STATE OF MICHIGAN

COURT OF APPEALS

In re PETTEY/PANNILL, Minors.

UNPUBLISHED
November 27, 2018

No. 342866
Kent Circuit Court
Family Division
LC No. 17-053106-NA;
17-053107-NA

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

Respondent-father appeals as of right the termination of his parental rights to his minor children, JP and GP, under MCL 712A.19b(3)(j) (reasonable likelihood of harm).[1] We affirm.

I. BACKGROUND

Respondent-father has a long history of involvement with Child Protective Services. Respondent-father voluntarily relinquished his rights to his oldest son in 2004. In 2014, respondents' son JP was removed from the home and placed into foster care shortly after he was born. JP was returned to the home in November 2015. JP was again removed from the home in January 2016 because of domestic violence between respondent-parents. Respondents were required to engage in services to rectify the conditions that led to JP's removal. Respondent-mother completed services, and JP was returned to her care and custody in October 2017. The trial court did not return JP to respondent-father's care because he failed to complete his treatment plan. Respondent-mother gave birth to GP prematurely in November 2017, and she and GP both tested positive for drugs. The Department of Health and Human Services (DHHS) petitioned the trial court to take jurisdiction over JP and GP, remove them from her care and custody, and terminate both respondents' parental rights. The trial court found that one or more of the allegations in the petition were true, and the trial court took jurisdiction over the children. After an evidentiary hearing, the trial court terminated respondents' parental rights.

II. JURISDICTION

[1] Respondent-mother is not a party to this appeal.

Respondent-father argues that the trial court erred by assuming jurisdiction because a preponderance of the evidence did not establish any new allegations against him and the trial court relied solely on old allegations from previous cases that were closed. We disagree. This Court reviews for clear error the trial court's decision to exercise jurisdiction. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). To exercise jurisdiction, the trial court must find by a preponderance of the evidence that a statutory basis for jurisdiction exists. *Id.* A finding is clearly erroneous if this Court is "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).

The trial court has jurisdiction over a child when the child's "home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in." MCL 712A.2(b)(2). The trial court acquires jurisdiction when it determines that the allegations in the petition provide probable cause to bring the child within the court's statutory jurisdiction. *In re AMB*, 248 Mich App 144, 168; 640 NW2d 262 (2001). "Whether the allegations are later proved true is irrelevant to whether the family court has subject-matter jurisdiction." *Id.*

In this case, the petition to terminate respondent-father's parental rights recited historical allegations and facts respecting the conditions that led to the children's removal and placement into care. The petition alleged that respondent-father failed to fulfill the requirements of his treatment plans, and a preponderance of the evidence presented at the preliminary hearing supported the allegations in the petition. The evidence established that respondent-father had a history of substance abuse and refused to submit to regular drug testing while the 2014 and 2016 cases were pending. Respondent-father failed to complete other services made available to him, including classes addressing anger management, and he missed some parenting time with JP. In addition, respondent-father lacked adequate housing. For these reasons, JP was not returned to respondent-father's custody following the 2016 removal. Accordingly, we hold that the trial court did not clearly err by finding that one or more of the allegations in the petition were true, bringing the children within the trial court's jurisdiction under MCL 712A.2(b)(2).

III. RELATIVE PLACEMENT

Respondent-father argues that the trial court clearly erred by not considering relative placements for JP and GP. We disagree. We review for clear error the trial court's finding that DHHS made reasonable efforts toward reunification. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "In general, [DHHS] 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). "While the [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Laster*, 303 Mich App 485, 495; 845 NW2d 540 (2013) (quotation marks and citation omitted). Reasonable efforts include identifying relatives who might be able to provide care for the children. *In re Rood*, 483 Mich 73, 107-109; 763 NW2d 587 (2009). The trial court is not required to place a child with relatives in lieu of terminating parental rights. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), overruled on other grounds by *In re Morris*, 491 Mich 81, 121; 815 NW2d 62 (2012). "If it is in the best interests of the child, the probate court may properly terminate parental rights instead of placing the child with relatives." *Id.*

In this case, the trial court considered DHHS's investigation into the appropriateness of relative placements. When respondent-father stated that he would stay with the children's maternal grandmother and care for JP, DHHS determined that this placement was not appropriate because the maternal grandmother had a history of drunk driving that included a felony conviction for driving while intoxicated. DHHS tried to investigate respondent-father's mother's home, where respondent-father resided for some time, but respondent-father refused to allow DHHS to conduct a review of her home. Additionally, respondent-father did not identify respondent-mother's father as a relative for potential placement. At the termination hearing, the children's paternal grandfather stated for the first time that he was interested in caring for the children. Although he previously contacted the caseworker to inquire about the children's welfare, he did not express an interest in caring for the children. DHHS made reasonable efforts to preserve the family by trying to find suitable and willing relatives with whom to place the children, and the trial court considered relative placement when it determined that termination was in the children's best interests. In short, respondent-father has identified no clear error in the trial court's consideration of DHHS's investigation into the possibility of a relative placement.

IV. STATUTORY GROUNDS FOR TERMINATION

Respondent-father argues that the trial court erred by finding statutory grounds for termination of his parental rights under MCL 712A.19b(3)(j). We disagree. We review for clear error the trial court's finding that statutory grounds for termination of parental rights exist. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "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." *Id*. We defer "to the trial court's special opportunity to judge the credibility of witnesses." *In re LE*, 278 Mich App at 18.

The trial court found that clear and convincing evidence established grounds for termination under MCL 712A.19b(3)(j), which provides for termination of parental rights if "[t]here 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." "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014) (citations omitted).

In this case, clear and convincing evidence established that respondent-father failed to comply with the parent-agency agreement. Respondent-father previously admitted to substance abuse, but he failed to submit to numerous drug screens. He failed to complete anger management and domestic violence counseling. Respondent-father completed only one parenting class over the long history of the 2014 and 2016 cases, and he failed to complete additional parenting classes. More importantly, respondent-father maintained that he only had an anger management problem, refusing to admit that he had any other problems, despite positive and missed drug screens and a police investigation into an incident between respondents that involved JP. Further, the trial court did not clearly err by finding that the removal of JP from respondent-father's custody twice, respondent-father's failure to comply with services offered in connection with both removals, and the agency's refusal to return JP to respondent-father's custody because of that noncompliance did not bode well for GP. Respondent-father's failure to complete services and his failure to acknowledge that he had problems support the trial court's

finding that there was a reasonable likelihood that the children would be harmed if returned to respondent-father's custody.

V. BEST INTERESTS

Respondent-father argues that termination of his parental rights did not serve the children's best interests. We disagree. Once a statutory ground for termination has been proven, the trial court must find by a preponderance of the evidence that termination is in the children's best interests before it can terminate parental rights. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error a trial court's best-interest determination. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

When considering the children's best interests, the trial court must focus on the children rather than the parent. *In re Moss*, 301 Mich at 87. The trial court may consider several factors, including the children's "bond to the parent, the parent's parenting ability, and the [children's] need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Further, the trial court may consider how long the children have lived in their present home and the likelihood that they "could be returned to [the parent's] home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (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. In addition, the risk of harm a child might face if returned to a parent's care is relevant to a best-interest determination. *In re VanDalen*, 293 Mich App at 142.

In this case, the trial court considered several factors to determine that termination of respondent-father's parental rights was in the children's best interests. In respondent-father's favor, he was bonded with JP, his visits with JP went well, and he visited GP in the hospital almost every day. Respondent-father also had employment. Nonetheless, several other factors weighed in favor of termination. Respondent-father was not honest with the caseworkers and the trial court about his relationship with respondent-mother. Their relationship was characterized by co-dependency and poor decision-making, and JP was last removed from respondent-mother's custody because of domestic violence between respondents. Respondent-father denied having a problem with substance abuse despite positive screens and missed screens. Although respondent-father contended that he once tested positive for alcohol consumption when a breathalyzer showed that he had not been drinking, other screens showed positive results for narcotics even when the screens were redone. Respondent-father also offered excuses for not taking advantage of the accommodations the caseworkers made for respondent-father to complete drug testing through an alternative agency, the court, or his doctor. Respondent-father maintained that he was drug-free, but he produced no proof to support that claim. Moreover, respondent-father failed to complete his parent-agency agreement, and he did not make progress toward rectifying the conditions that led to JP's removal and placement into care. He did not complete anger management or domestic violence counseling or parenting classes. Further, respondent-father lacked suitable housing.

JP was removed and placed into foster care three times during his young life. JP and GP were well cared for while in foster care. JP's foster parents were interested in adopting both children. The trial court considered the repeated removals and placements and concluded that JP should not be required to wait any longer for permanency, stability, and finality or for his parents to rectify the conditions that brought him into care. GP also needed stability. The trial court did not clearly err by concluding that the children's needs for permanency, stability, and finality weighed in favor of termination. Accordingly, the trial court did not clearly err by concluding that termination of respondent-father's parental rights served the children's best interests.

We affirm.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering