

STATE OF MICHIGAN
COURT OF APPEALS

In re K. D. PRESTON, Minor.

UNPUBLISHED
July 19, 2018

No. 341460
Van Buren Circuit Court
Family Division
LC No. 16-018613-NA

Before: HOEKSTRA, P.J., and MURPHY and MARKEY, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor child, KDP, under MCL 712A.19b(3)(g) and (j). Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

KDP was born with positive results for methamphetamine and marijuana in his meconium. Respondent admitted to using those substances while she was pregnant with KDP. Shortly after his birth, KDP was removed from respondent's care and placed with his maternal grandmother. Respondent was provided with a case service plan, including opportunities for parenting classes, parenting time, a substance abuse assessment, counseling, random drug screens, and services related to finding employment and housing. Throughout the case, respondent continued to test positive for methamphetamine and marijuana. She eventually stopped communicating with caseworkers, remained unemployed, and did not obtain appropriate housing. The trial court found that statutory grounds for termination under MCL 712A.19b(3)(g) and (j) were proven by clear and convincing evidence and that termination of respondent's parental rights was in KDP's best interests. Consequently, the trial court entered an order terminating respondent's parental rights. Respondent now appeals as of right.

On appeal, respondent first argues that the lawyer-guardian ad litem (LGAL) provided ineffective assistance to KDP. We need not reach the merits of this argument because respondent lacks standing to challenge the effectiveness of the LGAL on behalf of KDP. *In re HRC*, 286 Mich App 444, 458-459; 781 NW2d 105 (2009); *In re EP*, 234 Mich App 582, 597-598; 595 NW2d 167 (1999), overruled in part on other grounds by *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000). Respondent in fact acknowledges that she lacks standing under this Court's precedent, but she expresses her disagreement with our previous rulings, and she urges us to consider the LGAL's effectiveness. Despite respondent's disagreement, the published decisions of this Court are binding authority. See MCR 7.215(J)(1). Consequently, because

respondent lacks standing to challenge the LGAL's effectiveness, we need not consider this issue. See *HRC*, 286 Mich App at 458-459.

Respondent next argues that the trial court clearly erred by terminating her parental rights. Respondent does not challenge the trial court's findings regarding statutory grounds for termination. Instead, respondent argues that the trial court erred by concluding that termination of her parental rights was in KDP's best interest. In particular, respondent contends that the trial court failed to properly weigh KDP's placement with a relative. We disagree.

Once a statutory ground for termination has been proven by clear and convincing evidence, before the trial court may terminate parental rights, the trial court must find by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's best interests determination for clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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." *HRC*, 286 Mich App at 459.

In determining a child's best interests, the trial court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *Olive/Metts* 297 Mich App at 41-42. Other relevant factors include "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 701, 714; 846 NW2d 61 (2014). The trial court may also consider a parent's substance abuse problems and a parent's failure to provide proper care and custody for the child. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). Notably, "the fact that the [child was] 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." *Olive/Metts* 297 Mich App at 43 (quotation marks and citation omitted). "[A] child's placement with relatives weighs against termination . . ." *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.* (citation omitted).

In this case, KDP was placed with his maternal grandmother, who is a relative as defined by MCL 712A.13a(1)(j). Contrary to respondent's arguments on appeal, the trial court expressly acknowledged this relative placement during its best interests analysis and specifically considered whether termination was in KDP's best interests notwithstanding his relative placement. Cf. *In re Schadler*, 315 Mich App 406, 412; 890 NW2d 676 (2016). In finding termination was in KDP's best interests even though KDP was placed with a relative, the trial court considered several factors. For instance, the trial court noted that KDP's child/parent bond was with his grandmother, that the grandmother was the "only mother that this child knows," and that it was unclear if the 14-month-old child had a bond with respondent. The trial court also emphasized that KDP needed permanency, stability and finality, which his grandmother could provide. In this regard, the trial court noted that KDP was doing very well in his grandmother's care, that the grandmother's home provided a "safe environment" for the child, and that the grandmother was willing to adopt KDP. KDP's siblings also lived with the grandmother. In

contrast, the trial court found that respondent was not the “proper person” to have the child and that she would not be able to care for the child in a reasonable amount of time. In this regard, the trial court noted that respondent lacked a stable home, she had proven unwilling to comply with her case service plan, she had made no progress with her substance abuse problem, and her visitation history with the child was “poor.” Weighing all these factors, including the child’s placement with a relative, the trial court concluded that termination was in KDP’s best interests.

The trial court’s findings were not clearly erroneous. KDP may be placed with a relative, but the trial court’s findings make clear that KDP’s best interests weigh in favor of terminating respondent’s rights and making KDP’s placement with his grandmother permanent, not in giving respondent additional time to work toward reunification. Accordingly, the trial court did not clearly err by terminating respondent’s parental rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William B. Murphy
/s/ Jane E. Markey