

STATE OF MICHIGAN
COURT OF APPEALS

In re H. A. STEARNS, Minor.

UNPUBLISHED
July 19, 2018

No. 341918
Mackinac Circuit Court
Family Division
LC No. 2017-006177-NA

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

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor child, HAS, under MCL 712A.19b(3)(g) (failure to provide proper care and custody), (i) (parental rights to one or more siblings have been terminated), and (j) (reasonable likelihood that child will be harmed if returned to the parent). Because the trial court did not clearly err by terminating respondent’s parental rights, we affirm.

The Department of Health and Human Services (DHHS) received a complaint in October 2017, alleging physical abuse of HAS. When interviewed, HAS indicated that her daddy hit her, her daddy was mad, and he was mean to her mama. “Daddy” was identified as respondent’s live-in partner. Given the allegation of physical abuse and DHHS’s frequent involvement with the family because of respondent’s ongoing issues with substance abuse, domestic violence, mental health, and failure to provide recommended medical care for the child, HAS was removed from respondent’s care. Previously, respondent’s parental rights had been terminated with respect to two other children. In this case, respondent entered a plea of admission and the trial court took jurisdiction. After a termination hearing at which numerous witnesses testified, the trial court issued a written opinion and order terminating respondent’s parental rights.

On appeal, respondent does not dispute that statutory grounds for termination were proven by clear and convincing evidence. Instead, respondent challenges the trial court’s best interests determination. In particular, respondent argues that the trial court’s findings regarding the child’s best interests were clearly erroneous because of the strong bond between respondent and the child. Respondent also asserts that she has benefited from participation in services and that she should be given more time to comply with the case service plan in order to achieve reunification. 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*, 297 Mich App 35, 40; 823 NW2d 144 (2012). “[W]hether termination of parental

rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review the trial court’s determination of best interests for clear error. *Olive/Metts*, 297 Mich App at 40. “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

When considering best interests, the focus is on the child, not the parent. *Moss*, 301 Mich App at 87. “The trial court should weigh all the evidence available to determine the [child’s] best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court may consider such factors as “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Other relevant factors include the parent’s history of domestic violence, the parent’s compliance with her case service plan, and the child’s wellbeing while in care. *White*, 303 Mich App at 714. The court may also consider the parent’s mental health and substance abuse problems, *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001), and the parent’s ability to meet the child’s needs, including any particular medical needs, *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

In this case, the trial court acknowledged that respondent loved HAS and that there was a strong bond between them. However, among a “wide variety of factors,” the bond between the child and the parent is only one factor for the court to consider. See *White*, 303 Mich App at 714. Despite the bond between respondent and HAS, the trial court concluded that termination was in HAS’s best interests because respondent had “failed [HAS] on numerous occasions which have resulted in neglect and insufficient medical care to meet [HAS’s] needs.” The trial court also found that termination was in HAS’s best interests given respondent’s “continued issues surrounding substance abuse, domestic violence, mental health and lack of participation in, and benefit from, services for both respondent-mother and [HAS].” These findings were not clearly erroneous.

With regard to respondent’s failure to meet HAS’s needs and provide appropriate medical care, the court heard testimony from Child Protective Services (CPS) worker Regina Frazier that although respondent loved her child, HAS needed permanency and needed to have her needs met every day, and respondent had not been able to provide that. More specifically, the evidence showed that respondent had failed to meet HAS’s medical needs. HAS was born with a clubfoot, and the failure to obtain medical treatment for this issue could have “lifelong” consequences for HAS. Yet, respondent missed medical appointments, failed to make an x-ray appointment, failed to have HAS wear needed braces, and failed to follow other recommendations. HAS’s foot had been cast and undergone surgery, but because she was not wearing her braces and following other recommendations, she had to be recast. Respondent conceded that she did not always make HAS wear the braces. Further, HAS was still using a bottle at nearly four years old, even though respondent had been informed about dental care issues caused by bottle use. Indeed, HAS had to undergo dental surgery and have caps placed on her teeth. When asked why she did not stop the bottle use knowing that it could have health consequences for HAS, respondent stated that she was scared that someone would report her because of HAS’s temper tantrums. Additionally, HAS was discharged from her speech therapy due to repeated missed appointments. Similarly, HAS was discharged from her pediatrician’s office for noncompliance

and no-shows, and she had no pediatrician until DHHS became involved. HAS also missed several appointments necessary for the treatment of her behavioral problems. As a whole, this evidence amply demonstrated respondent's inability to provide HAS with appropriate care.

The evidence also supported the trial court's findings that respondent failed to benefit from services and that she continued to struggle with substance abuse, domestic violence, and mental health issues. For instance, respondent acknowledged that she needed mental health counseling but she had not attended regularly. She did not attend AA, NA, or Celebrate Recovery when it was recommended to her. Instead, respondent continued to take drugs or pills that she knew should not be mixed with her prescribed Suboxone. Additionally, Frazier indicated that she did not feel respondent benefited from the parenting program that was offered as part of her case service plan as evinced by the facts that HAS was still in diapers and using a bottle when she was removed at age four. The evidence also showed that respondent was still spending time with the man HAS accused of hitting her, even though respondent admitted that having him in the home had not created a good environment for HAS and even though she described him as "verbally abusive," "hurtful," and "mean." More generally, respondent has a long history of failing to benefit from services. Frazier reported that respondent had 28 CPS complaints against her since 1999 and that respondent had been provided with numerous services over the years, including programs aimed at parenting, domestic violence, substance abuse, housing, transportation, financial assistance, etc. Frazier testified that although there were some directives that were complied with, there was "not a lot of progress." According to Frazier, as soon as a case closed, respondent would stop services, and "in the next case that we opened, it was the same thing." In other words, respondent failed to follow through whenever DHHS was not involved and she failed to comply with DHHS's ongoing recommendations. Given this pattern of recurring issues despite all the services provided over the years, there is no merit to respondent's assertions that she has benefited from services or that she should be given additional time to benefit from a case service plan. Instead, respondent's lack of progress, her inability to care for HAS, and HAS's need for permanency and stability support the trial court's conclusion that termination was in HAS's best interests.

Overall, while respondent shared a bond with HAS, this bond did not outweigh HAS's need for adequate care, and given respondent's inability to provide such care, the trial court did not clearly err by finding that a preponderance of the evidence established that termination of respondent's parental rights was in the best interests of the child.

Affirmed.

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