STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 17, 2019

In re R. N. TANKERSLEY, Minor.

No. 342730
Wayne Circuit Court
Family Division
LC No. 14-518269 - NA

In re TANKERSLEY, Minors.

No. 343731
Wayne Circuit Court
Family Division
LC No. 14-518269-NA

Before: LETICA, P.J., and CAVANAGH and METER, JJ.

PER CURIAM.

In Docket No. 342730, respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor child, RNT, under MCL 712A.19b(3)(g), (i), and (j). In Docket No. 343731, respondent-father appeals as of right the trial court's order terminating his parental rights to the minor children, AMT, RFT, and RNT, under MCL 712A.19b(3)(a)(*ii*), and (g). We affirm.

I. BACKGROUND

Respondents had four children together: AMT, MRT, RFT, and RNT. Respondents' second child, MRT, died in November 2014 after suffering multiple unexplained injuries in respondent-mother's care. The coroner ruled MRT's death intentional and petitioner intervened to remove AMT and RFT from respondent-mother's custody (RNT had not yet been born). Respondent-mother stipulated that statutory grounds for termination existed under MCL 712A.19b(3)(b)(*i*), (g), (j), (k)(*iii*), and (k)(*vi*). The trial court concluded that termination was in the children's best interest, noting its concern over respondent-mother's long-term marijuana use, her history of assaultive behavior with respondent-father, and her "history of abuse of

[MRT]." Thus, the trial court terminated respondent-mother's parental rights to AMT and RFT in July 2015 and placed those children with respondent-father, who had not yet come within the court's jurisdiction. This Court affirmed the trial court's order. *In re Tankersley*, unpublished per curiam opinion of the Court of Appeals, issued April 12, 2016 (Docket No. 328733).

Following this placement, respondent-father and the children moved in with his mother, the children's grandmother. The grandmother supported respondent-father and the children because respondent-father did not have a job. The grandmother, however, kicked respondent-father out of her home following a domestic-violence incident in which respondent-father pushed her and held her on a couch. Respondent-father left and dropped the children off with a paternal aunt. When respondent-father did not return to pick up the children, the aunt returned the children to the grandmother's care. The grandmother attempted to obtain a guardianship over the children, but respondent-father refused to sign the paperwork.

After leaving the grandmother's home, respondent-father became homeless, traveling from place to place with respondent-mother. Petitioner offered respondent-father services, including housing assistance, but respondent-father declined to participate. The grandmother reported that respondent-father did not offer the children any consistent support—financial or otherwise—and only sporadically visited. Thus, in September 2016, the trial court assumed jurisdiction over AMT and RFT and continued their placement with the grandmother.

By March 2017, respondents' situations had not improved. A treatment plan was in place for respondent-father, but he had only sporadically participated in services. Respondents were still homeless. Nevertheless, RNT was born to respondents in May 2017.

By September 2017, respondent-father had still not found consistent housing. Respondent-father had been terminated from his services and petitioner had not been in contact with him since July. Respondent-father had not visited the children since June. In October 2017, petitioner filed petitions to terminate respondent-father's parental rights to AMT, RFT, and RNT and to terminate respondent-mother's parental rights to RNT. According to petitioner, termination was appropriate because respondent-father had abandoned his children and respondent-mother's rights to the older children had previously been terminated because of MRT's death, improper supervision, and physical abuse.

Respondent-mother stipulated to the trial court's jurisdiction and to the grounds pleaded in the petition, MCL 712A.19b(3)(g), (i), and (j). Respondent-mother admitted that she was living in a shelter and stated that she understood that the prior terminations and her lack of suitable housing would provide grounds to terminate her parental rights. The trial court took judicial notice of the court file when accepting the stipulation.

Respondent-father did not stipulate to the statutory grounds pleaded in his petition. Thus, the trial court held a statutory-grounds hearing, after which it concluded that MCL 712A.19b(3)(a)(*ii*) and (g) supported termination of respondent-father's parental rights. The trial court noted that respondent-father had no suitable housing, had been terminated from his services, and had not visited the children in approximately six months. The cases were then set for a best-interest hearing.

Respondent-mother was present at the best-interest hearing, but respondent-father was not. Petitioner's representative testified that, when RNT was four months old, respondent-mother dropped RNT off at the home of a paternal aunt without any proper supplies and left without any indication of when she was returning. Petitioner eventually intervened to place RNT in the paternal grandmother's home with RNT's siblings. Regarding respondent-father, petitioner's representative testified that he had a history of drug use and still did not have housing or employment. According to the representative, termination of both parent's rights was in the children's best interests.

The child's foster-care manager concurred in this opinion. She testified that respondent-father had been offered visitation but had not visited. According to the foster-care manager, respondent-mother would visit RNT, but was unable to calm her, necessitating the paternal grandmother's intervention. Respondent-mother had not provided verification of employment and had been kicked out of a homeless shelter because respondent-father had come to the shelter to assault her. The foster-care manager testified that respondents' relationship was marked by violence. Despite this violence, respondents were expecting a fifth baby.

The trial court noted respondent-father's unemployment, lack of suitable housing, and domestic-violence incidents. The trial court found that respondent-father had "chosen not to parent" and concluded that there was no reason to believe that respondent-father would make any changes. With regard to respondent-mother, the trial court noted respondent-mother's lack of suitable housing and expressed its concern over her violent relationship with respondent-father. The trial court found that respondent-mother "want[ed] to be a parent," given her attendance at visitation, but opined that that respondent-mother had demonstrated "no ability to be a parent." Thus, the trial court found that termination of both respondents' parental rights was in the children's best interests. This appeal followed.

II. ANALYSIS

"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." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." 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 determine the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

"We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(K). "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).

A. DOCKET NO. 342730

1. STATUTORY GROUNDS

On appeal, respondent-mother first argues that the trial court clearly erred in finding statutory grounds to terminate her parental rights. Respondent-mother, however, stipulated that MCL 712A.19b(3)(g), (i), and (j) supported termination. Thus, respondent-mother has waived any challenge to the trial court's statutory-grounds findings. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Moreover, on appeal, respondent-mother challenges only the trial court's reliance on subsection (i). Because respondent-mother has not challenged the trial court's reliance on subsections (g) and (j), she has waived any error relative to those statutory grounds, see *Riemer v Johnson*, 311 Mich App 632, 653; 876 NW2d 279 (2015), and, because only one ground for termination need be established to terminate a respondent's parental rights, any error with regard to subsection (i) is immaterial, *In re Trejo*, 462 Mich at 360.[1] Respondent-mother's argument is without merit.

2. INEFFECTIVE ASSISTANCE OF COUNSEL

Next, respondent-mother argues that she was denied the effective assistance of counsel when her attorney recommended that she stipulate to the statutory grounds for termination. "The principles applicable to claims of ineffective assistance of counsel in the arena of criminal law also apply by analogy in child protective proceedings." *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016). Accordingly, respondent-mother must show "that (1) counsel's performance was deficient, falling below an objective standard of reasonableness, and that (2) the deficient performance prejudiced" her. *Id.*

Respondent-mother's argument is based upon her belief that MCL 712A.19b(3)(i) did not support termination of her parental rights. Yet, again, respondent-mother did not address MCL 712A.19b(3)(g) and (j) in her argument related to this issue. Thus, even assuming that stipulating to subsection (i) was improper, because respondent-mother has not shown that subsections (g) and (j) provided insufficient grounds to terminate her parental rights, respondent-

[1] We acknowledge that respondent-mother, in her appellate brief, stated that she "challenges each and every statutory ground upon which her rights were terminated including MCL 712A.19b(3)(g), (i), and (j)." Nevertheless, respondent-mother did not support this "challenge" with any relevant argument. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714 (2009) (internal citation and quotation marks omitted). Respondent-mother, by failing to argue against MCL 712A.19b(3)(g) and (j), waived any challenge to those statutory grounds.

mother cannot show any prejudice from counsel's alleged error. Respondent-mother's argument is without merit.

3. BEST INTERESTS

Finally, respondent-mother contends that the trial court clearly erred in finding that termination of her parental rights was in RNT's best interests because (1) the trial court erroneously considered her prior terminations as impacting RNT's best interests, (2) respondent-mother was not provided with reunification services, and (3) respondent-mother had attended all of her visits with the child and acted appropriately during those visits. We address each argument in turn.

Respondent-mother's argument regarding her prior terminations amounts to a single conclusory statement in her brief. "It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (internal citation and quotation marks omitted); see also *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714 (2009). Because respondent-mother has provided no support for her argument that the trial court was precluded at the best-interest hearing from considering her prior terminations, we need not address this issue.[2]

With regard to respondent-mother's reasonable-efforts argument, "when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). "However, the petitioner is not required to provide reunification services when termination of parental rights is the agency's goal." *In re Moss*, 301 Mich App at 91 (internal citation and quotation marks omitted). The record shows that respondent-mother had been offered services prior to MRT's death, but, in this case, petitioner was seeking termination of respondent-mother's parental rights. Thus, respondent-mother was not entitled to reunification services.

Finally, while it does appear that respondent-mother appropriately participated in parenting time, other factors outweighed respondent-mother's desire to parent. Respondent-mother did not have consistent housing or employment and her family life was marked by violence, both between her and respondent-father and between her and MRT. Moreover,

[2] We note, however, that the trial court took judicial notice of the entire case file, including the prior terminations. At the best-interest stage, the trial court "should weigh *all* the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713 (emphasis added). We see no reason why the prior terminations would not be relevant to RNT's best interests.

respondent-mother abandoned her child with a paternal relative without any proper supplies. The trial court's determination that termination was in RNT's best interests was not clear error.

B. DOCKET NO. 343731

1. STATUTORY GROUNDS

On appeal, respondent-father first argues that the trial court clearly erred in finding statutory grounds to terminate his parental rights. Respondent-father's parental rights were terminated under MCL 712A.19b(3)(a)(*ii*) and (g). Termination is appropriate under MCL 712A.19b(3)(a)(*ii*) when the "child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." At the time of the trial court's order, MCL 712A.19b(3)(g) authorized termination of parental rights when 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."[3] Respondent-father argues that he did not desert his children or fail to provide proper care or custody because the children were in the care of their paternal grandmother. We disagree.

Respondent-father appears to argue that he intentionally placed the children with their grandmother to ensure their care. See *In re Nelson*, 190 Mich App 237, 241; 475 NW2d 448 (1991) (intentional placement with a relative who would provide the child with proper care is not abandonment). This is not the case. Rather, respondent-father dropped the children off with a paternal aunt and, when respondent-father did not return to pick them up, the aunt brought the children to the grandmother. Moreover, respondent-father refused to grant the grandmother a guardianship over the children, thereby limiting her ability to properly care for them. Respondent-father provided the children with only limited financial assistance and only infrequently visited them. Indeed, for at least the last several months of this case, respondent-father did not visit the children at all. Respondent-father failed to consistently participate in his treatment plan, which indicates that respondent-father had little interest in addressing his parental deficiencies so that he could reunite with the children. See *In re White*, 303 Mich App at 710-711 (concluding that a parent's failure to comply with his treatment plan is evidence that he will not be able to provide proper care or custody). Thus, the record shows that respondent-father abandoned his children, failed to provide them with proper care and custody, and was unlikely to be in a position to provide proper care and custody within the reasonable future. MCL 712A.19b(3)(a)(*ii*) and (g) supported termination of respondent-father's parental rights.

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[3] MCL 712A.19b(3)(g) has been amended, effective June 12, 2018, to require the trial court to inquire into the parent's financial ability to provide proper care or custody. See 2018 PA 58. Because the trial court's order was entered before the effective date of amendment, the new version of MCL 712A.19b(3)(g) is inapplicable to this case.

2. REASONABLE EFFORTS

Next, respondent-father argues that termination was premature because petitioner did not provide him with adequate housing services. As already discussed, petitioner has the "responsibility to expend reasonable efforts to provide services to secure reunification." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Nevertheless, petitioner's responsibility is not unilateral; "there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *Id*. Here, the record confirms petitioner's consistent efforts to help respondent-father, including re-referrals for services and numerous attempts to contact him. Indeed, respondent-father was twice given a form for housing assistance, but he never returned it. It is therefore clear that petitioner met its responsibility to provide reunification services, but respondent-father failed in his commensurate responsibility to engage those services.

3. BEST INTERESTS

Finally, respondent-father challenges the trial court's best-interest determination. Respondent-father argues that the trial court failed to consider the children's relative placement and that he deserves more time to complete services because the children are bonded to him.

Contrary to respondent-father's assertion, the trial court did consider the children's relative placement. Despite this placement, the trial court concluded that respondent-father's violent tendencies, lack of housing, and abandonment of the children indicated that termination was in the children's best interests. We agree. Although placement with a relative does generally weigh against termination, *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012), here, respondent-father has shown little interest in providing for his children. Despite petitioner's numerous attempts to assist him, respondent-father failed to engage his services and still did not have appropriate housing. Contrary to his assertion of a bond with the children, respondent-father had not visited his children in the several months before the termination trial. Indeed, respondent-father failed to attend the best-interest hearing. The trial court's conclusion that termination of respondent-father's parental rights was in the children's best interests was not clear error.

Affirmed.

/s/ Anica Letica
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter