informed that respondent-mother had left the state to care for an ill family member.

On the first day of trial, a maintenance technician testified that, three days after WP was born (and while respondent-mother was still in the hospital) he had observed "afterbirth" in the bathroom where respondent-mother had given birth, and that respondent-father had told him that he had been unable to clean it up because of a medical issue with his knees and that respondent-mother would clean it when she got home. Jochebed Swilley, a CPS investigator, also testified that she had entered the apartment with the maintenance technician and had observed blood on the floor of the bathroom. Additionally, Swilley testified that the apartment lacked several essential items for a newborn, including clothing and diapers.

Respondent-mother testified to her three prior terminations. She testified that in May 2015 there was a period during which she had stopped living with respondent-father, had started living "with someone of a questionable nature," and was in a "homeless type situation" for approximately two or three months. She also testified to living with a registered sex offender for several months in 2014, but stated that she had not known that he was a sex offender. Respondent-mother testified that she had a "pack-and-play" for WP to sleep in and had clothes, diapers, formula, wipes, and blankets. She testified that she had had all the "baby stuff" with her at the hospital. Respondent-mother testified that she had been planning to clean up the bathroom when she got home and that the apartment had only been messy because of WP's unexpectedly early birth. Respondent-mother testified that she had planned to talk to various agencies to obtain items for WP that she did not then possess, but that the early birth had interrupted her plans. Respondent-mother testified that she was in therapy and taking medication for depression. Dr. Joshua Ehrlich had conducted a psychological evaluation of respondent-mother in 2012.

Respondent-mother admitted to having been hospitalized for mental health issues in the past and admitted that she would at times forget to take her medication or refill a prescription. She stated that she had been provided services by petitioner in the past and admitted that she had not complied fully, but that she was then enrolled in a parenting class.

After the first day of trial, subsequent trial dates were adjourned several times. When the second adjournment was placed on the record in November 2016, respondent-mother requested a new psychological evaluation and supervised parenting time. The trial court agreed to the request for a new psychological evaluation and denied the request for parenting time, stating it would revisit the issue if the psychological evaluation was favorable.

The trial ultimately resumed in January 2017. Petitioner submitted respondent-mother's updated psychological evaluation, also performed by Erlich, into evidence. Ehrlich's evaluation noted that his 2012 evaluation had found respondent-mother to be "extremely immature" and "impulse-ridden," and further found that her lapses in judgment had put her children at risk. The updated evaluation noted that respondent-mother seemed calmer and appeared to be better able to avoid hospitalization and major depressive episodes; however, she still displayed substantial lapses in judgment, including sometimes disappearing without telling anyone where she would be, forgetting her medication, becoming temporarily homeless, and associating with registered sex offenders. Ehrlich concluded, "Sadly, given these considerations, it remains almost impossible to imagine her providing her son a safe, stable home."

Ehrlich also testified that he did not see increased insight from respondent-mother since the time of the 2012 evaluation. Ehrlich noted that respondent-mother's rights to three other children had previously been terminated, that she had a history of severe depression, suicide attempts, and hospitalizations, and that even though respondent-mother was trying to get her child back, she did not consistently take her medication. Ehrlich also noted respondent-mother's actions in her marriage and stated that "you can't impulsively run off when you're upset and hook up with a guy under a bridge who's a sex offender." Ehrlich testified that respondent-mother showed repeated lapses in judgment and impulse control, which greatly concerned him. Ehrlich concluded that nothing he had heard during the hearing would change the opinion expressed in his report.

Respondent-mother testified that she was living with respondent-father in a two-bedroom apartment, and that she had learned how to better manage her stress. She testified that she knew what items she would need to procure in order to care for a newborn. Shamekia Schoffner, a Community Mental Health (CMH) case manager, testified that respondent-mother had been referred to and was receiving group and individual therapy, that respondent-mother had attended all of her medication review appointments, and that her agency could also provide services for WP with a referral. Julie Lovelace, a therapist, testified that she had met with respondent-mother three times from November to December 2016, and that she had seemed willing to participate in therapy; however, her last session had been in December 2016.

The child's lawyer-guardian ad litem called Patrice Elkins as a witness. Elkins, who previously had been a foster-care worker for WP, testified that WP had been in the same placement since being released from the hospital, except for "a day or so" where he "went to another place . . . until the current placement could get him." Elkins further testified that the

relationship between WP and his foster parents was amazing, that they were bonded, and that the foster parents satisfied his needs. Elkins noted that WP was in the same placement as was one of his sisters and that there was a significant bond between the two children. Elkins had no concerns about WP's placement. According to Elkins, the foster parents were a long-term placement and had expressed a desire to adopt WP, and they were in the process of adopting his sister.

The trial court placed its ruling on the record, stating that it would address its findings regarding the statutory grounds for termination found in MCL 712A.19b(3)(g). The trial court found that WP's home was not suitable for him, despite respondent-mother's experience with her older children and her statements that she knew how to care for a newborn. The trial court found Ehrlich's testimony to be credible and concluded that there was no reasonable expectation that respondent-mother could provide proper care and custody within a reasonable time. The trial court concluded that the statutory ground for termination found in MCL 712A.19b(3)(g) was established by clear and convincing evidence.

With respect to WP's best interests, the trial court emphasized respondent-mother's lack of insight and understanding, her impulsive decision-making, and her failure to consistently take her medication. The trial court further noted that WP was doing well with his foster parents, that adoption was a real possibility, and that WP needed permanence, stability, and finality. The trial court found that termination was in WP's best interests, and it entered an order terminating respondent-mother's parental rights to WP. This appeal followed.

II. STANDARD OF REVIEW

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met," *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011), and "[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). This Court reviews for clear error a trial court's determination regarding statutory grounds and best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); *In re VanDalen*, 293 Mich App at 139; MCR 3.977(K). "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong . . . ." *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999) (quotation marks and citation omitted). Further, this Court gives "deference to the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App at 459.

III. STATUTORY GROUNDS FOR TERMINATION

On appeal, respondent-mother argues that termination was improper because there was insufficient evidence to establish a statutory ground for termination.[3] We disagree.

MCL 712A.19b(3)(g) provides that a trial court may terminate a parent's parental rights when "[t]he parent, without regard to intent, fails to provide proper care and 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." In this case, the trial court found that respondent-mother had failed to provide proper care and custody for WP because she was not ready to care for, and the home was not suitable for, a newborn child. Based on respondent-mother's prior terminations, her psychological evaluations, and her overall history, the trial court further found that there was no reasonable expectation that mother would be able to provide proper care and custody within a reasonable time considering WP's age.

Respondent-mother admitted that she was aware that CPS would likely be contacted upon WP's birth. She characterized the birth as unexpected; however, she testified that WP was born within a few days of his expected delivery date. There was testimony that the home was in disarray and that it lacked the essential items to care for a baby, such as clothing and diapers. Although respondent-mother testified that she had some items for WP, she admitted that she knew that she would be in need of additional items once she left the hospital. Notably, these facts are similar to those of one of respondent-mother's prior termination cases.[4] Moreover,

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[3] Within respondent-mother's argument relating to statutory grounds, she makes a conclusory statement relating to due process and the denial of interim visitation. We decline to address this issue because (1) it is not properly presented for review, see *Harper Woods Retirees Ass'n v Harper Woods*, 312 Mich App 500, 515; 879 NW2d 897 (2015) (declining to address an issue and explaining that "[i]ssues not specifically raised in an appellant's statement of questions presented are not properly presented to this Court"), and (2) mother's cursory treatment of the issue constitutes abandonment, see *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (explaining that "[a]n appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority" and that "[a]n appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue") (citations omitted). Further, our review of the record indicates that respondent-mother's reliance on *In re Gach*, 315 Mich App 83, 97; 889 NW2d 707 (2016), is misplaced. Respondent-mother's parenting time was not denied because of an irrebuttable presumption, and the record indicates that the trial court considered and denied her requests for parenting time in the exercise of its discretion. See MCL 712A.19b(4); MCR 3.977(D).

[4] See *In re KL Pfeiffle*, unpublished opinion per curiam of the Court of Appeals, issued July 26, 2016 (Docket No. 330729), p 3 (noting that respondent-mother "testified to sharing a one-bedroom apartment with her current husband [respondent-father], but [he] denied [the Department of Health and Human Services] access to the home and she admitted that the only items in that home for KP were a bathtub and a playpen" and that "[t]he court was concerned that

there was testimony that respondent-mother did not consistently take her medication because she would forget to either take or refill the medication.

Ehrlich acknowledged that respondent-mother seemed somewhat calmer and less agitated during her evaluation in 2016 (as compared to her evaluation in 2012). However, Ehrlich testified that he did not see that respondent-mother demonstrated any increased insight. He noted that respondent-mother's biggest issues were impulsiveness and poor judgment. Ehrlich expressed strong concerns about respondent-mother's ability to provide a safe and stable home for a child given her continued lapses in judgment and impulse control.

Finally, WP's age limited what could be considered a reasonable time for respondent-mother. WP was removed shortly after birth and was only approximately 15 months old when the trial court terminated respondent-mother's parental rights. See *In re LE*, 278 Mich App 1, 28; 747 NW2d 883 (2008) (explaining that "even if a reasonable time were a longer time (*as it might be for the older children*), the trial court did not clearly err in finding that there was no reasonable likelihood that the mother would be able to resolve these problems within a reasonable time") (emphasis added). We are not left with a definite and firm conviction that a mistake has been made, *In re HRC*, 286 Mich App at 459, and the trial court did not clearly err by finding that there was sufficient evidence to establish this statutory ground, *In re VanDalen*, 293 Mich App at 139.

IV. BEST-INTEREST DETERMINATION

Respondent-mother also argues that the trial court erred by finding that termination was in WP's best interests. We disagree.

"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). The child, not the parent, is the focus of the best-interest stage. *In re Moss*, 301 Mich App at 87. In making its determination, the trial court may consider factors such as "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 Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

In this case, WP was removed from respondent-mother's care shortly after birth and was bonded with his foster parents, who had expressed a desire to adopt him and who were in the process of adopting one of his sisters. WP had a significant bond with his sister, the foster parents were able to provide for his needs, and there were no concerns raised regarding the foster family. The placement provided WP, who was only approximately 15 months old at the time of termination, with stability and permanence—things that respondent-mother was unable to provide as demonstrated by her prior terminations, mental health issues, and continued lapses in

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mother was not prepared for KP and that mother was asking for KP's return to a home where no one was allowed entry"). Unpublished opinions are not binding on this Court. MCR 7.215(C)(1). We therefore refer to respondent's previous termination case only for its factual similarity, not for any propositions of law. See *id*.

judgment and impulse control. Respondent-mother's psychological evaluation conducted during the pendency of this case concluded that "it remain[ed] almost impossible to imagine her providing her son a safe, stable home." On this record, the trial court did not clearly err by finding that the termination of respondent-mother's parental rights was in WP's best interests. *In re Moss*, 301 Mich App at 90.

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Michael F. Gadola