

STATE OF MICHIGAN
COURT OF APPEALS

In re P. L. BORCHERT, Minor.

UNPUBLISHED
May 14, 2019

No. 346347
Delta Circuit Court
Family Division
LC No. 11-000610-NA

Before: GLEICHER, P.J., and RONAYNE KRAUSE and O’BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating her parental rights to the minor child, PLB, pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody) and MCL 712A.19b(3)(j) (reasonable likelihood of harm to the child if returned to the parent).¹ We affirm.

I. BACKGROUND

On February 16, 2018, the Department of Health and Human Services (DHHS) filed a petition seeking removal of 10-year-old PLB from respondent’s care. The DHHS alleged that it was contrary to the welfare of PLB to remain in the home with respondent because (1) the home was dirty and in disarray, (2) PLB observed drug use and/or paraphernalia in the home, (3) PLB had unexplained injuries for which respondent failed to seek medical care, (4) respondent allowed known drug users to stay in the home, (5) respondent was unaware of PLB’s whereabouts for a significant period of time on February 16, 2018, and (6) respondent was experiencing significant mental health issues and has a history of substance abuse. At the preliminary hearing held on the same date that the petition was filed, the Children’s Protective

¹ This case began on February 16, 2018 and respondent’s rights were terminated on October 5, 2018. In between those dates, the legislature amended MCL 712A.19b(3)(g). See 2018 PA 58, effective June 12, 2018. It is unclear what version of MCL 712A.19b(3)(g) was applied by the trial court, but it does not affect the outcome of this case because we conclude that respondent’s parental rights were properly terminated under MCL 712A.19b(3)(j).

Services (CPS) worker testified that PLB reported to her that she saw a man nude on the floor of her home with blood and syringes all around and that she witnessed a domestic violence incident. PLB also reported that she had not seen her father because he does bad things to her.² The trial court ordered PLB to be placed with the DHHS. The order included a provision that the DHHS had discretion to test respondent for drugs and alcohol before parenting-time visits, and it stated that visitation would not occur if she tested positive for controlled substances not prescribed to her or for alcohol.

In April 2018, respondent admitted to the trial court's jurisdiction over PLB by pleading guilty to the allegations in the petition. Respondent stated that she had "suffered with opioid addiction for thirteen years" and that she was the victim of domestic violence. She admitted that she allowed a man that she did not know very well to sleep at her house with PLB present and that he ended up passing out naked in the bathroom with syringes and that PLB observed him this way. Respondent also testified that in March 2014 PLB informed her that PLB's father sexually abused her. Respondent stated that her mother, her mother's boyfriend, and her cousin were also involved in the sexual abuse of PLB. However, respondent did not report any of the abuse that PLB disclosed. Respondent further testified that she was recently evicted and she was "staying in-between friend's houses right now." Respondent admitted that she would not be able to care for PLB if she was returned to her care that day. The trial court ordered respondent to participate in and benefit from mental health counseling, maintain suitable housing, stay in weekly contact with the DHHS, refrain from using alcohol or illegal substances, and submit to random drug and alcohol testing by the DHHS. The trial court also prohibited respondent from using "any . . . controlled substance prescribe[d] to her by a physician as part of an Opioid Treatment Program or for any other reason" and from associating with any drug users, known criminals, or individuals with a history of domestic violence.

Respondent failed to comply with her service plan. She briefly participated in inpatient substance abuse treatment, but she was discharged unsuccessfully after 9 days because she left the facility against professional advice. Respondent continued to test positive for drugs—including methamphetamine, marijuana, benzodiazepines, and buprenorphine—throughout the pendency of this case. Respondent was evicted from her apartment after it was deemed to be unsuitable for human habitation and, as a result, respondent was homeless at the time of the termination trial. Following the termination trial, the trial court determined that there was clear and convincing evidence establishing statutory grounds to terminate respondent's parental rights and that it was in PLB's best interests to do so. Accordingly, the trial court entered an order terminating respondent's parental rights, and this appeal followed.

II. STATUTORY GROUNDS

Respondent argues that the lower court erred by finding statutory grounds for termination of her parental rights. We disagree. This Court reviews for clear error a trial court's determination that there was at least one statutory ground for termination. *In re Olive/Metts*

² The parental rights of PLB's father were terminated on June 6, 2018, but he is not a party to this appeal.

Minors, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). “A trial court’s decision is clearly erroneous if 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.” *Id.* at 41 (quotation marks, alteration, and citation omitted).

The trial court may terminate a parent’s parental rights if it finds by clear and convincing evidence that one or more of the statutory grounds for termination have been met. MCL 712A.19b(3). “Only one statutory ground for termination need be established.” *In re Olive/Metts Minors*, 297 Mich App at 41.

MCL 712A.19b(3)(j) provides that the

court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence . . . [that t]here 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 comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent’s home.” *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014). In addition, a parent’s failure “to . . . obtain suitable housing” and often living “with others” during the pendency of a case supports the determination that there is a reasonable likelihood of harm if the child was returned to the parent’s care. *In re Laster*, 303 Mich App 485, 494; 845 NW2d 540 (2013).

At the termination hearing on October 5, 2018, Sergeant Timothy Moore of the Escanaba Public Safety Department testified that he oversaw respondent’s eviction from her apartment in late April or early May 2018. Respondent was still living in the apartment past the court ordered date that she was supposed to be out. According to Sergeant Moore, the apartment was “completely trashed” and “[t]here was debris everywhere,” including “dog feces, urine, drug paraphernalia, pill bottles, [and] clothing. You literally couldn’t go anywhere in the house.” Sergeant Moore stated that there were used needles on the floor, which would have been within reach of a child. There were also a number of prescription pill bottles in the apartment, and Sergeant Moore testified that “most of them were not prescribed to [respondent]. There [were] all kinds of names on the bottles.” Sergeant Moore stated that the apartment was not fit for human habitation, there was “[h]uman excrement heaped up in the toilet,” and there were “human and animal” feces everywhere. Respondent’s landlord also testified at the termination hearing that the city inspector declared the apartment unfit for human habitation. She agreed that the condition of the apartment was “toxic” and that it posed a danger to a child, yet PLB lived in the apartment with respondent. The landlord and the people she employed to help clean the apartment were very nervous about walking through the apartment because of the needles they saw everywhere.

Respondent argues that the trial court placed too much weight on the condition of her apartment when she was evicted. However, this argument is without merit as the testimony and evidence surrounding respondent’s apartment was just one of many factors the trial court considered when making its determination on statutory grounds. The foster care case manager testified during the termination hearing that respondent had not seen PLB since approximately

August 27, 2018. She was not able to determine whether the places that respondent lived after her eviction were suitable because respondent would not allow her to perform inspections. The case worker discussed going to a local homeless shelter with respondent, which would qualify her for a rapid re-housing program so that she could obtain independent housing that would have been paid for, but respondent refused to go. Further, the case manager testified that most recently, on September 5, 2018, respondent “tested positive for marijuana, benzodiazepines, and buprenorphine.” According to the case manager, respondent “state[d] that she [was] prescribed . . . Suboxone or Subutex, it’s the Buprenorphine, and Xanax, which is a benzodiazepine, but [she had] never received verification of those prescription medications.” The case manager also testified that there was a reasonable likelihood that PLB would be harmed if returned to respondent due to her substance abuse and refusal to address it and because of respondent’s inability to be in the proper state of mind to get PLB to school and appointments. She stated that PLB was reading at a second grade level at 10 years old. Further, respondent allowed PLB to wander the streets, and she did not have independent housing.

Moreover, respondent testified at the termination hearing that she was homeless, that she was unsure of the address of the home where she stayed the previous night, and that she would not be able to care for PLB. When asked why she tested positive for controlled substances during this case, respondent stated that “sometimes I honestly have no idea, and other times it’s because I use them.” She testified that she “used meth and amphetamines and marijuana,” and that if she were drug tested that day, she would test positive for marijuana. Respondent testified that she was also taking the medications she was prescribed and that she did not provide a valid prescription for those medications to CPS workers. Respondent also testified that she had been in a “toxic relationship” with a man who engaged in domestic violence and that he was not a safe person to have around PLB. In addition, the following exchange occurred between the guardian ad litem (GAL) and respondent:

GAL: If [PLB] were to be returned to you today, where would you take her?

Respondent: Today, I’m a mess right now.

GAL: Do you know when you—

Respondent: —this whole thing has just worn me out—

GAL: —can you give me an approximate time of when you’d be able to take [PLB]?

Respondent: I don’t know.

GAL: You don’t know?

Respondent: No.

GAL: Do you think it would be within any kind of a reasonable period of time?

Respondent: I wish I could start over. That's all I can say.

Accordingly, the evidence establishes that respondent failed to comply with her service plan, and respondent testified that she did not complete any of the programs for which CPS provided referrals. She did not complete substance abuse treatment or do anything to address her substance abuse disorder, her parenting program was closed out due to her lack of compliance, she continued to test positive for controlled substances without valid prescriptions, she did not keep in regular contact with the case worker, and she made no efforts to get suitable housing. As a result, there was clear and convincing evidence establishing a reasonable likelihood that PLB would be harmed if returned to respondent's care, and, therefore, termination of respondent's parental rights was proper under MCL 712A.19b(3)(j). See *In re White*, 303 Mich App at 711, 712; *In re Laster*, 303 Mich App at 494.

Respondent also argues that the trial court precluded her from having any parenting time with PLB by denying visitations while she was using marijuana, Suboxone, or buprenorphine. She argues that this runs contrary to recent Michigan public policy and that presenting the trial court with the requested information regarding her use of controlled substances was too high a burden.³ Respondent does not provide any caselaw on appeal in support of her position. When a party merely announces a position and provides no authority to support it, we consider the issue waived. *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998). Even if we were to address this argument, lack of visitation was just one of the many factors considered by the trial court in evaluating statutory grounds for termination. Respondent did not complete any of the services offered to her, she failed to obtain suitable housing, she was in a "toxic relationship" with a man who engaged in domestic violence,⁴ she continued to use drugs, she allowed PLB to wander the streets alone while in her care, and she admitted that she was not ready for PLB to be returned to her. Therefore, the trial court did not clearly err by finding a reasonable likelihood that PLB would be harmed if returned to respondent's care.

III. BEST INTERESTS

Respondent next argues that the trial court erred by finding that termination was in PLB's best interests. We disagree. This Court reviews for clear error a trial court's determination that

³ The record shows that the trial court required respondent to show that the medications she took were legally prescribed to her, that she was using them in accordance with the prescription's indications, and that her use was being appropriately monitored by the prescribing physician, so that the trial court could determine that she would not pose a danger or be a risk to PLB during visitations. Respondent failed to provide any of this information.

⁴ While there is discussion in this opinion of respondent being a victim of domestic violence, this case involves many additional issues. We are fully aware that being a victim of domestic violence is not a reason, in and of itself, to terminate parental rights. *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011).

it was in a child's best interests to terminate a parent's parental rights. *In re Olive/Metts Minors*, 297 Mich App at 40-41.

“Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests.” *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court should weigh all evidence in determining a child's best interests. *In re White*, 303 Mich App at 713. To make this determination, the trial court should consider a number of factors, including “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.” *Id.* (quotation marks and citation omitted). In addition, the trial court may “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.” *Id.* at 714.

In this case, a parent aide who was present during respondent's parenting-time visits with PLB observed that respondent and PLB had a strong bond typical of a mother and child. However, the parent aide testified that it would be in PLB's best interests for her bond with respondent to be severed because respondent was “inconsistent” and “she didn't seem to have regard for” her parenting time because “[s]he was typically late” to visits. Further, the evidence also established that respondent's parenting ability was lacking. She allowed PLB to wander outside alone and she permitted PLB to miss a substantial amount of school,⁵ causing PLB to fall significantly behind in her reading abilities. Respondent was homeless at the time of the termination trial and she testified that she was not currently able to care for PLB. In addition, PLB was exposed to domestic violence while she was in respondent's care and respondent testified that she was in a “toxic” and abusive relationship that was not safe for PLB. Respondent failed to comply with her service plan, and the CPS worker testified that respondent had not had any parenting-time visits with PLB in more than two months. There was evidence that PLB suffered injuries while she was in respondent's care, including a cat bite or a spider bite for which respondent failed to seek appropriate medical attention. In addition, PLB was exposed to respondent's drug use as well as drug use by people that respondent allowed into their home.

In contrast, a CPS worker testified that PLB was “thriving” in her foster care placement and she was progressing in school. According to the CPS worker, PLB felt “very comfortable in” her foster home, she began to refer to her foster mother as “[M]om,” and she was “dressed in clean clothing and well[-]groomed every time” the CPS worker visited. Further, PLB's foster mother expressed willingness to adopt her, which the CPS worker opined would provide permanency and stability for PLB.

Respondent argues that the trial court erred in finding that termination of respondent's rights was in PLB's best interests because the trial court caused respondent's once strong bond with PLB to deteriorate by not allowing the use of Medication-Assisted Treatment for

⁵ Respondent also took PLB out of school on at least one occasion to go to Milwaukee, Wisconsin, where respondent went to have her opioid prescriptions filled.

respondent's substance abuse disorder or visitation while respondent was testing positive for prescribed drugs. We disagree. Respondent did not cite supporting case law that this alleged mistake constituted error. Therefore, the Court considers the argument to be abandoned. *Blackburne & Brown Mortg Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004) ("An appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position. Insufficiently briefed issues are deemed abandoned on appeal.") (Quotation marks and citations omitted.) However, even addressing this argument, the trial court considered many factors aside from missed visitations in determining the best interests of PLB, including respondent's failure to complete her service plan, her continued drug use, her lack of parenting skills, and PLB's exposure to drugs and domestic violence in respondent's home. Further, the best-interest analysis focuses on the child rather than the parent. *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). Thus, the evidence supports that the trial court did not clearly err in finding that it was in the best interests of PLB for respondent's parental rights to be terminated so that PLB's need for permanency, stability, and finality could be achieved through adoption.

In sum, a preponderance of the evidence established that it was in PLB's best interests to terminate respondent's parental rights. While respondent and PLB shared a bond, respondent stopped attending parenting-time visits and she did not comply with services. When PLB was in respondent's care, she was unsupervised, she was exposed to drug use and domestic violence, and she fell behind in school. PLB was thriving in her foster care placement, she was attending and progressing in school, and her foster family was willing to adopt her.

IV. CONCLUSION

The trial court did not clearly err by concluding that there was clear and convincing evidence to establish grounds for termination under MCL 712A.19b(3)(j) and that a preponderance of the evidence demonstrated that it was in PLB's best interests to terminate respondent's parental rights.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause
/s/ Colleen A. O'Brien