

STATE OF MICHIGAN
COURT OF APPEALS

In re LAYTON, Minors.

UNPUBLISHED
February 20, 2018

No. 339661
Ottawa Circuit Court
Family Division
LC No. 17-084685-NA

Before: MURPHY, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to two minor children under MCL 712A.19b(3)(f) (failure to support and visit child for two years or more while the child was in the care of a guardian). We affirm.

I. BACKGROUND

In 2014, respondent was in the process of divorcing her husband and looking for a job and housing. During this time, she placed her two infant children in petitioners' care. After respondent found an apartment and a job, she took the children back. Less than one week later, respondent returned the two children to petitioners because she could not take care of them. In March 2015, with respondent's consent, the trial court appointed petitioners to be the children's guardians. Petitioners told respondent that she could visit whenever and as often as she wanted and only asked that she provide them advance notice to make sure they were available.

From May 3, 2015, through May 3, 2017, respondent sporadically visited the children and provided almost no support for their care. During that 24-month period, respondent visited the children 24 times. During 9 of the 24 months, she did not visit them at all, and she only visited them once a month for 10 of the 24 months. With the exception of one visit on Thanksgiving Day in 2016, respondent's visits lasted no more than 2.5 hours.

Petitioners sought to terminate respondent's parental rights because she failed to provide regular and substantial support and substantially failed or neglected without good cause to visit,

contact, or communicate with the children from May 3, 2015, to May 3, 2017.¹ After hearing testimony from several witnesses, including respondent, the trial court agreed to terminate respondent's parental rights, finding a statutory basis for termination under MCL 712A.19b(3)(f) and determining that termination was in the children's best interests.

II. DISCUSSION

A. STATUTORY BASIS FOR TERMINATION

Respondent first argues that the trial court erred by finding that a statutory basis for termination existed under MCL 712A.19b(3)(f). We disagree.

To terminate parental rights, the trial court must find that a statutory basis for termination under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). We review for clear error the trial court's determination of statutory grounds under MCL 712A.19b(3) for termination of parental rights. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). A factual finding is clearly erroneous if "we are left with a definite and firm conviction that a mistake was made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "We give deference to the trial court's special opportunity to judge the credibility of witnesses." *Id.*

MCL 712A.19b(3)(f) provides for termination of parental rights if the trial court finds the following, by clear and convincing evidence:

(f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and both of the following have occurred:

(i) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

(ii) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

Because the terms "visit, contact, or communicate" are phrased in the disjunctive, a petitioner must prove that the respondent "had the ability to perform any one of the acts and substantially

¹ Petitioners did not request the termination of the parental rights of the children's father because he supported petitioners' intention to adopt the children and stated that he would consent to the termination of his parental rights if the trial court terminated the mother's parental rights.

failed or neglected to do so for two or more years preceding the filing of the petition.” *In re Hill*, 221 Mich App 683, 694; 562 NW2d 254 (1997) (interpreting substantially similar language to MCL 712A.19b(3)(f)(ii) in a predecessor statute).

On appeal, respondent does not contest the trial court’s finding that subparagraph (i) was met. Respondent had a steady job that provided her regular and sufficient income to meet her needs and provide support for her children. Nevertheless, over the course of two years, she only gave petitioners \$100 and some clothing for the children on three occasions. Therefore, the trial court did not err by ruling that respondent failed to support her children.

Regarding subparagraph (ii), the record reflects that respondent had the ability to visit but failed to visit the children with any frequency or regularity. During the 24 month period from May 3, 2015, through May 3, 2017, respondent averaged one visit per month, but she went for long stretches seeing the children only once a month or not at all. Her visits were almost always brief, and she did not request longer visits, overnight visits, or weekend visits. Although she did not work Sundays, she did not ask to visit the children on Sundays. In short, respondent’s visits were brief, sporadic, and punctuated by long gaps. Respondent failed to visit the children regularly despite having the time and means. Further, respondent gave no explanation for her failure to visit, contact, or communicate with the children regularly, and petitioners did not interfere with or prevent respondent from visiting the children. Accordingly, clear and convincing evidence supported the trial court’s determination that statutory grounds under MCL 712A.19b(3)(f) existed for termination of respondent’s parental rights.

B. BEST INTERESTS

Respondent also argues that the trial court’s termination of her parental rights failed to serve the children’s best interests. We disagree.

We review for clear error the trial court’s decision that termination of respondent’s parental rights served the best interests of the children. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Once the trial court finds statutory grounds for termination by clear and convincing evidence, the trial court must determine whether termination is in the best interests of the children. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). A trial court must find by a preponderance of the evidence that termination serves the best interests of the children. *In re Moss*, 301 Mich App at 90.

The trial court should consider all available evidence when assessing whether termination serves the children’s best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court must focus on the children rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider several factors, including the children’s “bond to the parent, the parent’s parenting ability, the [children’s] need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). Other factors include “the parent’s visitation history with the [children], the children’s well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App at 714 (citations omitted).

In this case, the trial court did not clearly err whether it determined that termination of respondent's parental rights served the best interests of the children. The record shows that the children bonded with petitioners and considered them their mother and father. The children considered petitioners' biological children their siblings. Petitioners included the children in their activities with extended family and friends. Petitioners gave the children individual attention for their well-being and provided regular and consistent parental guidance and structure. Petitioners provided the children with stability and offered them a permanent home.

By contrast, respondent failed to visit the children regularly since 2014, showing that she failed to make the children a priority. Her documented sporadic visits and periods of long absences precluded the formation of any parental bond with the children. Further, respondent did not act like a parent when she visited them. She did not feed them, change their diapers, or provide other parental care. The children knew respondent as an aunt and did not interact with her like a parent. Respondent played with the children during visits but left the parenting to petitioners, and the children relied on petitioners for their parental care.

Respondent also lacked consistency and stability in her personal life. She changed domestic partners multiple times from 2014 to July 2017. She briefly reunited with the children's father, whom she alleged was abusive. She also lived in at least five different places in those three years. The trial court took into consideration improvements respondent made, including finding stable employment and working on her education. The trial court also noted the relationship between the children and respondent's oldest child in addition to respondent's ability to teach the children about her culture. Nonetheless, the trial court did not clearly err by concluding that the negative factors outweighed the positive factors. Therefore, the trial court did not clearly err by finding that termination was in the children's best interests and terminating respondent's parental rights.

We affirm.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly