STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 17, 2019

In re MCISAAC, Minors.

No. 343542
Oakland Circuit Court
Family Division
LC No. 2016-838847-NA

Before: GLEICHER, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor children, ARM and BLS, under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

On appeal, respondent argues that petitioner failed to establish at least one statutory ground for termination, and that, even if a ground was established, termination was not in the children's best interests. We disagree with both arguments.

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews for clear error a trial court's decision that a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich at 356. This Court "give[s] deference to the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j), which provide that a court may terminate parental rights if clear and convincing evidence establishes the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(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]

* * *

(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.

The court exercised jurisdiction over the children in February 2016 on the basis of respondent's and the mother's no-contest pleas that the mother repeatedly used cocaine and heroin—supplied by respondent—during her pregnancy with BLS and while ARM was in her care. BLS tested positive for cocaine at birth. Respondent also provided the mother with illegal drugs while she was in the hospital to give birth to BLS, and he was subsequently arrested and incarcerated "for possession of dangerous drugs and weapons." The caseworker explained that the children came into the Department of Health and Human Services' (DHHS) care because of "improper care" and "parental drug use." In March 2016, the trial court ordered respondent to complete psychological and psychiatric evaluations, participate in substance abuse treatment, attend parenting classes, submit random drug screens at least three times a week, regularly attend supervised parenting times with the children, maintain appropriate housing, and maintain a legal source of income.

Before respondent was incarcerated but after the case began, the children were placed with the maternal grandparents. The trial court informed respondent and mother that they could

[1] MCL 712A.19b(3)(g) was amended by 2018 PA 58, effective June 12, 2018, and now provides:

(g) 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.

not stay with the maternal grandparents or the children would be removed. Despite this warning, respondent and mother moved in with the maternal parents, and the trial court ordered the removal of the children and placed them in non-relative foster care. At the hearing following the children's removal, the trial court expressed dismay at the parents' decision to move into the maternal grandparents' home and force the children to be removed. The trial court stated that it hoped the parents learned from their mistake going forward. At the same hearing, the trial court repeatedly stressed the importance of respondent staying in contact with his caseworker to ensure that he was adequately complying with his treatment plan and to avoid problems like this in the future.

After respondent was incarcerated—which lasted for 16 months while this case was ongoing—he participated in substance abuse treatment and services to address domestic violence and employment readiness. After he was paroled, he completed a parenting class and regularly submitted drug screens, which were negative.

At the termination hearing—which began three months after respondent was paroled and concluded four months after he was paroled—the caseworker testified that she was concerned because respondent did not have a license or reliable transportation, he did not have a legal source of income, his visitations remained supervised, and he did not have suitable housing because he was living with his parents.

The caseworker also explained that the circumstances in which respondent came to live with his parents after being paroled exhibited a lack of judgment by respondent. When respondent was released, the children were legally placed with the paternal grandparents. The caseworker testified that, before respondent was released, she talked to respondent's parents, and his parents said that they would tell respondent to contact her. The caseworker was clear with respondent's parents that respondent could not stay at their home because the children were legally placed there, and that the consequence of respondent staying at their home would be removal of the children. The caseworker testified that she knew that respondent's brother was picking him up upon release, and so she gave respondent's brother her business card, and asked respondent's brother to give it to respondent and have respondent call her. Respondent could not recall whether he was given the caseworker's business card, but he said it was possible, and that, regardless, he knew he needed to contact the DHHS. After respondent was released, the caseworker did not hear from him, despite her repeated attempts to contact him; she left messages on respondent's parents' phones and talked to his brother and his brother's wife. The caseworker apparently never heard back from the parents, but respondent's brother and his brother's wife said that they had spoken to respondent since his release from prison. Eventually, the caseworker contacted respondent's probation officer, who told the caseworker that respondent was paroled to his parent's home, which, again, was where the children were legally placed. This led to an "emergency re-placement for the children" because they were not to live in the same home as respondent per court order. The removal took place nine days after respondent was paroled. Respondent only contacted the caseworker following the children's emergency removal. Respondent testified that he believed that it was permissible for him to move into his parents' home when he was paroled because, although the children were legally placed there, they were physically staying at respondent's brother's home so he was not around them.

Based on this evidence, the trial court ruled that MCL 712A.19b(3)(g) had been proven by clear and convincing evidence. The trial court expressed concern that respondent was not in compliance with his treatment plan; he did not have a legal source of income or suitable housing, and he had still not completed a psychiatric evaluation. See *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) ("A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody."). The trial court was also concerned with respondent's poor judgment when it came to the children. The trial court found that respondent knew that the children would be removed from his parents' home when he moved back there after he was paroled because the children had been removed from the maternal grandparents' home before for that very same reason. The trial court believed that respondent's decision to move to his parents' home knowing that the children would be removed evidenced that he was "still putting his needs above those of his kids."

The trial court was also concerned about respondent's lack of a legal source of income. The trial court recognized respondent's testimony that he was doing mechanic work for under-the-table pay, but pointed out that legal employment was a requirement of both his parole and his treatment plan. The trial court believed that, because respondent had been on parole for four months by the time the termination hearing concluded, he could at least "have a tax ID number," but he failed to get one or to otherwise verify his employment. The trial court was also troubled because respondent testified that "in [his] brain," his work satisfied his legal-employment requirement. The trial court found this as evidence that respondent "still hasn't gotten to the point where he understands that [not following rules is] an issue." Based on the foregoing and in light of the evidence presented at the termination hearing, we are not definitely and firmly convinced that the trial court made a mistake when it found by clear and convincing evidence that respondent failed to provide proper care and custody for the children.

As for whether there was a reasonable expectation that respondent could provide proper care and custody within a reasonable time given the children's ages, the trial court first noted that the children were very young. BLS was almost two years old and had been out of respondent's care for almost her entire life, and ARM—who was almost three years old—had been out of respondent's care for the majority of her life. The trial court found that, as this case had been pending for over 20 months and respondent still had not moved to unsupervised visitations, there was no reasonable expectation that he would be able to provide proper care and custody in a reasonable time given the children's ages. In light of the amount of time that this case was pending, respondent's continued exhibition of poor judgment and failure to learn from past mistakes, his continued failure to comply with aspects of his treatment plan, and the children's very young ages, we hold that the trial court's conclusion that there was no reasonable expectation that respondent could provide proper care and custody in the foreseeable future given the children's ages was not clearly erroneous. And so, we are not definitely and firmly convinced that the trial court made a mistake by terminating respondent's parental rights under MCL 712A.19b(3)(g).

"Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision." *In re HRC*, 286 Mich App at 461.

"Even if the trial court finds that the [petitioner] has established a ground for termination by clear and convincing evidence, it cannot terminate the parent's parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children." *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). A trial court's decision regarding a child's best interests is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.

In *In re White*, 303 Mich App at 713, this Court summarized:

> The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include 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. 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. [Citation and quotation marks omitted.]

At the best-interest hearing, Dr. Melissa Sulfaro—an expert in clinical psychology—testified that she evaluated respondent in February 2018. Dr. Sulfaro believed that terminating respondent's parental rights was in the children's best interests based on respondent's history of refusing to follow rules, often leading to criminal consequences. Dr. Sulfaro also believed that respondent continually exhibited selfish judgment and an inability to place the children first, and she cited as an example respondent's decision to move back in with his parents when he was paroled.

The caseworker testified that the children had been in six homes during the course of these proceedings. The children had to be removed from two of those homes because respondent moved into the homes while the children were legally placed there. The caseworker also testified that, based on her observations, respondent lacked a strong bond with the children. According to the caseworker, the children were happy to see respondent, but no happier than they were when they saw anyone else. Lastly, the caseworker testified that she received a text from respondent that was apparently intended for the children's maternal grandmother. The caseworker testified that the text appeared to be an attempt by respondent to get a message to mother through the maternal grandmother because respondent was not allowed contact with mother as a condition of his parole. Respondent disputed the caseworker's interpretation of his text, explaining that he was texting the maternal grandmother about ways to calm mother down because she was stressed about the termination proceedings. He testified that he was not intending to contact mother, either directly or indirectly.

Also at the best-interest hearing, respondent's mother and father testified about the positive improvements that respondent had made in his life following his release from incarceration. Respondent's parents testified that they believed that respondent would continue improving and that it would not be in the children's best interest to terminate respondent's parental rights. Respondent's father also testified that respondent and the children were bonded.

In finding that termination was in the children's best interest, the trial court relied on Dr. Sulfaro's testimony that respondent "exercises poor judgment." The trial court could not "get over the fact" that respondent moved into his parents' house when he was paroled knowing that the children were legally placed there and would have to be moved. The trial court was particularly alarmed by this decision because the children "had already been in . . . four different placements." And the trial court emphasized that the children were removed from one of those placements before because respondent "moved into that placement," and pointed out that he was therefore "well aware of what was going to happen" when he moved into his parents' home. The trial court pointed out that respondent did not contact his caseworker upon release—who could have again stressed the impact that his decision would have had—and that the caseworker could not get ahold of respondent, despite numerous attempts. The trial court concluded that respondent "made it a point to put [his] needs [above] the needs of these children."

The trial court found that, after his decision to move in with his parents, respondent continued to exercise poor judgment, as demonstrated by his text to the maternal grandmother, which took place less than a month before the best-interest hearing. The trial court believed that "[t]here is no other way of reading this [text] other than you expected whoever read it, if it wasn't directed to mother, you expected them to talk to mother." The trial court pointed out that this was a violation of respondent's parole, and found that it was another example of respondent "not following the directives of those in authority."

The trial court also found that respondent lacked a strong bond with the children. The trial court based this conclusion on the caseworker's testimony of what the caseworker observed during visits. The trial court recognized the testimony of respondent's father, but questioned how respondent could be bonded with the children "when he was out of their lives for such a long period of time, and one of them, he's never even lived with." We defer to the trial court's "special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App at 459.

On this record—and in light of the lack of a strong bond between respondent and the children, respondent's placing his needs above the needs of the children, and respondent's repeatedly exercising poor judgment during the course of these proceedings—the trial court did not clearly err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien