

STATE OF MICHIGAN
COURT OF APPEALS

In re HILL, Minors.

UNPUBLISHED
December 26, 2019

No. 348384
Wayne Circuit Court
Family Division
LC No. 15-521544-NA

Before: FORT HOOD, P.J., and SERVITTO and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of the right the trial court's order terminating her parental rights to her minor children, JDH, JH, JH, JMH, JFH, and JDSH. We affirm.

The three oldest children initially came under the jurisdiction of the court in early 2016 due to allegations of neglect, lack of suitable housing, and untreated mental health issues of the mother. The court later took jurisdiction over the three children born during the pendency of the action. Petitioner, the Department of Health and Human Services (DHHS), ultimately filed a petition to terminate respondent's parental rights for her failure to benefit from the parent/agency plan, difficulty parenting all six of her children at one time, physical injury to JMH and JFH during unsupervised parenting time, and physical and emotional abuse to JDH. At a February 20, 2019 best interests hearing the DHHS argued, among other things, that termination was in the best interests of all six children because they had been in foster care for a lengthy period of time and, while respondent had completed and been in compliance with her parent/agency plan, she had not demonstrated that she learned or benefitted from it, and there was a chance the abuse suffered by JDH could happen to another child. The trial court terminated respondent's parental rights under MCL 712A.19b(3)(b)(i) (parent caused physical injury or physical or sexual abuse of a child and there is a reasonable likelihood of future abuse), (b)(ii) (the parent who had the opportunity to prevent the physical injury or sexual abuse failed to do so), and (c)(i) (conditions that led to adjudication continue to exist). On appeal, respondent does not challenge the trial

court's conclusion that there were statutory grounds to terminate respondent's parental rights;¹ instead, she focuses only the trial court's determination of the children's best interests.

A trial court's factual findings, including that termination is in the child's best interests, are reviewed for clear error. *In re TK*, 306 Mich App 698, 709; 859 NW2d 208 (2014). "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." *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012) (quotation marks and citation omitted).

A court may terminate a respondent's parental rights if one or more of the statutory grounds for termination listed in MCL 712A.19b(3) have been proven by clear and convincing evidence. *Id.* at 40. However, before terminating a person's parental rights, the trial court must find by a preponderance of the evidence that termination is in the best interest of the child. *In re Jones*, 316 Mich App 110, 119; 894 NW2d 54 (2016). In reviewing a determination of the best interests of the child, this Court "focus[es] on the child rather than the parent." *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). A trial court may consider a number of factors in determining whether termination of parental rights is in the child's best interest, including the following: 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. *In re Olive/Metts Minors*, 297 Mich at 41-42. In addition, 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." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). "The trial court should weigh all the evidence available to determine the children's best interests." *Id.* at 713.

The trial court found that it was in the best interests of the children to have respondent's parental rights terminated. The trial court indicated that respondent had been provided with every service possible and that she had been making progress to the point where she was given unsupervised visits. However, during these unsupervised visits, two children (twins) were injured, and JDH was physically and verbally abused to the extent that she did not feel safe. While the trial court recognized respondent's progress over the course of the last several years and general compliance with her service plan, it did not believe that she had benefitted from those services. Relying on the doctrine of anticipatory neglect ("how a parent treats one child is certainly probative of how that parent may treat other children." *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014), (quotation marks and citation omitted)), the trial court held that the abuse and neglect that happened to one child by respondent (for example, the physical and emotional abuse to JDH) may happen to the others. "[A]nticipatory neglect can militate in favor of termination" *In re LaFrance*, 306 Mich App at 730.

¹ Respondent stipulated to the existence of statutory grounds for termination with respect to five of the children.

Respondent contends that the trial court's determination that termination was in the children's best interests was erroneous because she has made significant progress on her parent/agency plan and because she has a bond with the children. She avers that the decision was especially erroneous with respect to the oldest child, JDH, and the youngest child, JDSH. We disagree.

The evidence presented in this matter indicates that respondent was generally compliant with her services and completed the services she was enrolled in. However, the fact that she completed services is not dispositive: "A parent's failure to . . . benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710. Even after years of services and counseling, the evidence established that respondent continued to struggle managing all six children at once, and on at least two occasions, even when there were only one or two children in her care, the children were injured or abused. She left one of the children at home alone, and while respondent was able to maintain housing for a period of time, it took her many, many years and the absence of her children to support and care for in order for her to progress at all. Prior to their removal, the children resided in squalor, with their basic cleanliness needs not being met. Moreover, at least one of the children was undergoing testing to determine the presence of a learning disability and several children were in therapy and/or needed to be in therapy. These issues would require substantial attention and time and respondent has demonstrated that she has difficulty parenting all of her children at once even prior to these issues. The evidence established that termination was in the children's best interests.

It is true that respondent took full advantage of her visitation time with her children, and was even awarded unsupervised visitation at one point. But, because of concerns about the well-being of the children in her unsupervised care, including the abuse to JDH and the injuries to JMH and JFH, the unsupervised visits were revoked. The testimony established that JH and JJH were in a foster home in which the parent knew how to adequately redirect their behavioral issues, and JMH and JFH were in a foster home that was willing to adopt them. While the evidence makes clear that respondent wants to be with her children, and took advantage of every opportunity she had to spend time with them, the determination of the best interests of the children does not focus on the parent. *In re Schadler*, 315 Mich App at 411.

Respondent argues that she has an especially strong bond with JDH as the oldest child who lived with her the longest, and that termination, as least as to this child, was erroneous. While the evidence shows that there was a bond between JDH and respondent, that bond does not outweigh the remaining evidence that it is in JDH's best interest to be removed from respondent. After living with respondent for a few months, JDH requested to be removed from the home because of physical and emotional abuse, including throwing her against a wall, hitting her with a broom, and criticizing her appearance and intelligence. When she was removed, she stated that she felt unsafe. JDH is now 12 years old and has been in and out of foster care since 2013. There is a great need for permanency, stability, and finality in JDH's life. The trial court did not clearly err in finding that it was in JDH's best interests for respondent's parental rights to be terminated.

Specifically as to JDSH, respondent contends that the child has not been in the foster care system as long as the other children, and that respondent would be better able to manage

parenting her with only one child. JDSH has been in the care of DHHS since she was born in September of 2018. The doctrine of anticipatory neglect is applicable to this child and there is no reason to believe that the same issues that have persisted regarding respondent's parenting ability with her other five children would discontinue and not impact JDSH. In addition, JDSH has the potential opportunity to be placed in the care of her father in the future; the father has raised children of his own previously and has a steady job and housing situation. While respondent argues that she now has adequate housing and a source of income, the serious concerns about her ability to adequately parent and concerns about the well-being of a child in her care remain. The trial court did not err in concluding that termination of respondent's parental rights was in JDSH's best interests.

Respondent also argues that her parental rights to JDH and JDSH should not be terminated because they are both placed with family members—JDH with an aunt and JDSH with her maternal grandmother. “Indeed, a child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a). . . .” *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). JDH’s and JDSH’s placement with relatives was an explicit factor to consider in determining whether the termination was in the children’s best interests, *id.*, and the trial court did consider their placement in making its determination. The trial court ruled that, even though JDH and JDSH were placed with relatives, termination was still in the best interests of the children. While JDH’s therapist recommended some sort of relationship with respondent, the foster care workers close to the case suggested that termination was in JDH’s best interest because she deserved permanency and finality. Furthermore, after JDH was removed from respondent’s home at JDH’s request, the court-ordered family therapy between the two had to be terminated because it was only making matters worse between JDH and respondent. Based on those considerations, even though she was placed with a relative, the trial court found that termination was still in JDH’s best interests. Regarding JDSH, the trial court found that, although she was placed with a relative, the doctrine of anticipatory neglect was sufficient to terminate respondent’s rights. This Court concludes that the trial court properly terminated respondent’s parental rights as to JDH and JDSH despite their placement with relatives.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto
/s/ Mark T. Boonstra