

STATE OF MICHIGAN
COURT OF APPEALS

In re BURGESS-BERRY/BURGESS, Minors.

UNPUBLISHED
February 13, 2018

Nos. 339768
Berrien Circuit Court
Family Division
LC No. 2015-000079-NA

In re A. H. BURGESS, Minor.

No. 339769
Berrien Circuit Court
Family Division
LC No. 2017-000002-NA

Before: MARKEY, P.J., and M. J. KELLY and CAMERON, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother appeals by right the trial court order terminating her parental rights to MB, KB, and EB under MCL 712A.19b(3)(c)(i), (g), and (j). She also appeals by right the trial court order terminating her parental rights to AB under MCL 712A.19b(3)(g) and (j). Because there are no errors warranting relief, we affirm.

I. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent-mother argues that the trial court erred by finding clear and convincing evidence to terminate her parental rights to MB, KB, and EB under MCL 712A.19b(3)(c)(i), (g), and (j), and she argues that the trial court similarly erred by finding clear and convincing evidence to terminate her parental rights to AB under MCL 712A.19b(3)(g) and (j). “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). “We review the trial court’s determination for clear error.” *Id.* “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).

B. ANALYSIS

We first address whether the trial court erred by terminating respondent-mother's parental rights to MB, KB, and EB under MCL 712A.19b(3)(c)(i). Termination is proper under MCL 712A.19b(3)(c)(i) if:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

On appeal, respondent-mother does not dispute that she was "a respondent in a case brought under this chapter" or that at least 182 days had elapsed since the trial court issued its initial dispositional order. Instead, she contends that the trial court erred by terminating her parental rights under subdivision (c)(i) because the conditions that led to adjudication did not recur.

The record reflects that the conditions that led to adjudication were domestic violence and respondent-mother's substance abuse. At the adjudication hearing, respondent-mother pleaded no contest to the facts alleged in the petition. The petitioner stated that respondent-mother had overdosed on prescription medication. While at a fast-food restaurant, she was seen dropping her food and drinks, was unable to keep her eyes open, and was swaying. Her children were running around the parking lot of the restaurant and had to be picked up by their maternal grandmother. The petition further stated that respondent-mother was taken to the police station, where she was unable to hold her head up and slurred her speech. The petition noted that at the police station respondent-mother admitted she had smoked marijuana and had taken a number of different prescription medications in excess of her prescription, including Motrin, Xanax, and Norco. In addition to the allegations relating to substance abuse, the petition also included allegations of domestic violence perpetrated on respondent-mother by EB's father. The petition recounted that one of the children reported that EB's father "fights mommy and kicks her." The petition also asserted that during the last incident, which was witnessed by EB, respondent-mother's nose was broken. EB's father had two convictions for domestic violence perpetrated against respondent-mother.

On appeal, respondent-mother contends that her "drug problem" was in the past and that the condition leading to adjudication never recurred. She identifies the entirety of the incident at the fast-food restaurant as the condition leading to adjudication. However, the specific event leading to adjudication—here, the incident at a fast-food restaurant—need not recur in order to establish that the conditions leading to adjudication continue to exist.

In this case, there is evidence that respondent-mother continues to have a problem with substance abuse or domestic violence despite services offered to rectify those problems. The record reflects that throughout the case respondent-mother continued to test positive for

prescription medication that she did not have a prescription for. At times, she lied about the reasons for the positive screens, stating that she had received the medication at the hospital. After the hospital records failed to disclose that she had been given the medication, respondent-mother acknowledged that she had found an old prescription and taken pills. She also admitted to purchasing pills from a friend. Further, EB's father testified that he personally witnessed respondent-mother snorting Xanax, and he claimed that it occurred often. Although respondent-mother had negative drug screens in the months leading to the termination hearing, given her sporadic positive screens and lack of veracity with regard to her substance abuse, the trial court did not clearly err by finding that her substance abuse continued to be an issue.

Regarding domestic violence, the evidence demonstrated that EB's father committed domestic violence against her multiple times. The last incident of domestic violence resulted in EB's father breaking respondent-mother's nose. The children witnessed this domestic violence. Despite respondent-mother obtaining a personal protection order (PPO) against EB's father and there being a no-contact order in place, the evidence demonstrated that she initiated contact with him up until, and even after, the first day of the termination hearings. Respondent-mother also continued to have a sexual relationship with EB's father during these proceedings and while she was engaged to AB's father. Additionally, a caseworker testified to being aware that AB's father also had a history of domestic violence. Although there was no allegation that AB's father had ever committed domestic violence against respondent-mother, the caseworker opined that it was still a concern. Because of respondent-mother's continued contact with EB's father, as well as her relationship with AB's father, the threat of domestic violence remained a reality in her life.

Considering the above evidence, we are not "left with a definite and firm conviction that a mistake has been made," *In re HRC*, 286 Mich App at 459, when the trial court found clear and convincing evidence supporting termination of respondent-mother's parental rights to MB, KB, and EB under MCL 712A.19b(3)(c)(i). Because we hold that the trial court did not clearly err by finding that one statutory ground for termination existed under MCL 712A.19b(3)(c)(i), we need not address the additional statutory grounds for termination of respondent-mother's parental rights to MB, KB, and EB. *In re Van Dalen*, 293 Mich App at 139.

Regarding the statutory grounds for terminating mother's parental rights to AB, the evidence demonstrated that respondent-mother tested positive for Tramadol at AB's birth. Therefore, the evidence demonstrated that she failed to provide proper care and custody under MCL 712A.19b(3)(g). The trial court found that, despite respondent-mother's participation in the services offered to her, the evidence demonstrated that she did not benefit from those services. Additionally, there was a "high likelihood" and "high risk" that respondent-mother would return to abusing prescription medication to cope with the stress of handling all four children if they were returned to her. The trial court found, based on respondent-mother's "struggle with substance abuse, repetitive lying about substance abuse, emotional instability, and poor parenting skills, contact with the man who perpetrated domestic violence upon her and were witnessed by her three oldest children" that there was no reasonable expectation that respondent-mother could rectify the issues within a reasonable time.

Having reviewed the record, we agree with the trial court's findings. Respondent-mother was offered services—in conjunction with her case involving MB, KB, and EB—for well over a year. In that time period, her compliance with services was "wonderful" at times, but sporadic at

others. Furthermore, despite the services she participated in, respondent-mother still testified positive for a prescription medication that she did not have a prescription for when she gave birth to AB. There was also testimony about respondent-mother's continued contact with EB's father despite a no-contact order put in place following a domestic-violence incident that left respondent-mother with a broken nose. Finally, a caseworker testified that despite doing well with parenting time when the case started, respondent-mother's progress began to deteriorate after she resumed contact with EB's father. The caseworker added that parenting visits were "chaotic" when all four children were present. Based on this record, we are not "left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459. Accordingly, we conclude that the trial court did not clearly err in finding that clear and convincing evidence supported termination of respondent-mother's parental rights to AB under MCL 712A.19b(3)(g). Because the trial court did not clearly err by finding that one statutory ground for termination existed under MCL 712A.19b(3)(g), we need not address the additional statutory ground for termination of respondent-mother's parental rights to AB. *In re Van Dalen*, 293 Mich App at 139.

II. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent-mother next argues that the trial court clearly erred in finding that termination of her parental rights was in her children's best interests. The trial court must find by a preponderance of the evidence that termination was in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings of fact are reviewed for clear error. *In re HRC*, 286 Mich App at 459.

B. ANALYSIS

"If the court finds that there are grounds for termination of parental rights and 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). "[T]he trial court has a duty to decide the best interests of each child individually." *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). However, the trial court must only address each child's best interests individually when their best interests "significantly differ." *In re White*, 303 Mich App 701, 715; 846 NW2d 61 (2014). When determining a child's best interests, the trial court may consider the child's bond to his or her parents; the parents' parenting ability, the child's need for permanency, stability, and finality; and the advantages of a foster home over the parents' home. *In re Olive/Metts*, 297 Mich App at 41-42. "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, 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. It is also appropriate to consider a parent's substance abuse problems and willingness to participate in counseling. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

The trial court found that all of the children needed permanency and stability that respondent-mother could not provide. The record supports the court's findings. Here, despite services to address her substance abuse issues, respondent-mother had an ongoing issue with

substance abuse. Rather than acknowledge her problem, respondent-mother lied about her substance abuse, only confessing to her use once it became apparent that she was caught in a lie. Respondent-mother also maintained intimate contact with EB's father even though there was a no-contact order in place and even though he had been incarcerated at least two times for physically abusing her. The record reflects that the children had been in foster care for over a year and a half. In particular, EB had been in foster care for half his life and AB had been in foster care for her entire life. Based on the record before this Court, the trial court did not clearly err by finding termination in the children's best interests.¹

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Thomas C. Cameron

¹ To the extent that respondent-mother contends the trial court erred by not separately considering the best interests of each child, we find her argument without merit. Respondent-mother's substance abuse and domestic violence affected all of the children equally. All of the children had potential for adoption, and all of them needed permanency and stability that respondent-mother could not provide. Thus, the children's best interests did not significantly differ, so individualized findings of fact were not required. *In re White*, 303 Mich App at 715-716.