STATE OF MICHIGAN

COURT OF APPEALS

In re JONES/MILTON, Minors.

UNPUBLISHED
December 22, 2020

No. 352454
Wayne Circuit Court
Family Division
LC No. 03-423145-NA

Before: CAVANAGH, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother appeals by right the termination of her parental rights to eight minor children under MCL 712A.19b(3)(a)(*i*), (b)(*i*) and (*ii*), (g), (j), and (k)(*i*) and (*iv*). We affirm.

I. BACKGROUND

On January 29, 2019, the Department of Health and Human Services (DHHS) received a report that respondent's then 14-year-old son, DM, had been "trapped" barefoot in the home's basement with moldy, standing water. DM was taken to the hospital and his feet looked to be bleached white. As initially feared, both of his feet eventually needed to be amputated because of frost bite and severe infection. DHHS immediately filed a neglect petition, and the trial court ordered that the eight minor children be removed from the home.

Through its investigation, DHHS learned that respondent had previously brought DM to the hospital on January 9, 2019, for foot pain, but took him home despite being advised by the hospital staff that the condition of DM's feet required immediate treatment and that he should be transferred to the children's hospital. Some of the minor children informed investigators that DM had to use a walker because of his foot pain and that respondent gave DM pain medication when he told her his feet were hurting. Respondent admitted to investigators that she failed to do anything about DM's foot issues. DHHS made two visits to respondent's home and described it as "deplorable." Piles of trash and clothes were found throughout the home and the home smelled of mold and mildew. The home lacked working heat.

An amended petition was authorized seeking termination of respondent's parental rights to the eight minor children. At the hearing scheduled for the adjudication, respondent—who was facing a criminal charge of second-degree child abuse—pleaded no contest to the court's

jurisdiction and to the statutory grounds for termination listed in the petition. The court ordered that respondent participate in a Clinic for Child Study. The clinician who met with respondent reported that respondent smelled heavily of alcohol, appeared intoxicated and that she had an unsteady gait, although respondent denied drinking that day. Respondent appeared at the meeting with her boyfriend who also appeared intoxicated and created a disturbance in the lobby. The clinician recommended that respondent's parental rights be terminated. Respondent was not present at the scheduled hearing where the trial court found it was in her children's best interests that her parental rights be terminated.[1]

II. ANALYSIS

Respondent first argues that the trial court erred by terminating her parental rights without affording her an opportunity to participate in services. We disagree.

DHHS "has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(b) & (c); MCL 712A.19a(2). However, reunification efforts such as creating a case service plan are not required in cases involving "aggravated circumstances" as provided in MCL 722.638(1) and (2). *In re Rippy*, 330 Mich App 350, 355; 948 NW2d 131 (2019); MCL 712A.19(a)(2). Under MCL 722.638(1), DHHS must file a petition for authorization if it determines that an adult in the child's home has abused the child[2] or a sibling and the abuse included "[l]oss or serious impairment of an organ or limb." MCL 722.638(1)(a)(*iv*). Under MCL 722.638(2), DHHS is required to seek termination at the initial disposition hearing "if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk . . . ."

The facts alleged in the amended petition constitute an aggravated circumstance under MCL 722.638(1) and (2). For reasons unknown, DM was being kept barefoot in a basement with standing sewage water in the middle of winter in a home that lacked heat. Respondent brought DM to the hospital for foot pain only to discharge him against medical advice. DM continued to complain about his foot pain to respondent but she merely provided pain medication in response. Respondent admitted to investigators that she knew about DM's foot issues and did nothing. Respondent's treatment of her son constituted abuse and an unreasonable risk of harm, resulting

[1] DHHS also sought termination of rights to the father of respondent's three youngest children but the court ordered that he be afforded an opportunity to participate in services. The legal father to four of the other children pleaded to the court's jurisdiction and was participating in a parenting plan at the time of termination. The court terminated the parental rights of an unknown father to one of the children.

[2] Child abuse is defined as "harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment . . . ." MCL 722.622(g).

in the amputation of his feet. Accordingly, DHHS was required to seek termination at the initial disposition rather than make reasonable efforts toward family reunification.[3]

Next, respondent argues that there was insufficient evidence presented to establish a statutory ground for termination.[4]

To terminate parental rights, at least one of the grounds for termination listed in MCL 712A.19b(3) must be proven by clear and convincing evidence. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). In this case, however, respondent pleaded no contest to the statutory grounds alleged by DHHS in the amended petition. We have previously rejected an argument that there was insufficient evidence for termination after the respondent pleaded no contest to there being grounds for termination. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). The same reasoning applies here, which is that "[r]espondent may not assign as error on appeal something that she deemed proper in the lower court because allowing her to do so would permit respondent to harbor error as an appellate parachute." *Id*.

Further, respondent does not contend that DHHS would have been unable to meet its evidentiary burden had it been required to present proofs. MCL 712A.19b(3)(b)(*ii*) provides that termination is appropriate when there is clear and convincing evidence that:

> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
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> * * *
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> (*ii*) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

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[3] In advising respondent of the rights she would be waving by pleading no contest, the trial court stated that if it accepted respondent's plea it would order a parenting plan for her and that if she failed to comply with it DHHS could file a petition seeking termination of her rights. This statement was plain error as a petition seeking termination had already been authorized and the next step after respondent's plea was the best-interests determination. The court later corrected itself when it stated that a parenting plan would be ordered only if the court did not terminate respondent's parental rights at the best-interests hearing. Respondent does not argue that her plea should be vacated, but only that the court's erroneous statement entitled her to services. However, courts speak through orders and judgments, *People v Osteen*, 46 Mich App 409, 417; 208 NW 198 (1973), and the trial court did not enter an order directing DHHS to prepare a case service plan for respondent.

[4] A trial court's finding that a statutory ground for termination exists is reviewed for clear error. MCR 3.977(K); *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008).

DM's medical records were admitted into evidence at the plea hearing. The records show that respondent had an opportunity to prevent severe physical injury to DM by following the doctor's recommendation to admit DM to the children's hospital, but she chose not to do so. The trial court also took judicial notice of the case file, which according to DHHS shows that respondent had six substantiated Child Protective Services (CPS) cases against her since 2003 relating to improper supervision, abandonment, failure to protect, physical neglect and physical abuse. Further, a summary of DHHS's investigation was read into the record as the factual basis for the plea. Presumably, the caseworker was prepared to testify to the deplorable condition of respondent's home and her history with CPS. Considering all of the above, there plainly would have been sufficient evidence for the trial court to find a reasonable likelihood that the minor children would suffer injury or abuse if returned to respondent's care.

Finally, respondent argues that the trial court clearly erred by finding that termination of her rights was in the children's best interests.[5] In making that determination, "the court should consider a wide variety of factors that may 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 White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (quotation marks and citations omitted).

In terminating respondent's parental rights, the trial court relied on her lack of contact with the caseworker since the children's removal; her failure to regularly participate in parenting visits before her visits were suspended; her failure to protect DM; the deplorable condition of the home; and the children's need for permanency. Respondent argues that termination was not necessary for her older children. However, the record shows a lack of parental bond with these children. At the time of termination, the ages of the eight minor children ranged from 4 to 17. The caseworker testified to observing a parenting visit where respondent interacted only with the two younger children present. Two of the older children, ages 16 and 17, declined to come to the visit because they did not want to see their mother. Further, DM was 14 years old when respondent's actions led to the amputation of his feet, so the suggestion that respondent did not pose a risk to the older children is without merit.

Respondent also argues that termination was not warranted as to the children in relative care. The trial court acknowledged that relative placement weighs against termination, *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), but reasoned that respondent's ties with the relatives were not "strong enough to keep mother in the picture." Under

[5] We review the trial court's best-interests determination for clear error. *In re Utrera*, 281 Mich App at 15. "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). The petitioner must prove by a preponderance of the evidence that termination of parental rights is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

the facts of this case, we see no clear error in that determination.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro