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STATE OF MICHIGAN
COURT OF APPEALS

In re HENDERSON/TORRES, Minors.

UNPUBLISHED
April 16, 2019

No. 344745
Oakland Circuit Court
Family Division
LC No. 14-821893-NA

Before: LETICA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Respondent, the mother of the minor children, JAH and ADT, appeals as of right the trial court’s order terminating her parental rights to the children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if child is returned to the parent). We affirm.

This case initially arose in 2014 after a petition was filed seeking custody of respondent’s three oldest children.¹ The petition alleged domestic violence between respondent and the father of one of the older children, J. Henderson.² It also alleged that respondent attempted suicide by taking prescription drugs while the three oldest children were present. JAH was born during the pendency of that case. JAH was not removed from respondent’s care after her birth and the older children were returned to respondent in January 2016, but remained under the trial court’s jurisdiction.

After another incident of domestic violence between respondent and Henderson in May 2016, respondent fled to Florida with JAH and the three older children. At that time, respondent was pregnant with ADT. JAH was subsequently taken into custody and placed under the

¹ On May 10, 2018, this Court affirmed the termination of respondent’s right to the three older children. *In re Torres/Henderson, Minors*, unpublished per curiam opinion of the Court of Appeals, issued May 10, 2018 (Docket No. 337445). Those children are not part of the present appeal.

² Henderson is also the father of JAH and ADT. He is not a party to this appeal.

supervision of the Department of Health and Human Services (DHHS). A petition seeking termination of respondent's parental rights to JAH was filed on June 21, 2016.

In the fall of 2016, respondent concealed the birth of ADT from the court and was subsequently held in contempt for refusing to reveal ADT's location. ADT was eventually located, taken into custody, and placed with foster parents. A petition seeking termination of respondent's parental rights to ADT was filed on March 24, 2017. An amended petition regarding both JAH and ADT was filed on August 21, 2017.

Respondent entered a plea with regard to jurisdiction and statutory grounds for termination. Based on respondent's admissions and evidence taken before respondent's latter plea, the trial court found that statutory grounds for termination existed pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

After conducting best-interest hearings, the trial court issued an opinion and order terminating respondent's parental rights to JAH and ADT. With regard to the best interests of JAH and ADT, the trial court found that (1) there was little evidence of a bond or emotional tie between respondent and the children; (2) respondent refused to follow her treatment plan, improve the areas in which she struggled, provide proof of income, or allow DHHS into her home; (3) respondent continuously deprived the children of permanency and stability; (4) respondent failed to provide proof that her mental health was intact; (5) respondent failed to gain insight into her own shortcomings, making her a risk to the children; and (6) both foster families provided stable homes and had not interfered with respondent's ability to see her children. Based upon these considerations,³ the court found by a preponderance of the evidence that it was in the best interests of JAH and ADT to terminate respondent's parental rights.

On appeal, respondent argues that the trial court erred by finding that termination of her parental rights was in the best interests of the children. We disagree.

"The trial court must order the parent's rights terminated if the [DHHS] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "We review for clear error the trial court's determination regarding the children's best interests." *Id.* "The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake." *Id.* at 709-710.

³ The trial court made it clear on the record and in its opinion that it properly did not fault respondent for being a victim of domestic violence, see *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011), and that its concerns lay elsewhere. Indeed, in their closing arguments, petitioner and the guardian ad litem seemingly implied that they did not even think domestic violence remained an ongoing concern for respondent. Rather, the trial court indicated that it was instead concerned by respondent's pattern of dishonesty to the court, disobeying court orders, and directly endangering the children due to her own conduct. These are proper considerations.

As this Court has previously stated:

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 . . . 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. [*Id.* at 713-714 (citations omitted).]

The trial court's findings were not clearly erroneous. There was no specific testimony presented at the best-interest hearing regarding a bond or emotional tie between respondent and the children, and respondent does not point to any specific record evidence to support the existence of a bond. Rather, she relies on her counsel's arguments before the trial court, which are not evidence. She also argues that the lack of a bond was "artificially imposed" by the trial court because it denied her request to reinstate parenting time. Although respondent's motion to reinstate parenting time was denied in April 2018, there is no evidence that this denial *caused* the lack of bond or emotional tie between respondent and the children. Respondent's parenting time had been suspended since approximately September or October 2017 and there is little indication that a bond existed before that time.⁴

Moreover, to the extent that respondent challenges the trial court's denial of her motion to reinstate parenting time on the basis of her therapist's failure to appear at the hearing, respondent fails to establish error. The children's foster care worker testified that, although the information he received from respondent's counselor was positive, the documentation provided by the counselor did not explain how her opinions were reached. The trial court gave petitioner discretion for supervised parenting time and ordered that a hearing be held. When the therapist did not appear for the hearing, the trial court denied the motion because it could not determine that reinstating respondent's parenting time would be appropriate. This was reasonable given the testimony that there was insufficient information available to determine respondent's progress.

The balance of the trial court's factual findings with respect to the children's best interests were likewise supported by the record. The foster care worker also testified that, contrary to the treatment plan, respondent failed to provide full releases, failed to provide proof of income, and refused to allow him into her house to assess its suitability for the children. Respondent's failure to provide full releases or updates in any form during the majority of these proceedings left the foster care worker unable to adequately evaluate respondent's progress in terms of mental health. When he finally received information from respondent's counselor in

⁴ We note, however, that the trial court's reference to testimony offered by respondent's aunt indicating that respondent did not have a bond with the children is not supported by the record. Respondent's aunt acknowledged that she had no relationship with the children, but did not make any similar statements with respect to respondent.

February 2018, the documentation indicated that respondent was benefiting from services, but did not detail how the counselor reached that conclusion. Nor was it clear from the documentation whether respondent had fully and accurately disclosed her history. The foster care worker did not believe that respondent had made significant progress in remedying the issues that brought the children into care. As the trial court noted, respondent initially fled the state with the children. And after ADT's birth, respondent was dishonest with the court regarding ADT's name, date of birth, and whereabouts. These events clearly called respondent's ability to responsibly parent the children into question, and her lack of cooperation thereafter only reinforced the fact that respondent did not appear to prioritize reunification or the best interests of the children. In contrast with that evidence, the testimony offered by each child's foster parent suggested that both foster families provided stable homes, desired to adopt the children, and had not interfered with respondent's ability to see her children.

Respondent argues that the trial court failed to consider the progress that she was making in March 2018. Respondent, however, again relies on arguments made by her counsel before the trial court, rather than record evidence. As noted, the foster care worker testified at the best-interest hearing that, while the information provided by respondent's therapist was positive, it was not sufficiently thorough.

Respondent also argues that the trial court improperly focused on her shortcomings, rather than on the effect of termination on the children and whether she could rectify the issues if given more time. Although respondent claims that the trial court should have considered the psychological and emotional damage that would be done to the children if her rights were terminated, there was no testimony that any such damage would occur. Moreover, while respondent argues that the trial court should have considered whether she could have rectified the issues if given more time, the trial court did consider that factor by finding, in the context of statutory grounds for termination, that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the ages of the children.

Respondent further argues that the trial court should have given more weight to the testimony of her counselor, Terricka Lewis, and that the court erroneously stated in its written opinion that Lewis was unable to fully testify because respondent did not fully waive the patient-counselor privilege. During the best interests hearings, it was determined that respondent had not provided Lewis with a full release to discuss the details of her counseling. Lewis was therefore excused as a witness before DHHS could complete its cross-examination. The trial court declined to strike Lewis's direct-examination testimony, but indicated that it would give the testimony limited weight. Later, the court determined that the asserted privilege was abrogated in the context of child protective proceedings under MCL 722.631. However, Lewis was not available to testify the following day, and DHHS waived further cross-examination in order to avoid the necessity of an adjournment. As respondent observes on appeal, the trial court implied in its written opinion that Lewis was not entitled to waive the confidentiality of her communications with respondent and noted that Lewis could not fully testify as to the sufficiency of respondent's progress in therapy.

To the extent that the trial court found that Lewis was unable to fully testify on the basis of a privilege, we agree that the trial court erred. The record demonstrates Lewis's cross-examination was not completed as a result of DHHS's waiver, rather than the assertion of a

privilege. However, it does not appear that this error had a significant impact on these proceedings. Lewis testified regarding respondent's strengths and indicated that respondent was making progress with honesty, identifying her problems, accepting feedback, expressing remorse for her decisions, and accepting responsibility. This was in stark contrast to the testimony offered by the court-appointed psychologist who had evaluated respondent in connection with the earlier child protective proceedings and who was asked to reevaluate respondent's progress shortly before the best-interest hearings. That psychologist was unable to complete the reevaluation because respondent was combative, negative, disrespectful, and refused to cooperate in the evaluation process. The foster care worker similarly indicated that respondent's parenting time visits with the children had been suspended because of verbally aggressive behavior toward him and other DHHS staff members who supervised the visits. On the whole, even taking Lewis's testimony into account, we are not definitely and firmly convinced that the trial court erred by concluding that respondent had yet to demonstrate her mental health was stable. That is, even if she had made progress in therapy as Lewis stated, respondent's attitude toward other service providers suggests that she had not fully internalized the benefits of her treatment.

Finally, respondent argues that the trial court failed to give credit to what she had accomplished in the face of extreme obstacles. In particular, respondent alleged that, despite undergoing cancer treatment and dealing with the critical illness of her own mother, she visited the children on a regular basis and sought out counseling services on her own initiative. Contrary to respondent's assertion, however, the evidence did not establish that she was visiting the children "on a regular basis" and "complying and benefitting" from services. JAH's foster mother testified that, not considering the periods during which respondent had other obligations, respondent still only attended approximately 75% of visits. And as discussed earlier, the record suggests that respondent did not fully benefit from the services she voluntarily participated in.

Affirmed.

/s/ Anica Letica
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra