STATE OF MICHIGAN

COURT OF APPEALS

In re O. LEATH, Minor.

UNPUBLISHED
April 10, 2018

No. 339427
Washtenaw Circuit Court
Family Division
LC No. 17-000027

Before: GADOLA, P.J., and K. F. KELLY and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her minor child, OL, under MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm.

I. FACTUAL BACKGROUND

On April 7, 2017, pregnant with OL, respondent arrived at the hospital presenting with suicidal ideation and decreased fetal movement. She was diagnosed with a high fever and fetal tachycardia, and two days later, on April 9, 2017, OL was born prematurely at 27 weeks. Because OL was delivered prematurely, he suffered from various medical conditions, including an eye condition that can result in blindness if not properly monitored and treated, anemia, a weakened immune system, and a condition in premature infants that causes the tongue to stick to the roof of the mouth such that it must be lowered for feeding to prevent choking. Testimony elicited at the termination hearing from OL's pediatrician, Dr. Eric Wheatley, established that, as a premature infant, OL is also at greater risk for developmental problems such as ADHD, behavioral problems, and learning disabilities. To ensure OL's proper development, Dr. Wheatley emphasized that consistency of care, participation in regular doctor visits, and meticulous attention to his needs are of vital importance. Assuming OL receives adequate care, Dr. Wheatley predicted he would no longer be at a heightened risk of complications by roughly one year of age.

On April 18, 2017, a petition was filed seeking termination of respondent's parental rights to OL at initial disposition under MCL 712A.19b(3)(g), (i), and (j). The petition alleged that respondent was unable to provide adequate care for OL due to her unresolved mental health, developmental, and cognitive impairments attributable in part to the fact that she herself was born with fetal alcohol syndrome. Specifically, the petition noted that respondent's parental rights to her first child, GL, had been terminated in California due to severe neglect and caretaker absence. Additionally, proceedings seeking termination of respondent's parental rights to

another child, AT, born August 28, 2016, were already pending in Michigan at the time the petition regarding OL was filed. AT had been removed from respondent's care at birth and placed in foster care, and respondent was permitted supervised visits with him. When OL was released from the hospital, he was placed in the same foster home as AT.

At a termination hearing held in May 2017, the trial court granted the petition to terminate respondent's parental rights to AT, finding that respondent would be unable to provide proper care and custody for the child within a reasonable time. In arriving at this conclusion, the trial court relied heavily on the testimony of Dr. Owen Perlman, an expert in physiatry, the study of traumatic brain injuries and their physical, cognitive, emotional, and behavioral effect. A termination hearing regarding respondent's parental rights to OL was held two months later, on July 5, 2017. During this hearing, the trial court indicated it would take judicial notice of the testimony offered during the hearing concerning respondent's parental rights to AT. After hearing additional testimony from OL's pediatrician, OL's caseworker, and respondent, the trial court determined that the statutory grounds for termination pursuant to MCL 712A.19b(3)(g) had been established by clear and convincing evidence and that a preponderance of the evidence supported the conclusion that termination of respondent's parental rights was in OL's best interests.

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). If a court determines that these statutory grounds exist and determines by a preponderance of the evidence that termination of parental rights is in the child's best interests, "the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). This Court reviews the trial court's determinations regarding statutory grounds and best interests for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "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), citing *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

III. DISCUSSION

On appeal, respondent first argues that the trial court erred in terminating her parental rights because she was not afforded the benefit of participating in a treatment plan or other services directed toward reunification. Generally, the petitioner is required to make reasonable efforts to reunify a family prior to seeking termination of parental rights. *Id*. at 462. Those reasonable steps must include a service plan "outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Hicks/Brown*, ___ Mich ___, ___; 893 NW2d 637, 640 (2017), citing MCL 712A.18f(3)(d). However, petitioner is not required to provide reunification services when the agency's goal is termination of parental rights. *In re HRC*, 286 Mich App at 463; see also MCR 3.977(E). In the present case, petitioner sought termination of respondent's parental rights in the initial petition based on respondent's cognitive and mental health impairments. Under these circumstances,

petitioner is under no obligation to provide reunification services. See *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013). Accordingly, we conclude that no plain error occurred on this ground.

Next, respondent argues that termination of her parental rights was not in OL'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 Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5) and MCR 3.977(E)(4). Whether termination is in the child's best interests must be established by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. In making this determination, courts consider a number of factors, including whether a bond exists between the parent and child, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home as compared to the parent's home, the parent's compliance with his or her service plan, the parent's visitation history, and the child's overall well-being. *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014).

Respondent contends that the trial court did not adequately consider the progress she has made in her ability to parent since her parental rights to AT were terminated. Specifically, respondent emphasizes her bonding and frequent visits with OL, her success in finding appropriate housing, her participation in parenting classes and a group at Community Mental Health, and her compliance in taking antidepressant medication. She also states that she has spent time observing parenting within her brother's family. Finally, respondent highlights those portions of caseworker Tammy Coleman's testimony indicating that respondent's visits with OL went well and that respondent had been able to properly feed OL after instruction. In light of this evidence, respondent maintains that, with proper training, she would be capable of learning to parent effectively.

The trial court considered this evidence during the termination hearing, acknowledging the bond between respondent and OL and recognizing respondent's efforts to improve her parenting skills. However, the court held that the crux of the matter centered on respondent's ability to parent. The court relied on the testimony provided by Dr. Perlman just two months previously during the termination hearing with respect to AT. Based on his assessment of respondent on December 30, 2016, Dr. Perlman determined that she was born with fetal alcohol syndrome, had a history of ongoing depression resulting in six hospitalizations for suicidal ideation between May 2015 and September 2016, and exhibited significant cognitive defects. Although respondent exhibited a desire to regain custody of her children, Dr. Perlman did not believe she possessed basic parenting skills. In his opinion, respondent would require 24-hour assistance and supervision not only to parent safely but also to learn to care for herself. Even if respondent were to receive such extensive services, Dr. Perlman opined that there was less than a 20% chance that these services would be successful in preparing her to parent a child. Further, in addition to the time needed for respondent to achieve stability, Dr. Perlman stated she would need to demonstrate an ability to maintain stability over at least a 12-month period.

Moreover, Ms. Coleman testified that respondent's parenting abilities had not changed since the conclusion of AT's termination hearing in May 2017. Respondent required assistance from Ms. Coleman during every visit with OL and was frequently late. Although Ms. Coleman discussed with respondent OL's eye condition and doctor appointments, respondent testified at

the termination hearing that she was unaware of OL's eye condition or anemia. Ultimately, because OL's safety could not be ensured if he were placed in respondent's custody, Ms. Coleman testified that, in her opinion, it would be in OL's best interests for respondent's parental rights to be terminated.

In view of the testimony demonstrating respondent's limitations, as well as OL's substantial medical needs, the trial court did not clearly err in concluding that termination of respondent's parental rights was in the best interests of the child. Although, as the trial court acknowledged, respondent had bonded with OL and taken steps to improve her situation, we agree that the evidence demonstrates that respondent's limitations render her incapable of providing adequate care to OL, either presently or within a reasonable time. In contrast, the testimony demonstrated that OL was doing well in foster care and that the foster parents participated in OL's scheduled doctor appointments. Moreover, OL was placed in the same permanent foster care as his brother, AT, and adoption of both children was a possibility. This Court has previously upheld termination under similar circumstances where, although the respondent loved her children and participated in parenting classes, she was diagnosed as developmentally disabled, did not comprehend her child's medical issues, and would require day-to-day assistance for at least two to three years as she learned to care for her children's basic needs. *In re Terry*, 240 Mich App 14, 16, 20; 610 NW2d 563 (2000). Accordingly, we conclude that the trial court's best interests analysis is not clearly erroneous.

Finally, respondent challenges the trial court's reliance on Dr. Perlman's testimony, arguing that his opinion was nothing more than speculation, never having observed respondent interact with her children. As an initial matter, we note that respondent failed to object to Dr. Perlman's testimony or qualification as an expert during the termination hearing regarding custody of AT. Nor did respondent object to the trial court taking judicial notice of this testimony during the termination hearing regarding custody of OL. Accordingly, respondent failed to preserve this challenge to Dr. Perlman's testimony, and our review is for plain error affecting plaintiff's substantial rights. See *Wolford v Duncan*, 279 Mich App 631, 641; 760 NW2d 253 (2008), citing *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001), and MRE 103(a)(1).

The trial court's reliance on Dr. Perlman's testimony does not constitute plain error. Because Dr. Perlman was a qualified expert witness, the trial court was entitled to rely on his opinion testimony in accordance with MRE 702. Although Dr. Perlman did not observe respondent with her children, his opinions were premised on a ninety-minute evaluation, thus providing him an adequate basis to assess her cognitive abilities. Indeed, whereas respondent cites to a study demonstrating that intellectually challenged parents were generally capable of improving their parenting skills,[1] Dr. Perlman's opinion was premised on an individualized assessment of respondent in particular. Further, Dr. Perlman testified in court only two months

[1] The study to which respondent cites is: Feldman, *Parents with Intellectual Disabilities: Implications and Interventions*, *in* Handbook of Child Abuse Research and Treatment 401-420 (Lutzker ed., 1998).

before the termination hearing regarding custody of OL, and respondent's circumstances were substantially similar over this time period.

Affirmed.

/s/ Michael F. Gadola
/s/ Kirsten Frank Kelly
/s/ Michael J. Riordan