

STATE OF MICHIGAN
COURT OF APPEALS

In re B. T. CHAPA, Minor.

UNPUBLISHED
March 15, 2018

Nos. 340146; 340147
Branch Circuit Court
Family Division
LC No. 16-005413-NA

Before: O’CONNELL, P.J., and HOEKSTRA and SWARTZLE, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father and respondent-mother appeal as of right the trial court’s order terminating their parental rights to their minor child BTC under MCL 712A.19b(3)(c)(i) and (g). Because the trial court did not clearly err by terminating respondents’ parental rights, we affirm.

Respondents have a history of domestic violence, involving violence perpetrated by father against mother. The child was born in October 2014 and, after his birth, there were also concerns that father was too “rough” with the infant. In December 2015, mother and father left BTC unsupervised in a running car while they both went into a store for about 20 minutes.¹ In March 2016, mother obtained a personal protection order (PPO) against father. However, despite the PPO, mother continued to have contact with father and to allow him to have contact with BTC. As a result of these incidences, in May 2016, the Department of Health and Human Services (DHHS) filed an abuse and neglect petition seeking removal of BTC from respondents’ care. The trial court originally placed BTC with mother, but BTC was soon removed from her care because she continued to have contact with father. BTC was then placed with his maternal grandmother and step-grandfather. Despite the opportunity to participate in numerous services, respondents failed to make progress and, in September 2017, the trial court terminated respondents’ parental rights under MCL 712A.19b(3)(c)(i) and (g).

I. STATUTORY GROUNDS FOR TERMINATION

¹ In connection with this incident, mother and father were charged with fourth-degree child abuse, but the charges were eventually dismissed.

On appeal, mother argues that the trial court clearly erred in finding statutory grounds to terminate her parental rights. Specifically, mother maintains that she has addressed the conditions leading to adjudication because her relationship with father has ended and she participated in services. According to mother, by her participation in services she has also demonstrated that she can provide proper care and custody for the child.

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 met by clear and convincing evidence. *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). “We give deference to the trial court’s special opportunity to judge the credibility of the witnesses.” *Id.*

The trial court terminated mother’s parental rights under MCL 712A.19b(3)(c)(i) and (g), which provide:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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 . . .

(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.

* * *

(g) The parent, without regard to intent, fails to provide proper care or 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.

Regarding MCL 712A.19b(3)(c)(i), statutory grounds for termination under this subsection exist “when the conditions that brought the [child] into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services.” *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (quotation marks and citation omitted). In this case, more than 182 days elapsed between the entry of the initial dispositional order against mother and the termination of mother’s parental rights in September 2017. The conditions leading to adjudication included domestic violence, improper supervision of BTC, and mother’s failure to provide BTC with a safe environment as evidenced by her decision to allow contact between father and BTC in violation of the PPO and a safety plan. During this case, mother was given the opportunity to participate in a variety of services to address domestic violence and to teach mother about healthy relationships and the effects of her choices on BTC.

However, the evidence showed that mother had a “tendency to not show up” for appointments, her parenting visits were inconsistent, and her counselling services were suspended due to the number of sessions she missed.

To the extent mother did participate in services, testimony from her caseworker and therapist indicated that mother did not make progress and she did not internalize what she had been taught about healthy relationships and prioritizing the needs of her son. It is not enough to participate in services, a parent must also benefit from services. *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014). Despite the services provided, mother’s actions during this case demonstrate a continuing pattern of placing unhealthy relationships above her child. As noted, despite a PPO and safety plan, and despite witnessing at least one incident in which father physically abused BTC, mother allowed father to be around BTC. Further, while it appears that her relationship with father has ended, mother then began a new relationship with a man who had a history of domestic violence and substance abuse and whose rights to his own children had been terminated. Mother attempted to conceal this unwise relationship from her caseworker and, knowing that this relationship could affect her chances of having BTC returned to her, mother nevertheless chose the relationship over BTC’s needs. On the whole, despite time and the opportunity to participate in a variety of services, mother continued to choose unhealthy relationships and to place these unhealthy relationships above her child’s needs. Given mother’s failure to make any meaningful progress, the trial court did not clearly err by concluding that the conditions leading to the adjudication continued to exist and that there was no reasonable likelihood that the conditions would be rectified in a reasonable time considering the child's age. Thus, the trial court did not clearly err by terminating mother’s parental rights under MCL 712A.19b(3)(c)(i).

While only one statutory ground must be established to terminate parental rights, *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011), we note briefly that the trial court also did not clearly err by finding clear and convincing evidence to terminate mother’s parental rights under MCL 712A.19b(3)(g). The evidence showed that BTC was exposed to domestic violence, that father was physically abusive toward BTC, and that, despite a PPO and safety plan, mother allowed father to have contact with BTC. As discussed, mother was provided services, but she failed to demonstrate any meaningful change. “A parent’s failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody.” *In re White*, 303 Mich App at 710. Based on mother’s failure to participate in and benefit from the case service plan, as well as her continued pattern of choosing inappropriate romantic partners, the trial court did not clearly err by concluding that mother failed to provide proper care and custody and that there was not a reasonable likelihood that mother could provide proper care and custody within a reasonable time considering BTC’s age. Thus, the trial court did not clearly err by terminating mother’s parental rights under MCL 712A.19b(3)(g).

II. BEST INTERESTS

On appeal, respondents both argue that the trial court clearly erred by determining that termination of their parental rights was in BTC’s best interests. Father maintains that the trial court’s best interests analysis was deficient because the trial court did not explicitly consider BTC’s placement with relatives. In comparison, mother maintains that termination is not in BTC’s best interests because she and BTC are “very bonded.”

“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). The trial court must find by a preponderance of the evidence that termination was in the child’s best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review the trial court’s best interests determination for clear error. *In re White*, 303 Mich App at 713.

In determining a child’s best interests, the trial court may consider the child’s bond to his parent, the child’s need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts* 297 Mich App 35, 41-42; 823 NW2d 144 (2012). “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 child, the children’s well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App at 714. “[A] child’s placement with relatives weighs against termination . . .” *In re Olive/Metts* 297 Mich App at 43 (quotation marks and citation omitted). “[T]he fact that the [child is] in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination was in the [child’s] best interests.” *Id.* (quotation marks and citation omitted). “A trial court’s failure to explicitly address whether termination is appropriate in light of the [child’s] placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal.” *Id.*

In this case, contrary to father’s arguments on appeal, the trial court expressly acknowledged that BTC was in the care of his maternal grandmother and her husband. Recognizing this fact, the trial court considered whether termination was appropriate or whether a guardianship would be in BTC’s best interests. Despite the relative placement, the trial court concluded that termination was in BTC’s best interests because BTC needed permanence that a guardianship would not provide and BTC had found this permanence with BTC’s maternal grandparents, who the trial court described as having “a parent-like relationship with him already.” In short, the trial court explicitly acknowledged that BTC was placed with a relative, but nevertheless determined that termination was in BTC’s best interests. Cf. *In re Schadler*, 315 Mich App 406, 412; 890 NW2d 676 (2016). This determination was not clearly erroneous.

Mother additionally argues that termination of her parental rights was not in BTC’s best interests because BTC was bonded to her. However, testimony at the termination hearing indicated that there was “not really a bond” between mother and BTC. BTC was not yet three years old at the time of the termination hearing, and he had spent much of his life primarily in the care of his maternal grandparents. The testimony at the termination hearing demonstrated that BTC looked to his grandparents, not mother, for strength and comfort. Indeed, as noted, BTC was found to have a “parent-like relationship” with his maternal grandmother and her husband. On these facts, the trial court did not clearly err by concluding that termination of respondents’ parental rights was in BTC’s best interests.

Affirmed.

/s/ Peter D. O'Connell

/s/ Joel P. Hoekstra

/s/ Brock A. Swartzle