

STATE OF MICHIGAN
COURT OF APPEALS

In re C. BROOKS, Minor.

UNPUBLISHED
December 22, 2020

No. 352727
Washtenaw Circuit Court
Family Division
LC No. 19-000077-NA

Before: O’BRIEN, P.J., and M. J. KELLY, and REDFORD, JJ.

PER CURIAM.

Respondent appeals the trial court’s termination of her parental rights to CB. We affirm.

I. FACTUAL BACKGROUND

On August 3, 2019, following CB’s meconium screen testing positive for cocaine, and after a hospital social worker reported to Child Protective Services (CPS) that respondent had a history of contacts with CPS dating back to 2004, and a determination that her parental rights to eight other children previously had been terminated because of neglect, noncompliance with court ordered parent agency treatment plans, abuse, substance abuse, and threatened harm to those children, the Department of Health and Human Services petitioned for the termination of respondent’s parental rights.

The trial court ordered the removal of CB from respondent’s care and custody. Respondent waived her right to a trial in this case regarding jurisdiction and statutory grounds and entered a plea of responsibility respecting the statutory grounds allegations stated in the petition. The trial court held a four-day best-interest hearing and found that termination of respondent’s parental rights served CB’s best interests. Respondent now appeals.

II. STANDARDS OF REVIEW

We review for an abuse of discretion a trial court’s ruling whether to grant an adjournment. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). A court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). We review de novo whether constitutional due process has been satisfied. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005). We

review for clear error the trial court's determination that termination of respondent's parental rights served the child's best interests. MCR 3.977(K); *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "A finding 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 Mason*, 486 Mich 142, 152; 782 NW2d 747 (quotation marks, brackets, and citation omitted).

III. ANALYSIS

Respondent first argues that the trial court abused its discretion by denying her request for an adjournment. We disagree.

Under MCR 3.923(G), an adjournment of "trials or hearings in child protective proceedings should be granted only (1) for good cause, (2) after taking into consideration the best interests of the child, and (3) for as short a period of time as necessary." "Good cause" means "a legally sufficient reason and a substantial reason amounting in law to a legal excuse for failing to perform an act required by law." *In re Utrera*, 281 Mich App at 10-11 (quotation marks and citations omitted). A trial court cannot deny a party's right to attend a hearing, but the court rules applicable to child protective proceedings do not require the trial court to secure the respondent's physical presence at a hearing. See generally MCR 3.973(D); *In re Vasquez*, 199 Mich App 44, 48-49; 501 NW2d 231 (1993).

In this case, respondent failed to establish good cause for an adjournment or that an adjournment served CB's best interests. The record reflects that respondent appeared late to hearings and failed to attend on at least one other occasion. Respondent appeared at the first day of the best-interest hearing and was present when the parties, their counsel, and the trial court set the date for the second day of the hearing. Respondent does not argue that she lacked notice or an opportunity to appear.

The record reflects that respondent failed to attend the second day of the best-interest hearing despite having notice well in advance that the hearing would occur on January 21, 2020. Respondent notified her counsel via text message about two hours before the hearing that she would not attend because she purportedly faced a family emergency respecting one of her sons who she stated had been hospitalized. The trial court attempted to contact her to obtain her attendance; and when its efforts to do so were unsuccessful, the trial court left her a voicemail message requesting that she return the call, provided the courtroom's telephone number, and offered her the opportunity to attend by phone. Respondent did not respond to the trial court's call. While the trial court attempted to contact respondent, petitioner sought verification of the hospitalization of respondent's son by contacting the local hospitals including the one respondent's counsel represented to the trial court as the place where respondent went with her son. Neither local hospital confirmed such hospitalization. Respondent's caseworker attended the hearing and stood ready to testify. The trial court considered respondent's request but declined to delay the hearing because the witness was ready to testify and respondent's counsel and intern were present and able to protect respondent's interests.

The record does not support respondent's contention that the trial court abused its discretion by proceeding with the hearing in her absence. Respondent's counsel effectively cross-

examined the caseworker on each of the substantive points of her direct examination testimony. Respondent argues that her counsel lacked the ability to interrogate the caseworker with additional questions during cross-examination. Respondent, however, has not identified a single question her counsel failed to ask nor explained how her presence would have aided his cross-examination. Respondent merely speculates that she may have been able to present her counsel different versions of events that may have led her counsel to ask additional questions.

The record also indicates that respondent had an opportunity to testify on her own behalf and during her testimony she articulated her version of facts pertinent to the trial court's decision. She presented explanations for her conduct and had a full opportunity to present her case against termination to the trial court.

The record also reflects that on the last day of the hearing, the trial court obtained evidence for its consideration from respondent's employer that suggested that the ground that she claimed necessitated her absence had merely been a ruse. The evidence indicated that respondent worked her first shift at her new job rather than attend the hearing on January 21, 2020. Although the trial court did not have that information at the time of its decision, this evidence further undermines respondent's claim that the trial court abused its discretion by not adjourning the proceedings.

Respondent vaguely asserts that her rights to due process were denied. This argument also lacks merit. We consider de novo whether constitutional due process has been satisfied. *Reed*, 265 Mich App at 157. The essence of due process is fundamental fairness. *Id.* at 159, quoting *In re Adams Estate*, 257 Mich App 230, 233-234; 667 NW2d 904 (2003). "Procedure in a particular case is constitutionally sufficient when there is notice of the nature of the proceedings and a meaningful opportunity to be heard by an impartial decision maker." *Id.*; see also *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009). In this case, respondent had notice of the hearing and an opportunity to appear, and her counsel attended the hearing and ably represented her interests by effectively cross-examining the caseworker in respondent's absence. Further, respondent used her opportunity to testify and presented her version of the facts and defense against petitioner's claim that termination served CB's best interests.

The record establishes that respondent failed to show good cause justifying an adjournment. On the date of her request she only presented the trial court unsubstantiated information about her need for an adjournment. She failed to identify the child or the hospital and her reason for her absence could not be substantiated. She also failed to contact the court after the trial court left her a detailed voicemail message requesting her attendance or alternatively provided respondent an opportunity to attend the hearing by phone. Moreover, respondent failed to establish that an adjournment would serve CB's best interests. She presented nothing to show that delaying the proceedings would serve CB's best interests. Given the record in this case, the trial court did not abuse its discretion by denying respondent's request for adjournment.

Respondent next argues that termination of her parental rights did not serve CB's best interests because the trial court failed to consider her progress, her commitment to sobriety, her efforts to secure employment and housing, her ability to fulfill her treatment goals if given additional time, and her bond to CB. We disagree.

When a statutory ground for termination is proven, the trial court shall order termination of parental rights if termination serves the child's best interests in light of the evidence as set forth in the whole record. MCL 712A.19b(5). The determination must be made on the basis of the evidence on the whole record and is reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000). A trial court must find by a preponderance of the evidence that termination serves the best interests of the child before it may terminate parental rights. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court gives deference to the "trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich at 90 (citation omitted). Clear error exists if, on the entire evidence, we are left with the definite and firm conviction that the trial court made a mistake. *In re Mason*, 486 Mich at 152.

The trial court should weigh all the evidence available to determine the child's best interests. *In re White*, 303 Mich App at 713. To determine whether termination of parental rights is in a child's best interests, the trial 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 Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). 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 may consider the advantages of a foster home placement when determining a child's best interests. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). A trial court may also consider the history of child abuse. *In re Powers*, 244 Mich App 111, 120; 624 NW2d 472 (2000). Further, a child's safety and well-being, including the risk of harm a child might face if returned to the parent's care, constitute factors relevant to a best-interest determination. *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011).

In this case, the trial court considered the applicable best-interest factors and analyzed the evidence presented to determine whether termination of respondent's parental rights served CB's best interests. Evidence established that, after CB's meconium tested positive for cocaine, petitioner took steps to have him removed from respondent's care and custody within a few days after his birth. CB remained in foster care after his removal. The trial court permitted respondent supervised parenting time visits, some of which she attended. The record reflects that CB did not develop a meaningful bond with respondent. The caseworker testified that CB did not make and keep eye contact with respondent and seemed distracted while being fed. Respondent's infrequent visits appear to have prevented CB from forming an attachment to respondent. This factor, therefore, favored termination.

Respecting respondent's parenting skills, the record reflects that respondent knew how to feed, clean, diaper, and perform other parenting tasks. The caseworker, however, testified that respondent failed to consistently demonstrate her ability to focus on CB for his well-being. Evidence established that, after her discharge from inpatient substance abuse treatment, respondent failed to bring supplies to her parenting time visits despite having been provided a diaper bag, diapers, wipes, blanket, and everything she would need. To her credit, the record reflects that respondent behaved in a manner toward CB that indicated that she loved him. During the parenting time visits that she attended, respondent appropriately cared for and comforted CB. Although

respondent demonstrated that she had the basic parenting skills, the record reflects that she lacked consistency in using those skills to demonstrate that she could properly care for CB on a daily basis. Therefore, this factor also weighed in favor of termination.

Witnesses testified that CB needed permanency, stability, and finality. Respondent acknowledged these needs and admitted that she lacked the ability to immediately provide such for CB and that she needed additional time to overcome the obstacles to reunification with CB. The record reflects that CB had some special needs and required a stable environment and routine that would enable him to thrive and develop. The caseworker testified that respondent lacked the ability to provide consistency in CB's life. The trial court recognized that respondent made strides in the right direction but she could not within a reasonable time provide adequately for CB's needs for permanency, stability, and finality. The record indicates that respondent faced an uncertain future respecting maintaining sobriety and could not provide CB a stable consistent home environment. This factor favored termination of respondent's parental rights.

Evidence also established that CB experienced many advantages of living in his foster home. He had foster parents who loved him, met his every need, and expressed a desire to adopt him. They provided CB a stable environment that enabled him to grow and develop. They recognized his special needs and participated in a program with him to care for those needs. Although respondent expressed good intentions, she lacked a suitable, permanent home, and she failed to demonstrate that she could provide adequately for CB. She admitted that she could not do so in the near future. Further, she admitted that she had not fully achieved recovery from her cocaine addiction, needed additional time to work on the three-step recovery plan that she just started, and realistically faced a 50/50 chance of relapse. This factor, therefore, also favored termination.

Petitioner asserted that respondent had a history of domestic violence. The caseworker testified that, at an unspecified time in the past, respondent had been in a relationship that involved domestic violence. She opined that respondent had not developed discernment regarding toxic relationships. Petitioner did not present other evidence to substantiate that testimony. The trial court declined to consider this factor as part of its best-interest decision-making process because the testimony appeared to be based upon anecdotal evidence and opinion without further evidentiary support. Further, no evidence established that during the pendency of this case respondent engaged in a relationship that involved domestic violence. Accordingly, the trial court correctly declined to consider this factor.

Respecting respondent's compliance with her case service plan, the record reflects that respondent met two of the goals by completing inpatient treatment and obtaining employment. Her other goals, however, were not fully met. From CB's removal up to the four-day best-interest hearing, respondent missed a substantial number of parenting time visits, missed some of her therapy sessions, for over a month following her discharge from inpatient treatment lacked contact with her caseworker and refused or neglected to respond to calls and texts, and failed to obtain suitable housing. To her credit, respondent obtained employment and applied for Section 8 housing, obtained a new prescription for her medication two days before the start of the best-interest hearing, and passed one drug screen directed by the trial court during the best-interest hearing. Respondent, however, admitted that she had not overcome her substance abuse addiction and remained very vulnerable to relapse. Respondent also had a history of failing to fully comply

with the service plans in previous termination cases, all of which arose from the same underlying unresolved issues, particularly her substance abuse problem. This factor, therefore, favored termination.

Respondent's visitation history with CB also indicated that respondent failed to place CB's needs above her own. Respondent attended parenting time visits 16 out of 23 scheduled visits from September through November 2019, most of which occurred while an inpatient. After her discharge from inpatient treatment on December 2, 2019, respondent attended 6 out of 13 parenting time visits. In so doing, respondent failed to demonstrate her commitment to CB or his well-being. This factor, therefore, also favored termination.

Evidence established that while in care, CB's needs were fully met and he received the care he needed to thrive. His foster parents were devoted to his well-being and expressed their desire to adopt CB if given the opportunity. The record also reflects that uncertainty existed regarding CB's safety and well-being if returned to respondent because of her continuing vulnerability to drug addiction relapse. A high likelihood existed that, if returned to respondent's care, CB would face being removed and placed into care again in the future. Respondent had not overcome her addiction and admitted her vulnerability to relapsing. These factors favored termination.

Contrary to respondent's argument, the record indicates that the trial court considered and commended respondent for her progress, her stated commitment to sobriety, her success in securing employment, and the steps she took to obtain housing. The trial court, however, correctly found that she failed to fulfill her treatment plan goals. Further, evidence established that CB lacked a bond with her. The trial court correctly discerned that respondent remained significantly vulnerable to relapse and that her conduct after discharge from inpatient treatment and her failure to attend parenting time visits indicated the lack of readiness to consistently provide for the care and custody of CB.

A preponderance of the evidence established that CB's best interests would be best served by terminating respondent's parental rights to him. The trial court, therefore, did not clearly err by ruling that termination served CB's best interests.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Michael J. Kelly
/s/ James Robert Redford