

STATE OF MICHIGAN
COURT OF APPEALS

In re K. C. T. COOL, Minor.

UNPUBLISHED
October 22, 2020

No. 353002
Wayne Circuit Court
Family Division
LC No. 19-001864-NA

Before: GADOLA, P.J., and RONAYNE KRAUSE and O’BRIEN, JJ.

PER CURIAM.

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

I. FACTS

Respondent is the mother of five children born between 2012 and 2019. The state of Ohio retains jurisdiction over respondent’s four oldest children. KCTC, respondent’s youngest child, was born on September 27, 2019, at Beaumont Hospital in Farmington Hills. On October 7, 2019, Michigan’s Department of Health and Human Services (DHHS) filed a petition seeking jurisdiction over KCTC, and the termination of respondent’s parental rights to him.¹

The petition resulted from a referral to Child Protective Services (CPS) that alleged the presence of drugs in KCTC’s system. At birth, KCTC tested positive for methamphetamine, amphetamine and cannabinoid. The following day, KCTC experienced withdrawal symptoms and occasional tremors in his hand. In addition, upon KCTC’s birth respondent tested positive for methamphetamine and THC. A few days later, respondent disclosed to CPS her substance abuse history, which included methamphetamine and cocaine use, as well as the ongoing use of marijuana. The petition alleged that respondent’s four oldest children were removed due to her noncompliance with the service agreement provided by Ohio DHHS, which addressed her

¹ The parental rights of KCTC’s father were addressed during the trial court proceedings, but are not subject to this appeal.

substance abuse. Based on these circumstances, DHHS further alleged that respondent could not provide KCTC with adequate care and custody. The trial court authorized removal on October 15, 2019, and took jurisdiction over KCTC.

Respondent did not appear for the October 15 or the October 29, 2019 preliminary hearings. Also, respondent did not appear for the November 18 pretrial hearing. Respondent appeared via speaker phone on December 6, when the bench trial was continued to February 14, 2020, so respondent could be present in court. Respondent failed to personally appear in court on that date, and attempts to contact her by telephone were unsuccessful.

Despite this, the trial court heard testimony from Kayla Dunlap and Kristy Hreben. Dunlap, a Protective Services Worker, confirmed that KCTC tested positive for methamphetamines, amphetamines, and an unconfirmed positive cannabinoid at birth. According to Dunlap, KCTC experienced mild withdrawal symptoms with a mild tremor. Dunlap also confirmed that respondent tested positive for methamphetamines, amphetamines, and THC at KCTC's birth.

Moreover, Dunlap stated respondent's four eldest children were living with a relative in California. Dunlap testified that she spoke to respondent once, and made reasonable efforts to contact her again as well as obtain any new information from the Summit County CPS worker overseeing her case in Ohio. In addition, Dunlap testified that respondent rarely visited her four oldest children, and did not visit KCTC at any point between his birth and the February 14, 2020 bench trial.

Hreben, a foster care worker for Orchards Children's Services, had been assigned to KCTC's case since September 29, 2019. Respondent had indicated to Dunlap that she was in Ohio and staying wherever she could. Hreben reinforced Dunlap's testimony that respondent had not visited KCTC, despite being offered gas cards in order to travel from Ohio to Michigan to take advantage of supervised visits. Also, respondent had stated to Dunlap that she was employed part-time at a hotel, but did not disclose monthly income or submit any supporting documentation. Respondent had provided no financial support to KCTC since birth, and last spoke to Hreben on December 13, 2019.

Upon conclusion of the bench trial, the trial court entered an order terminating respondent's parental rights to KCTC under MCL 712A.19b(3)(g) and (j). Respondent appeals from that order.

II. STATUTORY GROUNDS

Respondent contends that the trial court erred when it found that statutory grounds for termination were established by clear and convincing evidence. We disagree.

"This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." MCR 3.977(K); *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A clearly erroneous finding exists "if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Gonzales/Martinez*, 310 Mich App 426, 430-431; 871 NW2d 868 (2015) (quotation marks and citation omitted). "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).

In this case, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more 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.

The trial court considered evidence and testimony of respondent's ongoing substance abuse, failure to seek treatment, and lack of stable housing. Specifically, KCTC testified positive for methamphetamine, amphetamine and cannabinoid at birth. Respondent also admitted to substance abuse, but failed to take significant steps in addressing this issue. Based on this history, there was no reason to believe respondent could navigate the perils of substance abuse and care for KCTC. The evidence demonstrated a reasonable likelihood of harm if KCTC were to be returned to respondent's care. Therefore, the trial court did not clearly err in finding that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(j).

Because we conclude that the trial court did not clearly err by finding that one statutory basis for termination was established by clear and convincing evidence, we need not address the second statutory ground, MCL 712A.19b(3)(g), under which it terminated respondent's parental rights to KCTC. See *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

III. BEST INTERESTS

Respondent argues that the trial court erred when it found that termination was in the best interests of KCTC because the record was inadequate and termination was premature. We disagree.

"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). Our Court reviews a trial court's decision regarding a child's best interests for clear error. *In re Medina*, 317 Mich App 219, 226; 894 NW2d 653 (2016). "A finding

is ‘clearly erroneous’ if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

Prior to terminating the parental rights of an individual, the trial court must conclude by a preponderance of the evidence that termination is in the child’s best interests. *In re Jones*, 316 Mich App 110, 119; 894 NW2d 54 (2016). When reviewing the trial court’s best interests determination, our 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 child’s best interests. *In re White*, 303 Mich App at 713. “[T]he court may consider 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 35, 41-42; 823 NW2d 144 (2012) (citations omitted). In addition, the court can consider the probability of the child being returned to the parent’s home within the foreseeable future. *In re Kaczkowski*, 325 Mich App 69, 78; 924 NW2d 1 (2018). Furthermore, the trial court may “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 found that it was in the best interests of KCTC to be removed from respondent’s care. Specifically, the trial court noted that respondent failed to make any attempt to care for KCTC since his birth. Between KCTC’s birth and the bench trial less than five months later, respondent did not visit KCTC. Testimonial evidence indicates that respondent did not call or write to check on KCTC. Such behavior negates the possibility of respondent bonding with KCTC.

In addition to the trial court’s analysis, the record showed that KCTC was living in a licensed foster home and meeting all milestones with no special needs. In contrast, respondent had shown no proof of progress in services offered by DHHS in Michigan and Ohio that provided her the opportunity to care for KCTC and address her substance abuse. Further, respondent had not utilized visitation opportunities with any of her children, and did not financially support KCTC. Respondent’s inaction shows a parent incapable of providing an adequate home and safe, stable environment for her child. Based on these facts, the trial court did not err when it determined that termination of respondent’s parental rights was in the best interests of KCTC.

Affirmed.

/s/ Michael F. Gadola
/s/ Amy Ronayne Krause
/s/ Colleen A. O’Brien