

STATE OF MICHIGAN
COURT OF APPEALS

In re THOMPSON, Minors.

UNPUBLISHED
November 21, 2019

No. 348944
St. Clair Circuit Court
Family Division
LC No. 17-000350-NA

Before: RONAYNE KRAUSE, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's termination of her parental rights to her minor children, DT, CT, and AT, under MCL 712A.19b(3)(g) and (j). We affirm.

I. BACKGROUND

Respondent-mother is the biological mother of three children, DT, CT, and AT. The children were removed from respondent-mother's and respondent-father's care in September 2017 after respondent-father assaulted respondent-mother in the presence of the children. Respondent-mother had a history of leaving the children in the care of others, sometimes in separate homes, and respondent-mother had failed to adequately attend to the children's immunizations. Petitioner attempted to provide respondent-mother with pre-removal services, but respondent-mother failed to attend eight separate interviews. After the trial court assumed jurisdiction over the children, petitioner placed the children with the maternal grandparents. The trial court ordered respondent-mother to participate in a case-service plan which, among other things, required her to attend individual therapy, screen for controlled substances, maintain suitable housing and income, and participate in service referrals.

Respondent-mother was inconsistent at best in complying with her treatment plan. Regarding therapy, respondent-mother would meet with her therapist occasionally, often when she was having a personal crisis, but would then fail to appear for weeks at a time. Indeed, at one point in this case, respondent-mother's therapist closed respondent-mother's case because she had not heard from her. Use of controlled substances was a consistent issue for respondent-mother as well. Respondent-mother consistently failed to attend random drug screens and often tested positive for cocaine at the screens she did attend. Respondent-mother's therapist testified that respondent-mother was not initially concerned about her substance abuse. Indeed,

respondent-mother did not admit that she had a substance-abuse issue until the termination trial. Respondent-mother did not complete extensive substance-abuse treatment, opining that she was too busy with work to do so.

Regarding her employment, respondent-mother failed to maintain a consistent, appropriate job. While, at times, respondent-mother reported that she was gainfully employed with multiple companies, respondent-mother would occasionally be unemployed. Moreover, respondent-mother reported to petitioner several job changes throughout the pendency of this case, despite petitioner's warning that multiple job changes would not show consistent employment. Near the end of the trial court's jurisdiction, respondent-mother admitted to petitioner that she had been lying about her employment and that she was working "under the table" for a friend's tree-cutting business and dancing at a club at nights. Regarding her housing, while respondent-mother did move into a home with respondent-father at one point, she had trouble making consistent payments on the house and, by the end of the case, had moved in with her sister.

During their placement with the maternal grandparents, the children were involved in a serious car accident. The maternal grandmother was killed in the accident and CT and AT were also injured, but recovered from their physical injuries. DT, however, suffered serious injuries for which he will need lifelong care. As DT was unable to talk, walk, feed himself, or use the bathroom alone, DT remained in the hospital and rehabilitation programs for the remainder of the case. Respondent-mother initially visited DT in the hospital almost daily, but her visits with the child waned to the point where respondent-mother did not visit the child at all.

Although CT recovered from his physical injuries, he developed posttraumatic stress disorder as a result of the accident. Respondent-mother continued visits with CT and AT, although she often showed up late. By the end of the case, CT and AT were struggling with the visits, and CT would often refuse to exit the car. At some point, the visits for respondent-mother and respondent-father were separated. On one occasion, respondent-mother was leaving her visit when respondent-father showed up with another woman for his visit with the children. Respondent-mother refused to leave, although her visit was over, and all three adults began yelling at each other. CT was scared and confused during this time and kept running to and clinging to both parents. The adults, however, continued to scream and curse at each other, with respondent-mother and the other woman indicating that they would go outside and fight.

In November 2018 petitioner petitioned the trial court to terminate respondent-mother's parental rights and suspend respondent-mother's parenting time. By that time, respondent-mother had become pregnant, although she continued to use cocaine and ultimately miscarried. Shortly thereafter a video surfaced on respondent-mother's social-media account showing her cutting and bagging cocaine. At the termination hearing in March 2019, respondent-mother admitted that, in her current state of mind and with her current issues, she would be unable to care for the children and it would be unsafe for the children to be in her care.

Ultimately, the trial court found statutory grounds to terminate respondent-mother's parental rights under MCL 712A.19b(3)(g) and (j) on the basis of respondent-mother's untreated substance abuse, minimal involvement with DT, and failure to comply with the case-service plan. The trial court found that termination was in each child's best interests for substantially the

same reasons. This appeal followed the trial court's termination of respondent-mother's parental rights to DT, CT, and AT. The trial court also terminated respondent-father's parental rights to the children; however, respondent-father is not a party to this appeal.

II. ANALYSIS

On appeal, respondent-mother challenges both the trial court's statutory-grounds findings and its finding that termination was in her children's best interests. "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). Once a ground for termination is established, the trial court must order termination of parental rights if it finds that termination is in the child's best interests. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "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).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(g) and (j), which authorize termination if the trial court finds by clear and convincing evidence either of the following:

(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.

Respondent argues that she has never harmed her children, that she has provided for them, and that she was making improvements in her case before the termination of her parental rights. The record, however, belies these assertions. Throughout the pendency of the case, respondent-mother consistently failed to address her substance-abuse issues, to maintain legal employment, and to maintain stable housing. By the end of this case, respondent-mother had been filmed cutting and bagging cocaine. Even more concerning was that respondent-mother became pregnant and continued to use controlled substances. Respondent-mother failed to attend the majority of her therapy sessions and did not complete substance-abuse treatment. Respondent-mother failed to attend visits with DT and, during a visit with CT challenged another adult to a fight while CT was nervously clinging to her parents.

"A parent's failure to participate in and 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 701, 710; 846 NW2d 61 (2014). "Similarly, 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." *Id.* at 711. Accordingly, because respondent did not adequately participate in or benefit from her case-service plan, the trial court did not clearly err by finding that statutory grounds existed to terminate her parental rights to each child under MCL 712A.19b(3)(g) and (j).

Regarding the children's best interests, respondent argues only that she is bonded with the children and that she "is working her way back from the los[s] of her mother and serious injury to her sons." Respondent's assertion of a bond with her children, however, is dubious given that, near the end of this case she nearly completely failed to visit DT in the hospital or rehabilitation center and her visits with the other children had deteriorated to the point where the one child refused to exit the car to attend the visit. As already discussed, the record also belies respondent-mother's assertion that she was working toward reunification. Respondent-mother appears to claim that the accident set back her substance-abuse recovery and limited her progress on her case-service plan. Yet, respondent-mother's failure to comply with the case-service plan predates the accident. In any event, we cannot conclude that it is in the best interests of the children to continue the parental rights of a parent who responds to a tragedy by abusing controlled substances, lying to caseworkers, and abandoning one of her children. Accordingly, we cannot conclude that the trial court clearly erred by finding that termination was in each child's best interests.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher