

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 17, 2019

In re DAVIS/BURTON-DAVIS/CRAFT, Minors.

No. 348770
Kalamazoo Circuit Court
Family Division
LC No. 2015-000380-NA

Before: METER, P.J., and O’BRIEN and TUKEL, JJ.

PER CURIAM.

Respondent-mother¹ appeals as of right the order terminating her parental rights to the minor children KC, ABD, HBD, and RD pursuant to MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days), (c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (other conditions continue to exist), (3)(g) (failure to provide proper care and custody), (3)(h) (parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding two years), (3)(j) (likelihood of harm if children returned to parent), and (3)(i) (prior termination due to serious neglect and parent failed to rectify the conditions that led to the prior termination). We affirm.

I. FACTS

On August 17, 2015, petitioner, the Department of Health and Human Services (DHHS), filed a petition for temporary custody. The DHHS alleged in the petition that on August 16, 2015, Kalamazoo Department of Public Safety officers discovered that methamphetamine was being produced in respondent’s home while the children were present, which placed the children at a substantial risk of harm. The petition stated that the officers located a “one pot method, tubes, generator, finished product residue on a coffee filter, and 20 ounces of Methamphetamine oil in the final stages of production in an upstairs bedroom of [respondent’s] apartment.” The

¹ The two respondent-fathers of the minor children also had their parental rights terminated, but they are not parties to this appeal.

petition further stated that respondent supplied the Sudafed for the methamphetamine production. Additionally, the petition stated that that the “historical parenting capacity of [respondent] combined with the lack of current evidence to the contrary subjects the vulnerable newborns to a substantial risk of harm if returned to her care.” Specifically, the petition alleged that respondent consumed illegal methadone while pregnant with ABD and HBD and that respondent had her parental rights terminated to “at least one child.”² The trial court issued an ex parte order placing the children in protective custody with the DHHS.

On the same date that the petition was filed, the trial court held a preliminary hearing. The investigator with Children’s Protective Services (CPS), Julie Grant, explained that the petition was filed after a methamphetamine laboratory was discovered in respondent’s home where KC, ABD, and HBD lived.³ Grant stated that respondent informed her that she had a long history of substance abuse issues. Grant also reported that the children were placed with their maternal grandmother, Pamela Kieweit, in the other apartment located within the duplex that respondent lived in. The trial court found probable cause and authorized the petition based on the fact that the children were present in a home with an active methamphetamine laboratory. Respondent was given liberal parenting time with the children. The DHHS foster care worker, Emily Welch-Walker, informed the trial court that respondent had already signed her parent agency treatment plan (PATP). As part of the PATP, respondent was to participate in a mental health/substance abuse evaluation and follow the recommendations made; obtain safe, appropriate, and sustainable housing for herself and the children; participate in and benefit from a parenting class; obtain and maintain employment; and participate in random drug screens.

At an adjudication hearing on October 20, 2015, respondent pleaded no-contest to the allegation in the petition involving the methamphetamine laboratory in her home. The trial court accepted her plea and took jurisdiction over the children. Welch-Walker testified that the children could no longer live in the duplex with Kieweit because it was condemned due to the methamphetamine laboratory on the other side of the duplex. Kieweit and the children moved into a home with one of Kieweit’s co-workers.

At the first review hearing on February 5, 2016, Welch-Walker testified that respondent’s biggest barrier to reunification was positive drug screens for marijuana. Respondent also missed about half of her drug screens. Welch-Walker stated that respondent married Raymond Lee Davis, the father of ABD and HBD. She further testified that respondent had not yet obtained housing, but believed that respondent had greatly improved in parenting time. At the next review hearing on May 5, 2016, Jaznice Williams, the new DHHS caseworker, reported that respondent had obtained employment at a local greenhouse and was “doing well” seeing the

² Respondent had her rights previously terminated to two other children. Respondent abused substances and got into a car accident with the children in the vehicle. Respondent’s rights to the children were eventually terminated after she did not comply with the case service plan by failing to see the children, using drugs, and failing to take parenting classes.

³ KC was five years old and twins ABD and HBD were two weeks old when the petition was filed.

children consistently. Williams also testified, however, that respondent was still homeless and living in a vehicle with Davis. Williams stated that respondent's sentencing for the methamphetamine laboratory was delayed because she was pregnant.

On September 21, 2016, the DHHS filed a second petition requesting the removal of RD, who was born on September 10, 2016, from respondent's care. The trial court held a preliminary hearing on the same date the petition was filed and placed RD with the DHHS, who then placed RD with Kieweit and the other three children. At a permanency planning hearing on September 30, 2016, Williams reported that RD's meconium was positive for methamphetamine. In addition, respondent had missed six drug screens during the reporting period and had not started domestic violence services. According to Williams, respondent's barriers to reunification were domestic violence, mental health, substance abuse, lack of housing and employment, and an impending prison sentence. Williams admitted that respondent was appropriate during parenting time and bonded with the children, but asked the court to change the permanency goal to adoption and order the DHHS to file a termination petition because the children had been in care for over a year and still could not be returned. The trial court decided to allow respondent additional time to comply with the PATP.

Respondent pled guilty to the allegation in the second petition involving RD's positive meconium test. The plea was accepted and the court took jurisdiction over RD. Despite respondent being sentenced to 24 months to 20 years in prison, the trial court ordered that reunification was the continued goal and that respondent would have parenting time by phone or letter during her incarceration.

In August of 2017, the children were removed from Kieweit's home due to the condition of the home, inattention to the cleanliness and safety of the children, and the discovery that drugs were being sold from her home. Further, Kieweit was failing to provide prescribed medication to KC. Over the next few months, the children were moved to several different foster homes. As of April 16, 2018, all were doing well in placement; KC with her paternal grandmother, Ladeanna Nickolae, and the younger three children with respondent's first cousin, Candace Lowell.

At a hearing on April 16, 2018, the trial court found that respondent had made minimal progress on the PATP and authorized the DHHS to file a petition to terminate respondent's rights. The court stated that although respondent would be released from prison on October 24, 2018, she would need additional time following her release to rectify the barriers to reunification which continued to remain. The court noted KC, ABD and HBD had been in care for two and a half years while RD had been in care for a year and a half. The supplemental petition was filed and the termination trial took place on four days over several months being completed on March 28, 2019.

At the conclusion of the trial, the court gave an oral ruling from the bench. The court determined that termination of respondent's parental rights was supported by MCL 712A.19b(3)(a)(ii), (3)(c)(i), (3)(c)(ii), (3)(g), (3)(h), (3)(i), and (3)(j). The court explained that respondent had not benefited from counseling, she did not have appropriate housing, she still had drug issues, and she was currently incarcerated. Respondent was imprisoned for two years, and therefore, could not seek custody of the children for over 91 days. Additionally, respondent had

been in prison for a period that deprived the children of a normal home for a period exceeding two years and during that time she did not provide proper care and custody. The court also noted respondent's previous terminations resulting from substance abuse issues. The trial court did not believe that respondent would be able to rectify these issues within a reasonable time considering the children's ages.

In regard to the children's best interests, the trial court acknowledged that the children were in relative placements, which weighed against termination. However, the court noted that the experts and the psychologist agreed that termination was in the children's best interests. The children were also likely to be adopted by their placements. The court stated that the children had special needs, which needed to be addressed. The court explained that it believed that KC was thriving so well because of all the support she received from Nickolae. Ultimately, the court emphasized the amount of time that the children had been in care, three years and seven months, and stated that the children needed permanence. The court did not believe that respondent would be able to provide for the children within a reasonable time. As a result, the trial court determined that it was in the children's best interests to terminate her parental rights. This appeal followed.

II. BEST INTERESTS

Respondent's sole argument on appeal is that the trial court erred in concluding that termination was in the children's best interests. We disagree.

At the outset, we note that respondent does not challenge the statutory grounds for termination on appeal. We therefore presume that the trial court did not clearly err in finding that the unchallenged statutory grounds were established by clear and convincing evidence. *In re JS and SM*, 231 Mich App 92, 98-99; 505 NW2d 326 (1998), overruled in part on other grounds by *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).⁴

This Court reviews for clear error a trial court's determination that it was in a child's best interests to terminate a parent's parental rights. *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court is "obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving 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).

⁴ Even if we were to address the issue, we would conclude that, based on our review of the record, the trial court did not clearly err in finding at least one statutory ground for termination. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

When the trial court considers a child's best interests, the focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. The trial court should weigh all evidence in determining a child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). 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. A trial court can also consider the length of time the child "was in foster care or placed with relatives," and whether it was likely that "the child could be returned to [the parent's] home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

First, respondent argues that although the trial court acknowledged that the children were in relative placements, it failed to set forth any "balancing test" as to how the relative placements were outweighed by other factors. We disagree. In the trial court's best-interest analysis, it acknowledged that the children were placed with relatives. KC was placed with her paternal grandmother. ABD, HBD, and RD were placed with their maternal first cousin. The trial court stated that this fact weighed against termination. However, the trial court explained that the experts agreed that termination of respondent's parental rights was in the children's best interests, and that the children were likely to be adopted by their placements. The trial court further explained that the children had special needs. Respondent argues that the trial court failed to outline those special needs, but the termination proceedings in this case were lengthy and the special needs of the children were discussed throughout.⁵ KC had attention deficit hyperactivity disorder (ADHD) that had to be managed with medication and the trial court specifically noted that she was seeing a counselor and doing exceptionally well in the care of Nickolae, who the trial court referred to as KC's "rock." ABD and HBD were involved in the Early Intervention Program for help with behavioral issues and they also required speech therapy. RD was participating in Early On services for speech delay. In addition, HBD and RD had extremely high lead levels that were being monitored through their diet and blood draws every three months in order to bring their lead levels down. Further, the trial court emphasized the length of the case and the fact that the children needed permanency, and also stated that someone still struggling with substance abuse could not provide the stable environment that the children needed. The case had been ongoing for three years and seven months, so the trial court gave respondent a significant amount of time to rectify the barriers that led to removal of the children. Notably, the DHHS first requested to file a termination petition after one year had passed from the time of removal, so the trial court gave respondent an additional two years and seven months to work on the PATP. When ruling on best interests, the trial court stated that this amount of time was "[l]onger than we have given most of all of our other cases because there was some light at the end of the tunnel and we had hope" By the time of the termination

⁵ "[C]hild protective proceedings are viewed as one continuous proceeding." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

hearing, however, the trial court believed that it was unlikely that the children could be returned to respondent's care within a reasonable time.

Therefore, in making its ruling regarding best interests, the trial court found that the children's need for permanency, stability, and finality clearly outweighed the fact that they were in relative placement. The trial court also found that the children's caretakers could provide for their special needs, unlike respondent who admitted that she had not engaged in any services since being released from prison—she had stopped counseling, she was non-compliant with drug screening, she was not taking medication or seeking treatment for her mental health, and she was still abusing methamphetamine. Further, the trial court had already noted that respondent was again in jail for violating her parole and prior to going to jail, she was still living with Kieweit, which was not appropriate housing for the children. Thus, the trial court did not clearly err in concluding that respondent's failure to successfully address the barriers to reunification after more than three years outweighed the fact that the children were placed with relatives. See *In re Olive/Metts Minors*, 297 Mich App at 40. See also *In re LaFlure*, 48 Mich App 377, 388; 210 NW2d 482 (1973) (stating that children have the "right to a stable and decent environment in which to mature").

Next, respondent argues that she had a strong bond with KC and that, given KC's age (eight years old at the time of termination), "it would serve little purpose to terminate" her parental rights. Respondent did not cite case law in support of her position, nor does she allege that the trial court made a mistake constituting an 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, Nickolae testified regarding her consistent involvement with KC at the termination hearing and stated that she had been KC's primary caretaker the vast majority of her life.⁶ Nickolae specifically stated that she had a strong relationship with KC and had concerns regarding respondent. Additionally, while respondent was incarcerated, KC had to be encouraged by Nickolae to draw pictures for respondent or write to her. Although KC did ultimately send pictures to respondent in prison, respondent sent multiple inappropriate letters to KC degrading Nickolae. Further, there is little evidence that a bond existed between respondent and KC. The DHHS foster care worker who took over the case in June 2018 testified at the termination hearing that the children did not have a bond with respondent because they had not seen her in over two years and that the three younger children did not even recognize respondent's picture.

⁶ Nickolae's son (KC's father) had legal custody of KC since August 2015, when KC was an infant, but Nickolae was her primary caregiver. However, KC's father took KC to respondent's home in June 2015 because he was experiencing a relapse in drug use and checked himself into a treatment facility.

Finally, respondent argues that the trial court erred in failing to consider the children's best interests individually. However, the trial court did consider KC individually, explaining that she was thriving so well because Nickolae had always been there for her. The trial court also expressly stated that it believed that termination was in the best interests for all four children. Moreover, considering the age of the children and the fact that the youngest three were placed together, the length of the case, and respondent's failure to make any progress in her case service plan, the trial court did not clearly err in failing to consider the best interests of the three youngest children individually. See *In re White*, 303 Mich App at 715-716 (holding that the trial court is not required to make redundant factual findings concerning each child's best interests if the best interests of the individual children do not significantly differ). Accordingly, the trial court did not clearly err in concluding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Patrick M. Meter
/s/ Colleen A. O'Brien
/s/ Jonathan Tukel