STATE OF MICHIGAN

COURT OF APPEALS

In re S. R. JUAREZ, Minor.

UNPUBLISHED
December 26, 2019

No. 348830
Saginaw Circuit Court
Family Division
LC No. 17-035316-NA

In re S. R. JUAREZ and N. M. SCHNELL, Minors.

No. 348832
Saginaw Circuit Court
Family Division
LC Nos. 17-035315-NA; 17-035316-NA

Before: BORRELLO, P.J., and K. F. KELLY and SERVITTO, JJ.

PER CURIAM.

In these consolidated appeals, in Docket No. 348830, respondent-father appeals as of right the order terminating his parental rights to SRJ under MCL 712A.19b(3)(c)(*i*) (conditions that led to the adjudication continue to exist) and (*ii*) (failure to rectify additional conditions), (g) (parent fails to provide proper care or custody), and (j) (reasonable likelihood that the child will be harmed if returned to parent). In Docket No. 348832, respondent-mother appeals as of right the orders terminating her parental rights to SRJ and NMS[1] under MCL 712a.19b(3)(c)(*i*) and (*ii*), (g), and (j). We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The children were taken into the care of the Department of Health and Human Services (DHHS) on September 7, 2017, after respondent-mother slapped NMS in the face, causing

[1] Respondent-father is not the biological or legal father of NMS.

injuries that required treatment at the hospital. Respondent-mother and respondent-father were divorced and no longer living together. DHHS alleged that respondent-mother had previously entered into an agreement in May 2017 with DHHS to not allow the children to be around her boyfriend, JW, after the children witnessed respondent-mother engaged in a physical confrontation with him. Petitioner also alleged that a July 27, 2017 psychological evaluation of respondent-mother revealed that she did not possess the necessary skills to appropriately parent or supervise the children. Additionally, petitioner alleged that respondent-father failed to provide financial, physical, or emotional support for his legal and biological child, SRJ. The trial court authorized the petition and placed the children in the care of DHHS, but gave DHHS discretion, with the approval of the guardian ad litem, to place SRJ with respondent-father once a home study was complete and was favorable.

On September 26, 2017, DHHS filed an amended petition requesting termination of respondent-father's parental rights to SRJ at the initial disposition because respondent-father's parental rights to two of his children had been involuntary terminated in 2008, and his parental rights to two other children were voluntarily terminated in 2007 and 2012. The amended petition also alleged that respondent-father was convicted of domestic violence, third offense, in 2012 and that he displayed violent and angry behavior with respondent-mother, and sometimes in the presence of the children. The trial court declined DHHS's request for termination of respondent-father's parental rights at initial disposition because 10 years had passed since respondent-father's involuntary terminations and six years had passed since his domestic violence conviction, and because allegations involving respondent-mother brought the children into care. The court gave respondent-father the opportunity to demonstrate that he had changed, but warned him to aggressively participate in services in the first six months or the court would authorize the filing of a termination petition.

Both respondents entered pleas to facts establishing jurisdiction in November 2017. In relevant part, respondent-mother was ordered to engage in and benefit from parenting classes, individual counseling, domestic abuse counseling, and to visit regularly with the children. Respondent-father was ordered to have a psychological evaluation, to engage in and benefit from parenting classes, individual counseling, and regular visitation, and to obtain and maintain suitable housing and a legal income.

DHHS made a referral to a parenting class for respondent-father and scheduled his psychological evaluation for December 2017, after which referrals would be made for additional recommended services. Respondent-father failed to undergo the psychological evaluation and, although he was transporting respondent-mother to parenting time, he stayed in the car and failed to visit SRJ on at least one occasion. He did not participate in services from December 2017 until June 2018. He completed a psychological evaluation in June 2018. The evaluator recommended that respondent-father complete outpatient therapy for at least one year before being reassessed for parental fitness, and strongly recommended that respondent-father not be given the opportunity to independently parent SRJ. Respondent-father completed a 16-week parenting class, but the parent educator was unable to say whether respondent-father benefited from the class. Beginning in August 2018, respondent-father participated regularly in outpatient therapy. At the time of the termination hearing in April 2019, the outpatient therapist was working with respondent-father on meeting his own basic needs, including hygiene and eating, and she believed that respondent-father would need an additional one year to 18 months of

individual therapy before he could he could possibly parent a child. Throughout the proceedings respondent-father was "bouncing from couch to couch" and he was unemployed at the time of the termination hearing. Respondent-father attended 33 out of 72 scheduled parenting times. Parenting time never progressed beyond supervised parenting time.

DHHS referred respondent-mother first to a group parenting class, individual counseling, and domestic violence counseling. DHHS later referred respondent-mother to an individual parenting class for one-on-one coaching designed to better accommodate her intellectual impairment. The foster care worker indicated that respondent-mother failed to adequately benefit from services in the 19 months that the children had been in care. Although respondent-mother had been participating in therapy, she made only minimal progress. Respondent-mother had not attended therapy since December 2018. Respondent-mother missed 19 out of 110 scheduled visits. Respondent-mother did not make progress in her parenting skills and a case aide had to be present in the room during supervised parenting times to keep the children safe. She continued to use threats of physical violence to discipline the children. Respondent-mother attended domestic violence counseling, but continued to stay in unhealthy relationships that were domestically violent. According to the foster care worker, respondent-mother was "still at square one" at the time of the termination hearing.

DHHS petitioned the trial court to terminate respondents' parental rights in February 2019, citing that neither parent had complied with their treatment plans over the significant history of the case or overcome the barriers to reunification. After a termination hearing, the trial court agreed and terminated respondent-father's rights to SRJ and respondent-mother's rights to SRJ and NMS.

II. STATUTORY GROUNDS FOR TERMINATION

Both respondents argue that the trial court erred by finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

This Court reviews the trial court's factual findings and its ultimate determinations concerning the statutory basis for termination under the clearly erroneous standard. *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). To be clearly erroneous, a trial court's determination "must be more than maybe or probably wrong." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (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*. In reviewing the trial court's determination, this Court must give due regard to the "special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id*., citing MCR 2.613(C).

In order to terminate parental rights, the trial court must find that at least one statutory ground for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). The trial court terminated both respondents' parental rights pursuant to MCL 712A19b(3)(c)(*i*) and (*ii*), (g), and (j). These statutory grounds permit 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:
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> (*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.
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> * * *
>
> (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.
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> * * *
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> (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.

Preliminarily, we note that the trial court erred in its application of MCL 712A.19b(3)(g) to both respondents. This particular subdivision was amended by 2018 PA 58, effective June 12, 2018. The current version of subdivision (3)(g) replaced "without regard to intent" with "although, in the court's discretion, financially able to do so[.]" The permanent custody petition filed on February 20, 2019, cited the pre-amendment version of the statute, as did the court's April 10, 2019 oral ruling terminating parental rights. Because the amendment became effective on June 12, 2018, the trial court erred by failing to make findings consistent with the amended statute. However, only one statutory ground for termination is required to terminate parental rights. *Trejo*, 462 Mich at 350. Because respondent-father has not challenged termination of his parental rights to SRJ under subparagraph (3)(c)(*ii*), and because the trial court did not clearly err when it terminated respondent-mother's parental rights to SRJ and NMS pursuant to subparagraphs (3)(c)(*i*) and (*ii*), the trial court's error does not warrant reversal.

Respondent-father does not challenge termination of his parental rights under subparagraph 3(c)(*ii*). Because the trial court need only find one statutory ground for termination, *Trejo*, 462 Mich at 350, we need not address respondent-father's claims of error under subparagraph (3)(c)(*i*) and subdivision (j). Nonetheless, we note that a preponderance of the evidence supported termination of respondent-father's parental rights under both MCL 712A.19b(3)(c)(*i*) and (j).

With respect to termination of respondent-mother's parental rights under subparagraphs (3)(c)(*i*) and (*ii*), the trial court entered the initial disposition order in this case on November 30, 2017, more than 182 days before the trial court's order terminating respondent-mother's parental rights on April 10, 2019. Respondent-mother admitted to the allegations that she had a significant intellectual impairment that she needed to address to provide better care for the children. She pleaded no contest to the allegation that she slapped NMS in the face and that as a

result NMS suffered severe bruising to his face and required treatment at the hospital. Respondent-mother argues that she was not given reasonable services to rectify the conditions in light of her disability and that if she had been given more time she would have been able to rectify the conditions. She maintains that the services were not tailored to her needs, particularly during the first 10 months that the case was open, but she identifies only a parenting class that was allegedly not tailored to her individual needs. Nonetheless, DHHS did recognize at the initial dispositional hearing in November 2017 that respondent-mother needed a one-on-one parenting class and referred her to two individual parenting classes after she completed her group parenting class. At the time of the May 2, 2018 review hearing, respondent-mother was working with a parent educator who sat in during parenting time and then spent an hour with respondent-mother after the parenting time. DHHS also arranged for another hands-on parenting educator to attend parenting times and provide real-time education during the parenting time rather than during the hour after the parenting time. Despite these services, respondent-mother remained unable to safely parent the children during supervised visitations and so an aide was in the room during the visits. Respondent-mother did not, however, consistently attend parenting times. Respondent-mother's individual therapist, who was experienced in working with people with developmental disabilities and intellectual impairments, was provided a copy of respondent-mother's psychological evaluation and tailored the one-on-one therapy to meet her needs. DHHS also referred respondent-mother to domestic violence counseling. Respondent-mother did not, however, benefit from or fully participate in services. The evidence showed that respondent-mother failed to internalize what she learned during counseling and the parent classes provided to her. She continued to use improper disciplinary techniques. Respondent-mother was offered services over a 19-month period in order to rectify the conditions that led to the children's removal and other conditions and to give her an opportunity to demonstrate that she could provide proper care and custody of the children. Considering her lack of progress in recognizing and resolving these issues after 19 months, there was no reasonable likelihood that she would be able to rectify them within a reasonable period of time considering the age of the children. Accordingly, the trial court did not clearly err by finding that statutory grounds for terminating respondent-mother's parental rights were established under subparagraphs (3)(c)(*i*) and (*ii*).

III. BEST INTERESTS OF THE CHILDREN

Both respondents challenge the trial court's finding that termination of their parental rights was in the best interests of SRJ and NMS. Because a preponderance of the evidence supports the trial court's finding, we find no merit in these challenges.

"Once a statutory basis for termination has been shown by clear and convincing evidence, the court must determine whether termination is in the child's best interests." *In re LaFrance Minors*, 306 Mich App 713, 732-733; 858 NW2d 143 (2014), citing MCL 712A.19b(5). "[T]he focus at the best-interest stage has always been on the child, not the parent." *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). "Best interests are determined on the basis of the preponderance of the evidence." *LaFrance*, 306 Mich App at 733. We review for clear error a trial court's finding that termination of parental rights is in a child's best interests. *White*, 303 Mich App at 713.

In considering the issue of whether termination is in the best interests of the minor child, the trial court is permitted to consider "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, . . . the advantages of a foster home over the parent's home[,] . . . the length of time the child was in care, the likelihood that the child could be returned to her parents' home within the foreseeable future, if at all, and compliance with the case service plan." *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 63-64; 874 NW2d 205 (citations and quotation marks omitted). "In assessing whether termination of parental rights is in a child's best interests, the trial court should weigh all evidence available to it." *Id*. at 63.

Respondent-father argues that it was not in the best interests of SRJ for his parental rights to be terminated because SRJ was bonded to him, because his parenting times were appropriate and without safety concerns, and because there was the possibility that he would be able to provide finality, stability, and permanence for SRJ within three months.

Even assuming that the evidence established that respondent-father had a bond with SRJ, this is just one factor to be considered. Three-year-old SRJ had been in foster care for 19 months. Respondent-father had not demonstrated compliance with his case service plan. Respondent-father's parenting time was inconsistent and sporadic. Respondent-father's parenting time was also supervised and was attended by an aide throughout the proceedings in this case. Respondent-father did complete a parenting class, but the parent educator did not say that respondent-father benefited from the class. Most importantly, respondent-father's therapist testified that respondent-father was unable to take care of his own basic needs, including hygiene and regular eating habits at the time of the hearing, and that he would need at least one year to 18 months of additional therapy before he might possibly be able to parent a child. Respondent-father was unemployed at the time of the hearing, had recently been denied SSI for the second time, and did not provide a plan for financially supporting SRJ. Although respondent-father claimed to have adequate housing in the home of a roommate as of December 2018, he told his therapist that he was "bouncing around" from couch to couch. SRJ was bonded with the foster parents, who were willing to provide permanency. Considering the entire record, the trial court did not clearly err by determining that a preponderance of the evidence supported that termination of respondent-father's parental rights was in SRJ's best interests. MCL 712A.19b(5).

Respondent-mother's argument with respect to the best interests of SRJ and NMS is that she should be given additional time to comply with services tailored to her needs. However, the focus of a best-interests determination is on the best interests of the children rather than the parent. Respondent-mother failed to comply with her case service plan and the case worker testified that respondent-mother was still at "square one" with her parenting skills after 19 months of services. Respondent-mother had an inconsistent visitation history with the children and had not advanced beyond supervised visitation with an aide in the room as of the time of the hearing. The bond between respondent-mother and the children was more of a friendship bond than a parent-and-child bond. Respondent-mother had a history of domestic violence and was residing with someone whom she accused of domestic violence and who was accused of domestic violence by respondent-father and respondent-father's mother. The children were doing well in the foster home where they had been placed at the commencement of the case and the foster parents were willing to adopt the children. In light of all the evidence available to the

court and presented at the hearing, the court did not clearly err by determining that a preponderance of the evidence supported that termination of respondent-mother's parental rights was in the best interests of the children. MCL 712A.19b(5).

Affirmed.

/s/ Stephen L. Borrello
/s/ Kirsten Frank Kelly
/s/ Deborah A. Servitto