

STATE OF MICHIGAN
COURT OF APPEALS

In re SIMMS/SMITH, Minors.

UNPUBLISHED
June 20, 2019

No. 345566
Oakland Circuit Court
Family Division
LC No. 15-831233-NA

Before: SAWYER, P.J., and O'BRIEN and LETICA, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's order terminating her parental rights to her three children, KDS, KDS, Jr., and KAS, pursuant to MCL 712A.19b(3)(c)(i) (adjudication conditions continue to exist), (g) (failure to provide proper care and custody), and (j) (risk of harm if returned). We affirm.

The initial complaint in this case alleged medical neglect of KDS and KDS, Jr., including the failure to make or attend medical appointments for KDS, Jr., who was born prematurely, had a brain hemorrhage at birth, and was using an in-home oxygen machine. Based on anticipatory neglect, KAS was added to the case after her birth. All three children had special medical needs that required physical, occupational, and speech therapy. KAS also developed an eating disorder. The children were returned to respondent-mother's care after she appeared to be making progress, but they were removed again after her continued neglect. After the second removal, all three children were placed with KDS's and KDS, Jr.'s paternal grandmother, who made great efforts to meet the children's special medical needs and provide them with a stable home. Throughout the case, respondent-mother demonstrated that she had emotional control issues, for which she sporadically participated in counseling. Respondent-mother also had sporadic employment. And she demonstrated that she did not understand the children's medical needs. Respondent-mother also had a sporadic visitation history. She moved to Ohio during the pendency of the case, which exacerbated the issues with her visitation, participation in the children's medical appointments, and participation and benefit from the parent-agency treatment plan (PATP).

Respondent-mother first argues that the trial court clearly erred in finding that a statutory ground was proven by clear and convincing evidence. We disagree.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's determination for clear error. *In re VanDalen*, 293 Mich App at 139. "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court terminated respondent-mother's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which state:

(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:

* * *

(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, 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.

* * *

(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.

A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide the children with proper care and custody and that there will be a risk of harm if the children are returned to the parent's care. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014).

The issue that led to adjudication was medical neglect. All three children had special medical needs that required frequent medical treatment. Yet the evidence demonstrated that respondent-mother consistently failed to take the children to their medical appointments, if she

scheduled them at all. Testimony demonstrated that respondent-mother was aware of the children's medical needs, but she was not taking them seriously. The children did not begin to receive proper medical care until they were removed from respondent-mother's care. Moreover, after the move to Ohio, respondent-mother was not involved in the children's medical treatment at all. The evidence demonstrated that after three years of this case progressing, respondent-mother still did not understand the impact that her neglectful behavior had on the children. Thus, the trial court did not clearly err in finding that subsection (c)(i) was established, i.e., that the issue that led to adjudication continued to exist, and there was no reasonable likelihood that it would be rectified within a reasonable time considering the children's ages.

Regarding subsection (g), it appears that respondent-mother had the financial ability to provide for her children. She received government assistance while in Michigan and although she frequently quit her jobs, she secured other employment. However, she failed to provide for the children's special medical needs, failed to participate in many of the services offered to her, and did not benefit from the services in which she did participate, including counseling and parenting classes. Respondent-mother had sporadic visitation. Moreover, a psychological evaluation raised concerns about her ability to properly parent the children because of her immaturity. Her immaturity caused her to make decisions that were not helpful for the children, such as denying the children's need for medical care, engaging in confrontations, and moving to Ohio during the pendency of this case. Moreover, respondent-mother continued to have unresolved emotional control issues. Thus, we conclude that the trial court did not clearly err in finding that subsection (g) was established, i.e., that she failed to provide proper care or custody and could not be expected to do so within a reasonable time. For similar reasons, especially the failure to appreciate the medical needs of her children and attend to them, the trial court did not err in concluding that they would be at risk of harm if returned to her, satisfying the requirements of subsection (j).

Respondent-mother next argues that the trial court clearly erred in finding that termination was in the best interests of the children. We disagree.

The trial court must find by a preponderance of the evidence that termination was in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings of fact are reviewed for clear error. *In re HRC*, 286 Mich App at 459.

"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). In determining a child's best interests, the trial court may consider the child's bond to his parent; the parent's parenting ability; the child's need for permanency, stability, and finality; and the suitability of alternative homes. See *In re Olive/Metts* 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "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," *In re White*, 303 Mich App at 714, as well as the testimony and opinion of experts. See *In re Conley*, 216 Mich App 41, 45; 549 NW2d 353 (1996). Further, the trial court may consider a parent's unwillingness to participate in counseling. See *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). "[A] child's placement with relatives weighs against termination" *In re*

Olive/Metts, 297 Mich App at 43 (quotation marks and citation omitted). “[T]he fact that the children [were] 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 interests.” *Id.* (quotation marks and citation omitted). A trial court may also consider a parent’s inability to control her temper and her lack of income. *Id.*

The trial court concluded that there was no bond between KAS and respondent-mother and that although there was a bond with KDS, Jr., it had deteriorated since removal. It did conclude that there was a bond with KDS, but that the bond was outweighed by his need for permanency and stability. The trial court found that respondent-mother’s visitation history was inconsistent. It found that she complied with parts of the PATP, but did not benefit. The trial court recognized respondent-mother’s lack of emotional control. It concluded that the time that she spent in counseling did not improve her mental health or stability to the point that a psychologist could say that she could safely parent the children. The trial court noted that the psychologist pointed out respondent-mother’s immature nature and lack of insight as to how her neglectful behavior led to removal of the children. The court stated that respondent-mother placed her own wants above the children’s needs when she moved to Ohio. It noted that the children had been in foster care for years, KAS essentially for her entire life, and concluded that they were in need of permanency, stability, and finality. It concluded that the grandmother could provide the permanency, stability, and finality that respondent-mother could not. The trial court found that respondent-mother still did not grasp the children’s medical issues or how they affected their lives. It recognized that KDS, Jr. and KDS were in relative placement, and that while relative placement typically leaned in favor of not terminating parental rights, a guardianship would not offer these children the permanence that they needed. It noted the children’s special needs and the consistency that the grandmother provided, which contrasted with respondent-mother’s lack of recognition of the children’s special needs, and concluded that termination was the better option. Respondent further argues that because the children were all in relative placement and that the father’s rights had not been terminated yet, that this mitigated against termination. We disagree. *In re Marin*, 198 Mich App 560, 568; 499 NW2d 400 (1993). We conclude that the trial court considered the appropriate factors, and we are not “left with a definite and firm conviction that a mistake has been made,” *In re HRC*, 286 Mich App at 459, in the trial court’s best-interest determination.

Affirmed.

/s/ David H. Sawyer
/s/ Colleen A. O’Brien
/s/ Anica Letica