

STATE OF MICHIGAN
COURT OF APPEALS

In re RUMFORD, Minors.

UNPUBLISHED
December 19, 2017

No. 338805
Wayne Circuit Court
Family Division
LC No. 14-515878-NA

Before: METER, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother appeals as of right a May 25, 2017, order terminating her parental rights to three minor children under MCL 712A.19b(3)(g) and (j).¹ A fourth child, AR, died from scalding, and this death formed the basis of the current child-protective proceedings. We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000), superseded by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). Once a statutory ground for termination has been established, the trial court must find that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Whether termination of parental rights is in a child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. This Court reviews the trial court's factual findings under the clearly-erroneous standard. MCR 3.977(K); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹ The court noted in the order that the grounds for termination in MCL 712A.19b(3)(b)(i) or (ii) had also "probably" been established. While this wording is ambiguous, we note that only one statutory ground need be established for termination of parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Accordingly, we find no error requiring reversal with regard to the wording.

The court may consider several factors when deciding if termination of parental rights is in a child's best interests, including "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). The court may also consider psychological evaluations, the child's age, and a parent's history. *In re Jones*, 286 Mich App at 131.

Respondent frames her first issue on appeal as follows: "Whether the trial court erred when it terminated [respondent's] parental rights as the trial court's findings of fact did not comport with the evidence received at trial." Her discussion of the issue makes clear that she is challenging the establishment of the statutory factors for termination. However, respondent *pleaded no contest*² to the establishment of MCL 712A.19b(3)(b)(ii), (g), and (j) and contested only the best-interests portion of the proceedings. At the plea hearing on the original petition for permanent custody, a representative for petitioner stated that, as part of the factual basis for the plea, she was submitting an autopsy report showing that the cause of death for AR "was scalding, and the manner of death was homicide; a homicide that occurred in mother's home while [AR] was under her supervision."

The trial court explicitly informed respondent that, by way of her plea, she "would . . . agree to grounds for termination but not as to best interests." The court further stated that, by way of her plea, respondent would be "giving up [her] right to have grounds for termination proved by clear and convincing legally admissible evidence," and respondent answered "[y]es" when the court asked her if she understood. Respondent again answered "[y]es" when the court asked if she understood that her parental rights would be terminated if petitioner subsequently established that termination was in the children's best interests. Respondent then pleaded no contest, and the trial court found a sufficient factual basis for the plea based on exhibits admitted into evidence, including the autopsy report. Respondent agreed that nobody had coerced her into making the plea.

Respondent makes no argument on appeal that her plea was coerced or otherwise involuntary or defective. She is attempting to "assign as error on appeal something that she deemed proper in the lower court" *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). This is not allowable. See *id.* (involving a no-contest plea). Accordingly, we reject the claim of error regarding the statutory grounds for termination.³

Respondent next argues that the trial court erred in finding that termination was in the children's best interests. In making its factual findings, the trial court noted that it had "absolutely clear unequivocal answers from the medical experts that [the scalding was] not accidental. This was intentional" The court stated: "What decides it for me is that mom

² A representative for petitioner noted that respondent was entering a plea of no contest, as opposed to a plea of admission, because of possible criminal liability related to child abuse.

³ We nevertheless note that, contrary to respondent's argument, the record supports a statutory basis for termination.

either participated in this, which I don't really believe, or she knew who did and she's protecting them" The court emphasized that parents have a duty to protect their children. It weighed multiple considerations and ultimately concluded that respondent was protecting someone else ahead of her children and would "probably do it again" It therefore terminated respondent's parental rights.

Respondent emphasizes that the children were bonded with her and, citing the report of the Clinic for Child Study evaluator, Dr. Kai Anderson, M.D., notes that the children wanted to be with her. She takes issue with other findings of Dr. Anderson, however, and states that the court improperly terminated her parental rights based on "the circumstances of [AR's] death" and on "speculation that [respondent] knew who hurt her child."

We find no basis for reversal. First, the court did not clearly err in finding that the bond between respondent and her children did not outweigh safety concerns. A foster-care worker testified that respondent had had "several CPS cases" and that "there's no way that we can guarantee that the children will be safe in her care." Dr. Anderson also stated that, despite the bonding, termination was in the children's best interests "due to the finding by the medical examiner that [AR's] death was due to homicide"

Dr. Anderson emphasized the characterization of AR's death as a homicide, essentially concluding that there had been improper supervision and that the children would be at risk of future harm if returned to respondent. This finding of improper supervision was adequately supported and not pure speculation, as insinuated by respondent. Indeed, the medical examiner's report indicated that the manner of death was homicide. Another exhibit revealed that, the night of the incident, respondent's friend inquired about the whereabouts of AR, who had been sleeping in respondent's bed. Evidently, in response to the friend's question, respondent checked the bed, discovered that AR was not there, and, after searching the house, found him face-down in the bathtub in scalding water.

To the extent that respondent is arguing that the trial court wrongly concluded that respondent was protecting AR's killer, we find no basis for reversal. Respondent admitted that she was home that evening. A caseworker testified that she gave inconsistent versions of how events unfolded that evening and inconsistent statements regarding who was in the home at the time. Despite the unequivocal evidence of homicide, the investigation report indicates: "It was reported that [AR] climbed out of [respondent's] bed, up the stairs, started the bathwater and climbed in." In addition, respondent reported to Dr. Anderson that "[AR] liked baths. I think he got in there and he slipped and fell and turned the water on" Under all the circumstances, the trial court made a proper inference that respondent was not being forthcoming about the events of the evening.

The essential point is that AR, a one-year-old child, experienced a painful and horrific death while in respondent's care, and thereafter she was less than forthcoming about the circumstances leading to this death. The trial court properly found that termination of respondent's parental rights to the other children was in their best interests.

Affirmed.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Douglas B. Shapiro