

STATE OF MICHIGAN
COURT OF APPEALS

In re HICKMAN, Minors.

UNPUBLISHED
March 24, 2020

No. 349941
Wayne Circuit Court
Family Division
LC No. 12-510620-NA

Before: M. J. KELLY, P.J., and FORT HOOD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating her parental rights to her children, LH and MH, under MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood of harm if child is returned to parent). We affirm.

I. FACTUAL BACKGROUND

Petitioner, the Department of Health and Human Services (DHHS), filed a petition to terminate respondent’s parental rights due to her improper supervision of the children. According to DHHS, termination was in the best interests of both children because LH and MH lacked stability and safety living with respondent, particularly in light of respondent’s mental health issues and use of drugs in the home. On appeal, respondent argues that the trial court erred in finding that statutory grounds to terminate respondent’s parental rights existed because the children were never in danger of physical harm. Respondent further argues that the trial court erred by failing to give adequate weight to her bond with the children in making its best-interest determination. We disagree.

II. STATUTORY GROUNDS

This Court reviews the trial court’s findings regarding statutory grounds for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if the reviewing court is “left with a definite and firm conviction that a mistake has been made.” *In re Gonzales/Martinez*, 310 Mich App 426, 430-431; 871 NW2d 868 (2015).

MCL 712A.19b(3)(g) provides that the court may terminate parental rights if it finds, by clear and convincing evidence,

[t]he 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.

MCL 712A.19b(3)(j) provides a ground for the court to terminate a respondent's parental rights if it finds, by clear and convincing evidence,

[t]here 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.

“Only one statutory ground need be established by clear and convincing evidence to terminate” a respondent's parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). However, in this case, we conclude that clear and convincing evidence existed to support the trial court's conclusion that both statutory grounds existed.

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(g) because it determined that respondent's episodes of mania and unresolved mental health issues, in addition to her long-term drug habits, impeded her ability to care for LH and MH and posed a risk of harm to them. In making its determination, the trial court considered respondent's admission that she had not taken her psychotropic medication for a year, and evidence that respondent used drugs in the home in which she lived with LH and MH. The court noted LH's special needs and the young age of both of the children, and considered the instability that came with a parent who abuses drugs and does not engage in necessary mental health treatment. Respondent's drug abuse resulted in her hospitalization at least once, and her lack of appropriate care resulted in multiple Child Protective Services (CPS) interventions in the past. Respondent was unable to provide proper care and custody for LH and MH, and on the basis of her history of mental health and drug abuse issues, as well as her history with CPS, the trial court did not clearly err in finding that a statutory ground for termination existed under MCL 712A.19b(3)(g).

In determining that there was a statutory basis to terminate respondent's parental rights under MCL 712A.19b(3)(j), the trial court again considered that respondent used drugs in the home while caring for LH and MH, and failed to take her medication. The court also considered testimony that respondent had once threatened—in the presence of her children—to commit suicide. And, while respondent enrolled in some mental health treatment programs during the lower court proceedings, respondent had multiple opportunities in the past to benefit from services and failed to do so. The record evidence suggested that respondent would continue to make that mistake. Additionally, respondent allowed her adult son, who respondent believed to have a criminal history involving sexual assault, to live with her, LH, and MH. There was also testimony that the son had untreated mental health and drug abuse issues. Overall, there was a plethora of evidence to indicate that the return of LH and MH to respondent would place them in harm, and thus, the trial court did not clearly err in determining that there was a statutory basis to terminate respondent's parental rights under MCL 712A.19b(3)(j).

III. BEST INTERESTS

Following a determination that statutory grounds for termination exist, a trial court must consider whether “termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012). “A trial court’s factual findings 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*, 297 Mich App at 41 (quotation marks and citation omitted).

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). “The trial court should weigh all the evidence available to determine the children’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). 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 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*, 297 Mich App 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 at 714.

The trial court in this case noted that, on the basis of respondent’s history with CPS, it was concerned about LH and MH being in and out of care for their entire childhoods. The court also considered respondent’s mental health and drug abuse issues, and concluded that respondent was unable or unwilling, in part on the basis of her mental illness, to provide the children with the security and stability that they needed. The trial court also noted that respondent did, throughout the case, make some progress when it came to going to therapy and taking her medication, but that overall, respondent did not demonstrate that she was willing or able to provide permanency and stability for LH and MH. Given respondent’s history with CPS, and the opportunities she had to resolve her mental health and drug abuse issues, we cannot conclude that this finding by the trial court was clearly erroneous. Moreover, while respondent contends that the trial court failed to consider her bond with the children, there was at least some testimony that the bond between MH and respondent was unclear. And in any event, the trial court had to balance that bond the young ages of the children and their need for permanency, stability, and safety. We discern no error from the manner in which the trial court balanced those factors.

Affirmed.

/s/ Michael J. Kelly
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello