STATE OF MICHIGAN

COURT OF APPEALS

In re D. R. REIDT, Minor.

UNPUBLISHED
April 18, 2019

No. 345320
Branch Circuit Court
Family Division
LC No. 15-005312-NA

Before: BORRELLO, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(*ii*) (failure to protect from sexual abuse and reasonable likelihood of reoccurrence), (c)(*i*) (failure or inability to rectify conditions of adjudication), and (g) (failure to provide proper care and custody). We affirm.

I. BACKGROUND FACTS & PROCEDURAL HISTORY

This Court previously affirmed the trial court's termination of mother's parental rights to two older children under MCL 712A.19b(3)(b)(*ii*) after it found that she failed to protect them from sexual abuse perpetrated by her boyfriend and the existence of a reasonable likelihood of reoccurrence. See *In re Miller*, unpublished per curiam opinion of the Court of Appeals, issued April 28, 2016 (Docket No. 329811). While in jail for lying to the police, a charge stemming from her conduct during the criminal investigation into the sexual abuse committed by her boyfriend, mother gave birth to the minor child. The Department of Health and Human Services (DHHS) immediately obtained a removal order placing the minor child into its protective custody, care, and supervision and sought termination of mother's parental rights to the newborn minor child, arguing that there was no appreciable change since the previous termination.

At the termination hearing, the trial court heard evidence from a limited licensed psychologist that mother was unable put her own needs ahead of her children and that she still did not accept full and complete responsibility for her role in enabling the sexual abuse of her two older children. The psychologist also testified that mother took "liberties with facts," continued to lie about the sexual abuse committed by her ex-boyfriend, and possessed "a mixed personality disorder with predominant histrionic and narcissistic patterns," which led to mother's inability to maintain stability in her life. In the psychologist's opinion, mother's issues were

"characterological," meaning that her behaviors and thoughts had been displayed for a long time and were unlikely to change.

The trial court also heard testimony from mother, who testified that she was trying to improve her parenting skills. Mother agreed that it was not fair for her minor child to have to wait but that she "would like to try and complete these classes and programs for" the minor child's sake. Mother's caseworker testified that mother's supervised visitations with the minor child were "going fine" and that there was no disadvantage with providing mother more time, but she expressed concern that it may take too long for mother to correct her issues to the degree necessary for the department to feel comfortable recommending reunification. While acknowledging the serious nature of mother's previous termination and her current inability to care for and protect the minor child, the trial court, "somewhat reluctantly," found that it would not be in the child's best interests to terminate parental rights. The trial court stated its intention to revisit the issue of mother's rehabilitation or continued lack of fitness at some future point.

Over the course of the next 19 months, the DHHS provided mother with various services, including counseling, educational programs, and continued supervised parenting time. Mother made significant efforts to comply with the department's recommendations and to participate fully in these services. However, even after the provision of extensive services, mother's updated psychological evaluation "was almost identical to her previous psychological evaluation, with the same concerns being noted," and demonstrated that she "has not shown that she benefited from services offered to her." The DHHS filed a second petition seeking the termination of mother's parental rights.

At the second termination hearing, the same psychologist who had testified at the earlier termination hearing testified that mother was "very adept at saying what she thinks you want to hear," even if it only is "to go through the motions," which was consistent with all of mother's psychological evaluations dating back to 2015. The psychologist believed that mother did not show a benefit from the services provided, and, in the psychologist's professional opinion, merely parroted "the lingo of what to say" without demonstrating any follow-through or internalization. She believed that mother had issues with interpersonal relationships and finding stability in relationships. Because of mother's instability, the psychologist did not believe that mother would ask for help, even if she needed it. Mother's family support worker testified very favorably about mother's preparation for and participation in supervised parenting time. However, a foster-care specialist testified that the DHHS had serious reason for concern about mother's ability to safely and effectively parent the minor child. According to the foster-care specialist, although mother had made progress in supervised visits and obtained suitable employment and housing, serious reason for concern remained. The DHHS believed that mother was dishonest about with whom she associated and invited into her home life. The foster-care specialist described two different recent occasions when men whom mother invited into her home later robbed her or assaulted her, requiring police involvement. The DHHS viewed these events as a major threat to the health and well-being of the minor child, who remained nonverbal and unable adequately seek help. The trial court concluded that termination was proper under MCL 712A.19b(*ii*), (c)(*i*), and (g) and in the minor child's best interest. This appeal followed.

II. STATUTORY GROUNDS FOR TERMINATION

Mother argues that the trial court clearly erred in finding statutory grounds for termination. We disagree.

A. STANDARD OF REVIEW & GENERAL LAW

This Court, in *In re Dearmon*, 303 Mich App 684, 699-700; 847 NW2d 514 (2014), restated the applicable standard of review for termination cases:

> The clear-error standard controls our review of both the court's decision that clear and convincing evidence supported a ground for termination and that termination served the children's best interests. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). In reviewing the circuit court's decision, we also must give "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).

The trial court must find that at least one of the statutory grounds for termination by clear and convincing evidence in order to terminate parental rights. *In re Gonzalez/Martinez*, 310 Mich App 426, 431; 871 NW2d 868 (2015). If this Court finds that the trial court did not clearly err as to the existence of one ground for termination, this Court need not address any additional termination grounds. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

B. APPLICABLE LAW & ANALYSIS

Termination of parental rights under MCL 712A.19b(3)(b)(*ii*) is proper if

> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
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> * * *
>
> (*ii*) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

"[S]ubparagraph (*ii*) is intended to address the parent who, while not the abuser, failed to protect the child from the other parent or nonparent adult who is an abuser." *In re LaFrance Minors*, 306 Mich App 713, 725; 858 NW2d 143 (2014).

When this Court affirmed the trial court's termination of mother's parental rights to her two older children on this same statutory ground, we recognized the "overwhelming evidence that [mother] took calculated steps to shield her boyfriend from sexual assault accusations,

leaving her children vulnerable." *Miller*, unpub op at 2 n 1. We agree that the trial court appropriately declined to simply terminate mother's parental rights to the minor child as a result of the prior termination.[1] The trial court gave her an extended opportunity over the course of nearly two additional years to demonstrate meaningful change considering the relative unlikelihood that she would once again fail to act to prevent sexual or physical abuse by another to her child.

We must determine whether the trial court clearly erred in concluding that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in mother's home. As this Court explained in *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part by statute on other grounds as noted in *In re Hansen*, 285 Mich App 158, 163-164; 774 NW2d 698 (2009), judgment vacated 486 Mich 1037 (2010),

> it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement or case service plan. For example, attending parenting classes, but learning nothing from them and, therefore, not changing one's harmful parenting behaviors, is of no benefit to the parent or child.

Moreover, a parent's "history of hiding the sexual abuse and failing to prevent it" can constitute grounds for termination of a parent's rights to all of her children under MCL 712A.19b(3)(b)(*ii*). See *In re HRC*, 286 Mich App at 461.

Relying on expert testimony, the trial court found clear and convincing evidence that mother did not benefit from the services offered to her because she did not internalize the need to change her behavior and place the welfare of her children over her own needs. The psychologist, who evaluated her and had the benefit of comparing psychological evaluations over several years, concluded that her prognosis as a mother remained poor, that she had not benefited from the services provided, and that "[v]ery little" had changed since the previous evaluations. We do not discern any clear error in this determination. The mother gave birth to the minor child while in jail for lying to the police during the criminal investigation into her ex-boyfriend's sexual abuse of her two older children. While the trial court correctly gave mother an opportunity for possible rehabilitation, her proven history of enabling the sexual abuse of her children and placing the welfare of sexual abusers above that of her own children remained strong evidence

[1] Indeed, our Supreme Court has explained that trial courts may not simply speculate regarding a "reasonable likelihood" of reoccurrence simply because the parent once exposed the child to a risk that may no longer exist at the time of the termination hearing. See *In re Sours*, 459 Mich 624, 635-636; 593 NW2d 520 (1999). Similarly, a parent's due-process rights are violated when a trial court terminates parental rights on the basis of an earlier termination of parental rights if there is no clear and convincing evidence that the parent failed to remedy the circumstances leading to the earlier termination. See *In re Gach*, 315 Mich App 83, 100-101; 889 NW2d 707 (2016).

that placing the minor child in her home would result in a reasonable likelihood of sexual or physical abuse. In the professional opinion of the psychologist who evaluated mother, mother's ability to change was "contingent on her having a positive partner," and demonstrating some stability in her interpersonal relationships. At the time of the termination hearing, the mother had failed to demonstrate both.

The trial record shows that within a 19-month period since adjudication, mother allowed two different men into her home life who later either stole from her, assaulted her, or otherwise required police intervention. One of these men impregnated mother and acted in a manner that, at the time of the termination hearing, caused mother to be in the process of seeking a personal protection order against him. While there is nothing in the record that these men would have physically or sexually abused the child, mother's repeated behavior of giving access to her home to persons of such character raises serious red flags as to the likelihood of harm to the child in such an environment. See *In re Archer*, 277 Mich App 71, 75; 744 NW2d 1 (2007) (concluding that evidence that a parent continues to associate with individuals who may pose a risk of sexual or physical abuse to a child supports termination of parental rights). Moreover, the testimony suggested that mother still refuses to acknowledge full, complete responsibility for how her actions in protecting her ex-boyfriend harmed her two older children. She also continues to show a predilection toward dishonesty with herself and others that could easily jeopardize the child's safety and well-being. There also was adequate evidence in the record to support the trial court's conclusion that mother merely went "through the motions," while not internalizing any real and lasting change. On these facts, the trial court could properly conclude that mother simply could not be trusted to protect the child from physical injury or sexual abuse. See *In re HRC*, 286 Mich App at 461.[2]

III. BEST INTEREST OF THE CHILD

Mother also argues that the trial court clearly erred in determining that termination of her parental rights was in the best interest of the minor child. We disagree.

A. STANDARD OF REVIEW & APPLICABLE LAW

This Court reviews a trial court's determination regarding best interests for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "A trial court's decision is clearly erroneous '[i]f 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 Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations and quotation marks omitted).

"Once a statutory basis for termination has been shown by clear and convincing evidence, the court must determine whether termination is in the child's best interests." *In re LaFrance*

[2] Because we find that the trial court did not clearly err as to the existence of this statutory ground for termination, we need not address any of the remaining statutory termination grounds. See *In re HRC*, 286 Mich App at 461.

Minors, 306 Mich App 713, 732-733; 858 NW2d 143 (2014), citing MCL 712A.19b(5). " '[T]he focus at the best-interest stage has always been on the child, not the parent.' " *In re Payne/Pumphrey/Fortson Minors*, 311 Mich App 49, 63; 874 NW2d 205 (2015), quoting *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). "Best interests are determined on the basis of the preponderance of the evidence." *LaFrance Minors*, 306 Mich App at 733.

In considering the issue of whether termination is in the best interest of the minor child, the trial court is permitted to consider "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, [] the advantages of a foster home over the parent's home . . . the length of time the child was in care, the likelihood that the child could be returned to her parents' home within the foreseeable future, if at all, and compliance with the case service plan." *Payne/Pumphrey/Fortson Minors*, 311 Mich App at 63-64 (internal citations and quotations omitted). "In assessing whether termination of parental rights is in a child's best interests, the trial court should weigh all evidence available to it." *Id*. at 63. In addition, placement with a relative weighs against termination under MCL 712A.19a(6)(a). Indeed, "the fact that the children are in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination was in the children's best interest." *Olive/Metts Minors*, 297 Mich App at 43 (internal quotations omitted).

B. ANALYSIS

Here, the trial court recognized that mother showed some improvement by securing stable housing and regular employment, which was "a certain degree of responsibility" that the trial court did not see in the previous termination case. It further noted that mother and the minor child had never lived together, that any necessary change in mother's parenting ability was impossible without intensive long-term therapy and, even then, only was speculative.

Although mother demonstrated some progress, as further evidenced by the favorable testimony from the visitation supervisor concerning mother's preparation for visits and mother's interactions with the minor child, we agree that it was not enough. The trial court gave mother nearly two years to demonstrate that the minor child could safely live with her, but, at the time of the termination hearing, for the reasons discussed throughout this opinion, this goal still remained far out of reach. The child's need for stability and finality did not permit the trial court to wait any longer. Accordingly, we conclude that the trial court did clearly not err in finding that it was in the minor child's best interests to have long-term permanence, stability and safety, which mother could not realistically provide at that time or in the foreseeable future. See *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 638; 853 NW2d 459 (2014) (holding that termination of parental rights was in a child's best interests where mother "lacked the ability to keep her children safe or effectively parent them").

IV. CONCLUSION

Affirmed.

/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan