STATE OF MICHIGAN

COURT OF APPEALS

In re A. R. SANDERS, Minor.

UNPUBLISHED
October 25, 2018

Nos. 342578, 342677
Oakland Circuit Court
Family Division
LC No. 13-813008-NA

Before: SHAPIRO, P.J., and SERVITTO and GADOLA, JJ.

PER CURIAM.

Respondent-mother and respondent-father each appeal the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), (j), and (*l*). We affirm.

I. RESPONDENT-FATHER'S APPEAL IN DOCKET NO. 342578

Respondent-father argues that the trial court erred in finding that clear and convincing evidence supported a statutory ground for termination. We disagree. We review a trial court's determination regarding a statutory ground for termination for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). When reviewing a trial court's findings of fact, we give deference to the trial court's special opportunity to judge the credibility of the witnesses. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

The trial court found that statutory grounds for terminating respondent-father's parental rights to the child existed pursuant to MCL 712A.19b(3)(g), (i), (j), and (*l*), which, at the time this matter was decided, permitted termination under the following circumstances:

> (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:
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> * * *

(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.[1]

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.[2]

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(*l*) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.[3]

The trial court did not clearly err by concluding that respondent-father failed to provide proper care or custody for the child and that there was no reasonable expectation that he would be able to do so within a reasonable time considering the child's age. Respondent-father and respondent-mother have a history of domestic violence, which they did not conceal from the child, and respondent-father has three convictions for domestic violence. The last time the child lived for a short time with respondent-father and respondent-mother, in either 2014 or 2015, respondent-mother kept her "guard up" because of her history with respondent-father. A court psychologist, Sylvie Bourget, testified that as a result of seeing her parents' conflicts, the child suffers from behavioral issues, aggressiveness with her peers, anxiety, and attachment issues. Respondent-father refused to acknowledge that his past, including domestic violence, could have

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[1] Respondents' parental rights were terminated in February 2018. In 2018 PA 58, the Legislature amended MCL 712A.19b(3)(g), effective June 12, 2018, to provide: "The parent, although, in the court's discretion, financially able to do so, 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."

[2] In 2018 PA 58, the Legislature also amended MCL 712A.19b(3)(i), which now provides that termination is appropriate when "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent has failed to rectify the conditions that led to the prior termination of parental rights."

[3] As amended by 2018 PA 58, MCL 712A.19b(3)(*l*) now requires that the parent failed to rectify the conditions that led to the prior termination and that the prior termination involved abuse that included one of the listed grounds.

affected the child and denied emotionally harming her. There is no evidence that respondent-father ever resolved these domestic violence issues, with counseling or classes, for example, and Bourget opined that, even if services were provided, respondent-father's severe personality pathology would preclude any long-term benefits.

The record also demonstrates that respondent-father has persistently lacked appropriate housing for a child. In 2010, when his three older children were under the court's jurisdiction, respondent-father had no home for them. When the instant child needed his care and custody from 2013 to 2015, when she was under the court's jurisdiction the first time, respondent-father spent a year in jail and then left Michigan. When the child needed housing in May 2016, when she was placed in protective custody after respondent-mother was involved in an accident involving drugs and alcohol, respondent-father again lacked appropriate housing. Citing MCL 712A.2(b)(1)(C), respondent-father claims that the child was not without proper care and custody because he was responsible for placing the child with his mother after respondent-mother's accident. But this placement was ultimately deemed inappropriate for the child. The trial court did not clearly err by finding that respondent-father could not, and would not within a reasonable time, provide proper care or custody for the child.

The crux of respondent-father's argument is that petitioner, the Department of Health and Human Services (DHHS), failed to provide him with services, such as housing assistance, to reunite him with the child. "In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). However, reasonable efforts to reunite the child and parent need not be made when the parent previously had his or her parental rights involuntarily terminated. MCL 712A.19a(2)(c), as amended by 2016 PA 497.[4] Respondent-father's rights to three other children were previously terminated. Therefore, DHHS did not err by not providing respondent-father services.

Moreover, in March 2017, when respondent-father complained to the trial court that DHHS was not providing services, the trial court informed respondent-father that he was free to seek them on his own. Despite the court's advice, respondent-father did nothing for approximately nine months. Then, shortly before the third day of trial, he began a parenting class. By the time the court terminated his parental rights in February 2018, 21 months after his daughter was placed in the court's jurisdiction for the second time, respondent-father still had not addressed his domestic violence issues and lack of housing. In any event, the court psychologist opined that respondent-father would not benefit from services. For those reasons, we are not left with a definite and firm conviction that the trial court erred in terminating respondent-father's parental rights under MCL 712A.19b(3)(g). *In re Terry*, 240 Mich App at 22. Because only one statutory ground is needed to terminate parental rights, we decline to consider the additional

[4] MCL 712A.19a(2)(c) now provides that reunification efforts are not necessary when "[t]he parent has had rights to the child's siblings involuntarily terminated and the parent has failed to rectify the conditions that led to that termination of parental rights." 2018 PA 58, effective June 12, 2018.

grounds on which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

Respondent-father also argues that termination of his parental rights was not in the best interests of the child. We disagree. We review for clear error the trial court's determination regarding the child's best interests. MCR 3.977(K); *In re Mason*, 486 Mich at 152.

Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). "[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). The trial court should weigh all the evidence available to it in determining the child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Factors relevant to a determination of the child's best interests include the child's bond to the parent, the parent's compliance with his or her case service plan, the parent's history of visitation with the child, the child's need for permanency, stability, and finality, the advantages of a foster home over the parent's home, and the possibility of adoption. *Id*. at 713-714.

More than a preponderance of the evidence supports the trial court's determination that termination of respondent-father's parental rights was in the child's best interests. On appeal, respondent-father maintains that he shares a bond with the child. But Bourget said that the child recalled that she was first taken into custody at the age of three in part because of the repeated instances of domestic violence that she witnessed between respondents. The child also recalled helping respondent-mother get up after respondent-father pushed her down. While the child was in protective custody until she was five years old, respondent-father was incarcerated and out of state, and he did not complete a parent-agency treatment plan or address the domestic violence. The record demonstrates that when the child was released into her mother's care, respondent-father may have lived with the child and respondent-mother for a few weeks and visited with her a few times after school. Then, in May 2016, the child was removed again when she was six years old. The foster-care worker recorded 13 times when respondent-father cancelled a supervised parenting visit with the child.

As respondent-father asserts, he engaged the child when he came to visitation and they had a good relationship. But the record does not support respondent-father's argument that termination of his parental rights was contrary to the child's best interests because of the emotional impact of termination on the child. The record indicates that when respondent-father missed visitation, the child was "fine." Although the child said that she wanted to return to live with respondents, she also said that she wanted to stay in foster care, where she felt safe. Any bond between respondent-father and the child did not outweigh the child's emotional well-being and the security she feels outside of respondents' care.

Respondent-father also argues that his care is preferable to foster care for the child because the foster parents did not plan to adopt her. Indeed, the trial court concluded that the child would be placed on the permanency docket and adoptive parents would be found. But respondent-father was not a viable alternative because he lacked housing and was only employed "under the table." Although the trial court informed him that he could initiate services to address

DHHS's concerns with his past, he only began a parenting class near the end of trial and there is no record that he has reformed and can keep the child physically and emotionally safe.

Given that the child was young, had spent nearly half of her life in foster care, and needed hands-on parenting and mental health care that respondent-father had not shown that he could provide, the trial court did not clearly err in finding that she was in need of permanency and finality, and that termination of respondent-father's parental rights was in her best interests.

I. RESPONDENT-MOTHER APPEAL IN DOCKET NO. 342677

Respondent-mother similarly argues that the trial court erred in finding that clear and convincing evidence supported a statutory ground for termination. We disagree.

The trial court did not clearly err by finding that respondent-mother failed to provide proper care or custody for the child and there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the child's age. MCL 712A.19b(3)(g). Again, the child was first removed from respondents' care, in part, because of their history of domestic violence. After the child was returned to respondent-mother's care, respondent-mother was in another dangerous relationship with a boyfriend and she lived with respondent-father for several weeks, despite their volatility. The child was removed from respondents' care the second time because of respondent-mother's drunken car accident, with the child in her car. The child experienced minor injuries from the accident, but the trial court found that she could have been killed. Moreover, Bourget, the psychologist, opined that the child was "greatly affected" by the accident and her parents' domestic violence. The child also observed respondent-mother fighting, kicking, biting, and resisting the officers who responded to the accident. Again, Bourget testified that, as a result of seeing her parents' conflicts, the child suffers from behavioral issues, aggressiveness with her peers, anxiety, and attachment issues. Although respondent-mother was required to participate in anger management classes as a condition of her probation and she was medicated for bipolar disorder, she continued to exhibit inappropriate, confrontational, and aggressive behaviors with the foster-care workers and the foster parents. She also repeatedly discussed the case with the child, despite admonishment from the court and foster-care workers. Bourget reported that respondent-mother had a "very high elevation on the turbulent personality scale. This elevation is associated with unpredictable mood swings that can escalate to behaviors that are reckless and erratic." Bourget opined that, even with therapeutic intervention, respondent-mother would not benefit on a long-term basis.

Additionally, respondent-mother has a history of substance abuse, brief sobriety, and relapse. When the child was first placed in protective custody after respondent-mother was involved in a drunken fight, respondent-mother completed a parent-agency treatment plan, involving substance abuse. But just a year later, she caused the life-threatening accident while under the influence of marijuana and with a blood-alcohol content of .18, and she claimed that she felt fine before choosing to drive. Bourget opined that such a high tolerance for alcohol usually indicates ongoing serious use. At the time of trial, respondent-mother testified that she had completed a year of zero-tolerance probation involving alcohol and drug testing, and her screens were negative, but respondent-mother still had one year of probation to complete. Respondent-mother claimed at trial that she did not abuse alcohol or feel dependent on it.

Bourget countered that respondent-mother was prone to such denial and defensiveness, which is used to "safeguard [a] virtuous self-image." Given respondent-mother's unresolved combativeness, volatility, and dependence on drugs and alcohol, the trial court did not clearly err in finding that respondent-mother could not, and would not within a reasonable time, provide proper care or custody for the child. Again, because the trial court did not err in finding that termination was justified under MCL 712A.19b(3)(g), we need not consider the additional grounds on which the trial court based its decision. *In re HRC*, 286 Mich App at 461.

Finally, respondent-mother argues that termination of her parental rights was not in the child's best interests. We disagree.

More than a preponderance of the evidence supports the trial court's determination that termination of respondent-mother's parental rights was in the child's best interests. Like respondent-father, respondent-mother cites the bond between her and the child. Yet, in 2016, respondent-mother missed four to six weeks of visitation because of an injury and did not have appropriate housing to have home visits with the child. Later in the case, she missed 5 out of 17 visits and was often late to others. Moreover, after visits with respondent-mother, the child initially demonstrated defiance and later the need to be very close to her foster parents. When respondent-mother missed visitation, the child was "fine."

During these proceedings, respondent-mother completed the requirements of the first of two years of probation, but when DHHS presented her with a parent-agency treatment plan in November 2017, she refused to sign it. Respondent-mother argues that she has a two-bedroom home and employment to support the child, and the child also expressed interest in returning to respondent-mother's home because she had pets. But as discussed earlier, the child had substantial emotional and behavioral issues resulting from respondents' combativeness in her presence. Although her foster parents did not intend to adopt her, the trial court concluded that the child would be placed on the permanency docket and adoptive parents would be found. Again, the child was only eight years old and she had spent nearly half of her life in foster care. Bourget opined, and the trial court concurred, that the child needed stability and permanency that respondent-mother could not provide. The trial court did not clearly err by finding that termination of respondent-mother's parental rights was in the child's best interests.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Deborah A. Servitto
/s/ Michael F. Gadola