

STATE OF MICHIGAN
COURT OF APPEALS

In re SMITH/VOGEL, Minors.

UNPUBLISHED
January 21, 2021

No. 353837
Wayne Circuit Court
Family Division
LC No. 10-496888-NA

Before: K.F. KELLY, P.J., and STEPHENS and CAMERON, JJ.

PER CURIAM.

Respondent appeals the trial court’s order terminating her parental rights to the minor children, JV, BS, and CS, under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood the children will be harmed if returned to the parent’s care). We affirm.

I. BACKGROUND

This matter began in April 2018, when the Department of Health and Human Services (“DHHS”) filed a petition. The petition alleged that CS was born with amphetamines in his system, that respondent had tested positive for amphetamines, and that respondent did not have a prescription for amphetamines. It was further alleged that CS was experiencing withdrawals and had to be given morphine. Respondent had prior contacts with Child Protective Services in 2010 and 2011, and respondent had an extensive criminal history. The petition requested that the trial court remove the children from respondent’s care and custody, exercise jurisdiction, and terminate respondent’s parental rights. The petition was authorized, and respondent was granted supervised parenting time. The children were later placed with BS and CS’s father. However, after an amended petition was filed in July 2018 with respect to BS and CS’s father, the children were removed from his care,¹ and petitioner changed the goal from termination to reunification with respect to respondent.

¹ On May 6, 2019, the trial court terminated the parental rights of BS and CS’s father. The father appealed the May 6, 2019 order, and this Court affirmed the trial court’s decision. *In re Smith*

At a September 2018 hearing, respondent admitted to certain allegations in the petition. Thereafter, the trial court exercised jurisdiction as to respondent and ordered that reasonable efforts toward reunification be made. DHHS created a case service plan, which the trial court adopted. Respondent was ordered to participate in and benefit from (1) parenting classes, (2) individual therapy, and (3) substance abuse treatment, including 12-step meetings. Respondent was also ordered to complete a psychological evaluation, submit to random drug screenings, obtain a legal source of income and suitable housing, and regularly attend supervised parenting visits. Respondent's participation in the case service plan was poor, and she failed to maintain sobriety despite entering multiple inpatient treatment centers between December 2018 and July 2019. After respondent was arrested in September 2019 for drug-related crimes, she was ordered to complete inpatient treatment.

In October 2019, petitioner filed a supplemental petition, requesting that the trial court terminate respondent's parental rights to the children under MCL 712A.19b(3)(c)(i), (g), and (j). At the termination hearing, caseworkers testified about respondent's lack of progress for a majority of the proceeding. Although respondent was making progress at the time of the November 25, 2019 hearing, she was still participating in court-ordered inpatient treatment. Respondent testified that she was taking psychotropic medications and that she intended to comply with intensive outpatient services and the case service plan upon her release from treatment. After the November 25, 2019 hearing, the trial court concluded that termination was proper under MCL 712A.19b(3)(j), scheduled a best-interest hearing for February 28, 2020, and warned respondent that there was "no room for relapses anymore[.]"

Respondent was released from inpatient treatment in December 2019. Thereafter, respondent submitted to a psychological evaluation, began working with a parent partner, attended visitations with the children, and engaged in individual therapy. However, respondent did not immediately participate in outpatient services after her release from inpatient treatment. Respondent relapsed and later began treatment at a methadone treatment clinic. At the February 28, 2020 hearing, respondent requested additional time to maintain her sobriety and to comply with services. At the close of proofs, the trial court concluded that termination of respondent's parental rights was also appropriate under MCL 712A.19b(3)(c)(i) and (g), and was in the children's best interests. This appeal followed.

II. ANALYSIS

A. STATUTORY GROUNDS

Respondent argues that the trial court clearly erred by finding clear and convincing evidence supporting the statutory grounds cited in support of termination. We find no clear error warranting reversal.

"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

Minors, unpublished per curiam of the Court of Appeals, issued December 19, 2019 (Docket No. 349565). JV's father was deceased at all relevant times.

met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). A finding is clearly erroneous if, although there was evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). To be clearly erroneous, a decision must be more than maybe wrong or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). This Court must give regard “to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” MCR 2.613(C).

We conclude that the trial court did not clearly err by finding that a ground for terminating respondent’s parental rights to the minor children was established under MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) authorizes termination under the following circumstances:

The parent, although, in the court’s discretion, financially able to do so, fails to provide proper care or custody for the child[ren] 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[ren]’s age[s].

Our Supreme Court “has held that a parent’s failure to comply with the parent-agency agreement is evidence of a parent’s failure to provide proper care and custody[.]” *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

The record is replete with evidence that respondent failed to comply with and benefit from the case service plan. Respondent was referred to services multiple times over the course of the proceeding. However, as of November 25, 2019, she had not completed any services aside from inpatient treatment and had not submitted to a psychological evaluation. Although respondent completed the psychological evaluation in January 2020, began working with a parent partner, and participated in individual therapy, she had not participated in services long enough to show a benefit at the time of termination. Moreover, the parent partner had difficulty maintaining contact with respondent during the short period of time that they worked together and had to resort to locating respondent at parenting time visits. On at least one occasion, respondent did not answer the door for a scheduled appointment with the parent partner because she was sleeping.

Moreover, respondent failed to benefit from the substance abuse services that she was provided during the proceeding. While respondent had demonstrated a period of sobriety as of November 25, 2019, respondent had been in court-ordered inpatient treatment since September 23, 2019. Respondent was ordered to attend inpatient treatment as a result of her drug-related criminal charges. Shortly after respondent was released from treatment in December 2019, she began to test positive for substances. Respondent also stole Valium from the children’s maternal grandmother, purchased substances off of “[t]he street,” failed to attend outpatient treatment, and failed to consistently attend 12-step meetings. Respondent did so despite being warned that her parental rights were at stake.

Respondent consistently attended visitations with the children when she was free from incarceration and treatment. However, at times during the proceeding, respondent attended visitations when she was under the influence. Respondent also had unapproved contact with the children, which led to them being removed from their maternal grandmother’s care. Respondent also had difficulty managing all of the children at once and even briefly left a February 2020

parenting time after she became overwhelmed. JV, who is the oldest of the children, was not interactive during visits. JV indicated that he only wanted to return to respondent's care if she was "clean," and he expressed fear about returning to respondent's care. Although BS expressed an interest in returning to respondent's care, it appears to be based off of the fact that she was concerned about respondent's ability to perform household chores on her own. Respondent did not complete parenting classes during the proceeding. While she participated in several sessions, there is no indication that she benefitted from the classes.

Although respondent had appropriate housing at the time of termination, respondent did not obtain an independent income. Respondent was able to maintain appropriate housing and pay her bills because of the financial support of the children's maternal grandmother. This arrangement was precarious, however. Specifically, after the children's maternal grandmother discovered that respondent had stolen her Valium, she threatened to stop supporting respondent financially and failed to attend a visitation with the children. Importantly, respondent testified at the November 25, 2019 hearing that she would seek employment after being released from inpatient treatment, and she indicated that she was able to work. After respondent was released in December 2019, however, she failed to seek employment. Instead, respondent continued using substances that she either stole or purchased off of "[t]he street." At the February 28, 2020 hearing, respondent testified that she should have made more attempts to locate employment. Respondent acknowledged that she had free time to spend "hang[ing] out" and watching movies. Thus, the record establishes that although respondent was "financially able to do so," she was unable to provide proper care and custody at the time of termination.

Furthermore, there is no evidence that respondent would have been able to provide proper care and custody within a reasonable time given the ages of the children. Respondent demonstrated a lack of commitment during the proceeding and was either unable or unwilling to maintain sobriety unless she was confined in a treatment center. Given the lack of evidence that respondent would comply with the case service plan and would treat her long-standing substance abuse issues, it is unlikely that she would do so within a reasonable time. At the time of termination, JV was 13 years old, BS was five years old, and CS was two years old. The children had been out of respondent's care for 23 months. Because the children required consistency and permanency that respondent was either unable or unwilling to provide, we conclude that the trial court's finding that termination of respondent's parental rights was proper under MCL 712A.19b(3)(g) was not clearly erroneous.²

In so concluding, we note that respondent argues that "DHHS must make reasonable reunification efforts" and implies that such efforts were not made in this case. However, respondent does not explain or rationalize how petitioner failed to provide her with appropriate services. Rather, respondent appears to argue that she was not provided with sufficient time to complete services. Consequently, to the extent that respondent is attempting to argue that

² Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Nonetheless, we have considered them and conclude that termination was also appropriate under MCL 712A.19b(3)(c)(i) and (j).

reasonable efforts were not made, respondent has abandoned this argument on appeal. See *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 518-519; 885 NW2d 861 (2016). Nonetheless, we have briefly considered the argument and conclude that it lacks merit.

Respondent was provided with a myriad of services throughout the lengthy proceeding and never objected to the services that were offered to her. Indeed, respondent indicated through counsel at the initial dispositional hearing that she was in agreement with the recommended case service plan, and she agreed that the plan was proper during at least one subsequent hearing. Testimony at the November 2019 and February 2020 hearings establishes that respondent either failed to participate in services or failed to benefit from them. Thus, even if respondent had properly raised a reasonable efforts argument, it would be without merit given that respondent failed to uphold her “commensurate responsibility” to engage in and benefit from the services offered by petitioner. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

B. BEST INTERESTS

Respondent argues that the trial court clearly erred by finding that termination of her parental rights was in the children’s best interests. We disagree.

“The trial court must order the parent’s rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). We review the trial court’s best-interest determination for clear error. *Id.*

This Court focuses on *the children*—not the parents—when reviewing best interests. *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). “In making its best-interest determination, the trial court may consider the whole record, including evidence introduced by any party.” *In re Medina*, 317 Mich App 219, 237; 894 NW2d 653 (2016) (quotation marks and citation omitted).

[T]he 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. 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 713-714 (quotation marks and citations omitted).]

Although the record supports that respondent was bonded with the children, the record also supports that respondent lacked commitment throughout the lengthy proceeding. Even though the children were removed because CS was born with substances in his system, respondent continued to abuse substances throughout the proceeding and was charged with drug-related crimes during the proceeding. The children were also removed from their maternal grandmother’s care and placed in nonrelative foster care because respondent had engaged in unsupervised visits with them. Respondent did this despite knowing that she was not permitted to do so. Respondent also

continued to wear her wedding ring despite the fact that her husband had physically abused the children and had physically abused respondent in the presence of the children.

Moreover, JV, who had been subjected to trauma while in respondent's care throughout his life, acted detached and often isolated himself during visitations. JV reported that he only wanted to return to respondent's care if she was "clean," and he expressed fear about returning to respondent's care. BS, who was only five years old, expressed concern about respondent and believed that she needed to return home to help respondent with household chores. Although CS enjoyed the visits, he viewed his foster parents as his parental figures. Indeed, he was removed from respondent's care not long after he was born. Thus, although respondent shared a bond with the children at the time of termination, the bond was not healthy for the children. See *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2002), overruled on other grounds by *In re Sanders*, 495 Mich 394 (2014) (holding that the fact that there was a "serious dispute on the record concerning whether [the respondent] had a healthy bond of any sort with her children" supported that termination of her parental rights was in the children's best interests).

Additionally, the parent-child bond is only one factor for the trial court to consider. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). As discussed above, respondent lacked commitment during the proceeding and was unable to provide consistency, stability, and permanency at the time of termination. Indeed, at the time of termination, respondent was unemployed and had not demonstrated that she was able or willing to maintain her sobriety for meaningful lengths of time. Although respondent argues that she was fully in compliance with the case service plan, this argument is disingenuous given that respondent was only just beginning to engage in intensive outpatient treatment, had only attended a few 12-step meetings, continued to miss drug screenings, had failed to complete parenting classes, and had failed to continuously keep in contact with the parent partner. Importantly, respondent acknowledged that she continued to use substances after the November 25, 2019 hearing even though she knew that it was her last chance to prove to the trial court that she would be able to remain sober and safely parent the children.

Meanwhile, CS was doing well in his preadoptive placement, where he had the opportunity to achieve permanency and stability. The record supports that CS was bonded to his foster parents and that he called them "mom and dad." JV and BS were not in preadoptive placements, but the caseworker believed that they were "adoptable" and testified that the agency could search for preadoptive placements after termination. Although the children's maternal grandmother was willing to care for the children and placement with a relative weighs against termination, *In re Olive/Metts*, 297 Mich App at 43, the record reveals that it was not appropriate to place the children with their grandmother. Respondent often spent time at the maternal grandmother's home at the time of termination and admitted to taking her Valium without her consent in the weeks leading up to the February 28, 2020 hearing. The testimony of the maternal grandmother also demonstrated that she did not fully understand the extent of respondent's addiction and treatment. Importantly, after the maternal grandmother found out that respondent had stolen her Valium, she threatened to stop supporting respondent financially and failed to attend a visitation with the children.

Additionally, as already stated, the children were removed from their maternal grandmother's care because she permitted respondent to have unsupervised contact with the

children. Although respondent testified that she would not have additional unsupervised contact with the children and the maternal grandmother testified that she would not permit respondent to have unsupervised contact, it is clear from the trial court's findings of fact that it found this testimony to be incredible. Given respondent's proven inability or unwillingness to remain sober and comply with the treatment plan, the maternal grandmother's inability or unwillingness to enforce rules and comply with court orders, and the children's need for permanency, we conclude that the trial court did not clearly err by finding that a guardianship would not be in the children's best interests. For these reasons, the trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens
/s/ Thomas C. Cameron