

STATE OF MICHIGAN
COURT OF APPEALS

In re A. WHITE, Minor.

UNPUBLISHED
November 26, 2019

No. 348580
Dickinson Circuit Court
Family Division
LC No. 18-000506-NA

In re WHITE, Minors.

No. 348582
Dickinson Circuit Court
Family Division
LC No. 17-000505-NA

Before: MURRAY, C.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

In these consolidated cases, respondent-mother appeals as of right the trial court's orders terminating her parental rights to her three children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). In Docket No. 348580, respondent appeals the trial court's order terminating her parental rights to ANW. In Docket No. 348582, respondent appeals the trial court's order terminating her parental rights to AW and EMW. We affirm in both appeals.

I. RELEVANT FACTS AND PROCEEDINGS

Respondent has had an ongoing open case with petitioner since October 2016. AW and EMW were removed from respondent's home in March 2017 based in part on allegations that respondent was using methamphetamine in her home and that the drugs and paraphernalia, including needles, were stored in places accessible to the children. After a preliminary hearing, the trial court authorized the petition. Subsequently, respondent pleaded no contest to the allegations in the petition concerning her methamphetamine use, which were supported by a police report stemming from a March 15, 2017 incident. She also admitted to allegations concerning her drug use and failure to complete inpatient substance abuse treatment. The trial court accepted her plea and exercised jurisdiction over the children. Among other things, the

court ordered respondent to refrain from using alcohol or controlled substances, to participate in random drug and alcohol screenings, and to follow her current mental health and substance abuse provider recommendations.¹

Respondent made little progress on her parent-agency agreement in 2017. During an April 18, 2017 dispositional hearing, foster care worker Jamie Rosten testified that respondent's recent drug screens were positive for gabapentin, methamphetamine, and amphetamine. Respondent testified at the hearing and admitted that she had used heroin. Following a July 11, 2017 dispositional hearing, the court ordered respondent to schedule an assessment to attend inpatient substance abuse treatment. Respondent began inpatient treatment in July 26, 2017, but she used gabapentin while in treatment and checked herself out early against the recommendation of the treatment provider. During a subsequent show-cause hearing, the prosecutor stated that one of respondent's recent drug screens indicated the presence of marijuana. Respondent admitted to the show-cause allegations and the court sentenced her to 10 days in jail. However, the sentence was held in abeyance for 90 days until the next dispositional review hearing, and respondent would not have to serve it unless she again engaged in contempt of court. Shortly thereafter, respondent used marijuana, Adderall, and Percocet. She also tested positive for heroin, although she denied using heroin. At an October 30, 2017 sentencing hearing on the initial contempt charge, the court noted that respondent was again pregnant. The court sentenced respondent to 60 days in jail, to be suspended if an inpatient bed became available and respondent completed treatment. ANW was born in March 2018. Subsequently, another petition was filed and respondent entered a plea to allegations in the petition concerning her history of substance abuse, her drug use during pregnancy, and her last use of controlled substances in February 2018. The court accepted her plea and found that ANW was subject to the court's jurisdiction.

Respondent made substantial progress with her parent-agency agreement over much of 2018; she attended counseling, obtained housing, attended parenting and infant care classes, and received a favorable parenting assessment. Because of her progress, the children were returned to her care in June 2018. However, respondent continued to remain unemployed and her application for Social Security disability benefits was denied. At the September 7, 2018 dispositional review and permanency planning hearing, the children's guardian ad litem expressed his concern that respondent was not participating in outpatient treatment or other substance abuse services. The court also noted that some of respondent's drug screens were diluted and that it had been reported that there were choking hazards on the floor in respondent's home. The court advised respondent of the importance of engaging in outpatient treatment.

At the December 4, 2018 dispositional review hearing, Ashley Meglathery, a caseworker with Upper Peninsula Family Solutions, told the court that respondent would be completing an assessment with Great Lakes Recovery in a week in order to obtain more intensive mental health

¹ The department also named AW's father in the petition, who later released his parental rights and is not a party to this appeal. The fathers of EMW and ANW were never identified.

and substance abuse services. Respondent had obtained a new recovery coach and a sponsor, and she had also made progress in improving the condition of her home.

In January 2019, petitioner moved the court to remove the children from respondent's home. The petition alleged that respondent had tested positive for Tramadol and gabapentin, neither of which had been prescribed. The trial court ordered that the children be temporarily removed from respondent's home. At a January 23 hearing, Meglathery described the circumstances surrounding the positive drug screen and stated that the children had been returned to their prior foster home. The court noted that respondent did not have a "drug of choice," such as alcohol or marijuana, which she would be allowed to use if she otherwise acted as a proper parent. The court found that, instead, respondent used whatever she could get her hands on, and she could not maintain sobriety for any length of time, which made the situation dangerous for the children because no one could predict what respondent would do at any given moment. The court also noted that during the two years the case had been pending, respondent had at times completely spiraled out of control. Her behavior created an imminent risk of harm to the children. It also created a risk for AW's well-being, because respondent's conduct forced AW to take on far more responsibility than she should have to as a child herself. The court continued the children in foster care. The court noted that it would consider an amended petition for termination of parental rights at the next hearing in March if petitioner provided one. Petitioner filed a supplemental petition to terminate respondent's parental rights on February 7, 2019. At a combined dispositional review and permanency planning hearing held on March 4, 2019, the court authorized the filing of the termination petition, finding that it was clear the children could not be returned home to respondent under the presenting circumstances.

At the March 20, 2019 termination hearing, in an initial statement to the court, respondent reported that she had obtained part-time employment in February and was earning \$10.50 an hour. She acknowledged that some of her drug screens had been marked as diluted and stated that she had scheduled a doctor's appointment to help determine why her creatinine levels were low. Later, respondent testified that she was living in a three-bedroom home, where she had lived since before the children were removed, she was receiving housing assistance, and she had a driver's license and a vehicle. She said she was attending an infant mental health program, a parenting program, group substance abuse therapy, individual therapy, and had started an adult trauma assessment and had been diagnosed with post-traumatic stress disorder. She was now working on dealing with trauma from her parent's divorce and from having been physically and sexually abused. She said she had been seeing a psychiatrist regularly, and had recently been prescribed a different medication for mood stabilization, one that did not trigger her addiction. Respondent denied using a controlled substance for 63 days. She discussed what would occur if she felt the urge to use and stated that she had a sober support network. She acknowledged that she could have a relapse, but claimed that she never wanted to use again.

Respondent felt that parenting time with the children went very well. She testified that she was stable and felt she was finally capable of being the mother that the children needed her to be. She understood it would be difficult to raise three children, but said she had a good support system. She acknowledged that working was a new challenge for her, but she had been able to juggle that in the past.

When asked on cross-examination about the previous time the children were returned and then she relapsed, respondent stated that she was “very very nervous” about regaining custody. She also explained that she relapsed in October 2018 because her sobriety “was in question,” and she had a bad attitude and decided to use because people were already accusing her of doing so. She admitted that she again relapsed in January 2019, even after she had attended an additional 30 days of inpatient treatment, and that she did not know what caused her January relapse. She agreed that her addiction had affected her children very negatively, AW in particular. She also agreed that the foster parents who were caring for AW could provide her with a financially stable household, but stated that she was working toward that stability as well. She touted the fact that she had not used “hard drugs” for more than two years and that her progress from her previous level of addiction was “unheard of.” She acknowledged, however, that she had previously been trying to “normalize” her addiction by telling herself that she could use other substances.

Clinical Social Worker Mary Ann Boyden McLeod stated that she had been counseling AW since July 13, 2017. When asked whether she had an opinion of AW’s best interests with respect to termination, McLeod stated that AW was in need of consistency, security, stability, and permanency. AW had worried about respondent’s actions since AW was a little girl. After an overnight visit with respondent, AW told McLeod that she liked to spend time with her friends who acted younger, because she sometimes did not think that she had enough of a childhood. McLeod observed AW act “clingingly” with respondent and try to control respondent’s actions because AW was worried whether respondent would use controlled substances when the two were not together. AW, whom McLeod had diagnosed as having long-term anxiety issues, started to become calmer when she was returned to respondent in June 2018. In January 2019, AW had begun sleeping in her own room. Before that time, she slept in the same room with respondent because she was afraid that respondent was going to use drugs. When McLeod saw AW during a January 10, 2018 therapy session, AW was devastated because she had again been removed from respondent’s home. She was sad, angry with the person who had given respondent the drugs, and did not want to keep worrying all of the time anymore. AW was happy that she had been returned to her previous foster parents. She told McLeod that she would want to visit with respondent if respondent’s parental rights were terminated. AW also strongly wanted to be placed with her siblings and maintain a relationship with them.

McLeod testified that AW had a strong relationship with respondent and loved her. Parenting time went very well. However, McLeod felt that AW needed to be in a place where she was secure and safe and not have to worry. The foster parents were providing AW with stability, consistency, security, and love, and she was doing well in school and had made friends. According to McLeod, the two-year period that the proceedings had been ongoing was taking a toll on AW. It would affect the child even more negatively if she were again returned to respondent and then again forced to leave. AW would exhibit even more controlling behavior and not want to let respondent out of her sight.

McLeod testified that she had worked for Great Lakes Recovery in the past and was familiar with the patterns of relapse and recovery. Stress factored into recovery, and McLeod stated that it was very stressful to raise children as a single parent, and it was hard to be a single parent with a 12-year-old and two other children who were one and two. Although it could be done, and respondent had done so for several months, it would be very stressful to try to maintain sobriety and take care of children.

The trial court found that petitioner presented clear and convincing evidence to establish statutory grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j), and that termination of respondent's parental rights would be in the children's best interests.

II. DISCUSSION

A. STATUTORY GROUNDS

Respondent argues that the trial court erred in finding that petitioner established a statutory ground for termination by clear and convincing evidence. We disagree.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review for clear error a trial court's ruling that a statutory ground for termination has been proved by clear and convincing evidence. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

The trial court found that grounds for terminating respondent's parental rights were established under MCL 712A.19b(3)(c)(i), (g), and (j), which authorize termination of parental rights under the following circumstances:

(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.

With respect to § 19b(3)(c)(i), the trial court found that it had been almost two years since it entered the initial dispositional order concerning AW and EMW, and one year since the disposition concerning ANW. The conditions that led to the adjudication for AW and EMW

were respondent's use of controlled substances, the presence of drug paraphernalia in the home, and domestic violence. The condition that led to the adjudication for ANW involved respondent's continued drug abuse after treatment. These conditions continued to exist at the time of the termination hearing. Respondent had maintained sobriety for 63 days at the time of the hearing. Although she claimed that she had not used "hard drugs" in some time, she had continued to use alcohol and other drugs throughout the case. She admittedly relapsed in October 2018, and again relapsed in January 2019, after having completed another inpatient treatment program. She was unable to provide a reason for her January 2019 relapse. She had not benefited from any of her substance abuse treatment. The court also noted that these relapses occurred during a period when respondent was under significant scrutiny. The court found that it was not reasonably likely that respondent would rectify this condition and remain drug free given her pattern of relapses. The court considered the length of time this proceeding had been pending and also addressed AW's need for stability and consistency, and the fact that the younger children could not continue to bounce between caregivers where they were at an age that they need to form appropriate attachments.

We find no clear error with the trial court's assessment of this ground for termination. Respondent continued to relapse, despite attending inpatient treatment programs. She admitted that one of her relapses occurred because she thought she should go ahead and use because other people thought she was already doing so. She also relapsed again after having the children returned to her and attending an additional 30 days of inpatient treatment. Her claim that this barrier to reunification had been rectified because she was no longer using "hard" drugs is not persuasive. We agree with the trial court's earlier finding that respondent's use of a variety of different controlled substances, rather than her occasional use of a "milder" drug of choice such as alcohol or marijuana that might still allow her to properly parent the children, made the situation more dangerous for the children because no one could predict what respondent would do at any given time. Respondent's inability to articulate why she relapsed in January 2019 further supports the trial court's finding that this condition had not been rectified. We also agree with the trial court's finding that it was not reasonably likely that this condition would be rectified within a reasonable time given the children's ages and AW's need for stability. This finding is supported by the length of time the children had remained in care and respondent's pattern of continued relapses. This finding is also supported by the testimony of AW's therapist about the stressors and difficulty of trying to care for multiple children while maintaining sobriety.

With respect to § 19b(3)(g), the trial court found that although respondent had a history of financial struggles, it was not basing its decision on respondent's financial ability to provide for the children. The court instead found that this ground was also supported by respondent's continued instability due to her drug use, which prevented her from providing proper care and custody. The evidence that supports the court's findings regarding § 19b(3)(c)(i) also supports the court's determination that § 19b(3)(g) had been proven.

With respect to § 19b(3)(j), the trial court again relied on respondent's instability because of her continued drug use. The court agreed that respondent would not intentionally place her children in harm's way. But it found that AW's mental well-being would be harmed if she were returned to respondent's care. This finding is not clearly erroneous. A parent's failure to comply with the parent-agency agreement is evidence that the child may be harmed if returned to the

parent's home. *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014). Respondent did not comply with the parent-agency agreement. The trial court's finding of likely mental harm to AW is supported by her therapist's testimony about AW's long-term anxiety issues, the gradual lessening of her anxiety when she was returned to respondent in June 2018, and the devastation AW felt when she was again removed from respondent's home in January 2019. The therapist testified that it would negatively affect AW even more if she were again returned to respondent and then again forced to leave.

In sum, the trial court did not clearly err when it found that the statutory grounds for termination had been established by clear and convincing evidence.

B. BEST INTERESTS

Respondent also argues that the trial court erred when it found that termination of her parental rights was in the children's best interests. We again disagree.

We review for clear error the trial court's finding that termination of parental rights is in a child's best interests. *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 63; 874 NW2d 205 (2015). "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). Whether termination of parental rights is in a child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). Factors to be considered 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." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). A trial court may consider the possibility of adoption when determining a child's best interests. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). A court may also consider whether it is likely "that the child could be returned to her parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The trial court found that it was in the children's best interests to terminate respondent's parental rights. It noted that the foster parents had provided a stable home for the children and were interested in adopting them. The court discussed that keeping a sibling group together is a priority and important, and noted that if it returned the children and removed them again, they may not be placed together. The court found that the foster parents had provided stability, security, and guidance, and could continue to do so. They had been attentive to the children's needs, had shown that the children's welfare was a clear priority for them, and had the ability to provide AW with needed treatment and therapy. They had done everything they could to foster reunification, but the court again found that respondent could not demonstrate long-term stability and consistency. The court also noted that even when the children were returned to respondent, there were issues in her home, such as the presence of choking hazards.

The court's findings are not clearly erroneous. As discussed earlier, respondent had not demonstrated that she could provide stability for the children due to her substance abuse issues. Evidence was also presented about the negative effects that this instability has had on AW. In

addition, there were problems with the safety of respondent's home when the children were previously returned to her. AW's therapist testified that AW was happy that she had been returned to her foster family's home. Further, it is generally in the best interests of children to keep siblings together. *In re Olive/Metts*, 297 Mich App at 42. The foster parents remain interested in adopting the children. Particularly considering the testimony about how AW's mental health had been affected by the extended proceedings and the trial court's findings that respondent would not be likely to have the children returned to her within a reasonable time, the trial court did not clearly err when it found that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Jane M. Beckering