

STATE OF MICHIGAN
COURT OF APPEALS

In re SHANKSTER/RUMER, Minors.

UNPUBLISHED
November 27, 2018

No. 343471
Hillsdale Circuit Court
Family Division
LC No. 18-000040-NA

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

PER CURIAM.

Respondent mother appeals as of right the order terminating her parental rights to the four minor children under MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood that the child will be harmed if returned to the parent). We affirm.

The children were previously removed from respondent's care in 2015 because of her problems with substance abuse. Respondent, after several lapses and a shaky history, was able to successfully complete Family Treatment Court in January 2017, and the trial court released its jurisdiction of the children. However, in January 2018, a new child protective proceeding was initiated because of numerous reports that respondent had resumed her abuse of controlled substances, including a suspected overdose. Respondent tested positive many times for amphetamine, methamphetamine, buprenorphine, and tetrahydrocannabinol (THC) after the petition was filed and during the course of the lower court proceeding, at times providing nonsensical reasons for the positive results. Respondent missed many visitations, would often not communicate with petitioner's personnel, was uncooperative, was defensive and combative, including one occasion where she refused to allow a CPS worker into her home, failed to participate in nearly all services, let alone benefit from services, refused to acknowledge her addiction and engage in substance abuse treatment, and eventually stopped involving herself in the case to the point of not appearing at the termination hearing. The children were thriving and had made great strides in foster care following removal.

Respondent challenges the trial court's ruling regarding the statutory grounds for termination and its decision concerning the children's best interests. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817

NW2d 111 (2011). “This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). “A finding . . . is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]” *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). In applying the clear error standard in parental termination cases, “regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court must “state on the record or in writing its findings of fact and conclusions of law[,] [and] [b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient.” MCR 3.977(I)(1).

The trial court terminated respondent’s parental rights to the children pursuant to MCL 712A.19b(3)(g) and (j). In relevant part, those grounds 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:

* * *

(g) The parent, without the 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

* * *

(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.

With respect to MCL 712A.19b(3)(g), respondent initially argues that “[a] review of the record makes clear that the Department of Health and Human Services was unable to provide . . . any services to [respondent] even though some serious effort was made.” We are not quite sure what to make of this argument, other than to agree that petitioner made numerous attempts at providing services to respondent, but respondent failed to participate in and take advantage of those services. Indeed, the trial court cited and discussed a litany of services and programs that were made available to respondent. Respondent further contends that because she failed to appear at hearings, including the termination hearing, the record did not shed any light on what caused the interference with her participation in services. Therefore, according to respondent,

¹ On June 12, 2018, after the order of termination was entered here, an amended version of MCL 712A.19b(3)(g) took effect, 2018 PA 58, requiring consideration of a parent’s financial ability in assessing an alleged failure to provide proper care or custody.

termination was premature, petitioner should be directed to extend services to her, and she should be given an opportunity to complete services. This argument is entirely lacking in merit. Respondent does not even attempt to proffer a reason why she failed to participate in services or attend court hearings. Any lack of clarity in the record on the matter is of respondent's own doing. Petitioner cannot be blamed or held responsible for respondent's unaccountability, shortcomings, and lack of engagement. Moreover, the history of the protective proceedings involving respondent, i.e., the 2015 and 2018 cases, reveals that petitioner gave respondent opportunity after opportunity to address her drug problem and, unfortunately, respondent has not been able to conquer the addiction. Given respondent's severe substance abuse addiction and her failure to acknowledge and address the addiction, the trial court did not clearly err in finding that there was clear and convincing evidence establishing a ground for termination under MCL 712A.19b(3)(g); respondent could not provide proper care or custody now or within a reasonable time.

With respect to termination under MCL 712A.19b(3)(j), respondent maintains that there was no indication that the children feared being harmed or that they would be harmed by respondent if returned to her care. Respondent also argues, once again, that she should have been granted more time to work with petitioner relative to services. As to the latter argument, we again reject the contention for the reasons stated above. In regard to the former argument, respondent's unacknowledged addiction to controlled substances and a psychological assessment showing a low frustration tolerance level, impulsivity, and aggressive tendencies provided adequate support to conclude that there existed a reasonable likelihood, based on respondent's conduct or capacity, that the children would be harmed if returned to respondent's home. There certainly was no clear error on the issue.

With respect to the children's best interests, respondent contends that it is in the best interests of the children to provide her with more services and to give her an additional six months so that she can learn to provide proper care and custody for the children. In support, respondent points to the 2015 protective proceeding which reflected that she could overcome the obstacles facing her.

With respect to a child's best interests, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. In assessing a child's best interests, a trial court may consider such factors as a "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." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "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 701, 714; 846 NW2d 61 (2014).

The trial court ruled that termination was in the children's best interests, finding that, prior to foster care, the children were lost, "suffering tremendously in development, in speech, [and] potty training." The court further declared that the children needed direction, permanency, and stability, none of which they previously enjoyed. For the reasons expressed by the trial court, along with the evidence which revealed that the children have made enormous progress following removal and that the infrequent visits with respondent were problematic and showed

little bonding, the trial court did not clearly err in finding that a preponderance of the evidence established that termination of respondent's parental rights was in the children's best interests. For the third time, and for the reasons stated earlier, we reject respondent's argument that she should be given more time, which is plainly not in the best interests of the children.

Affirmed.

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