STATE OF MICHIGAN

COURT OF APPEALS

In re HOWARD/MUELLER/GARRETT, Minors.

UNPUBLISHED
February 18, 2021

No. 354093
Ottawa Circuit Court
Family Division
LC No. 18-087648-NA

Before: BECKERING, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Respondent[1] appeals as of right from the trial court's order terminating her parental rights to her children, TH, PM, and AG, under MCL 712A.19b(3)(c)(*i*) (the conditions that led to adjudication continue to exist) and (*ii*) (failure to rectify other conditions), and MCL 712A.19b(3)(g) (failure to provide proper care and custody). Respondent argues on appeal that the trial court clearly erred by finding that clear and convincing evidence established any of these statutory grounds for termination of her parental rights and by finding that termination was in the best interests of her minor children. Finding no error requiring reversal, we affirm the trial court's termination order.

I. FACTUAL BACKGROUND

On April 13, 2018, Roslyn Boone, an employee of petitioner, Department of Health and Human Services (DHHS), filed a petition asking the court to take jurisdiction over AG and PM, and issue an order removing them from the care of respondent and her husband, P. Mueller.[2] The petition alleged that respondent was medically neglecting PM and endangering PM and AG

[1] "Respondent" refers to the children's mother. The trial court terminated the parental rights of PM's and AG's father in July 2020; he has not appealed that decision. The parental rights of TH's father have not been terminated.

[2] P. Mueller, the biological father of PM and legal father of AG, was incarcerated at the time as a result of having entered a plea in 2014 to assault with intent to do great bodily harm less than murder, MCL 750.84, for stabbing TH's father with a knife.

through her choice of caregivers, and that she lacked the parenting skills necessary to parent PM and AG. The petition alleged that, pursuant to a safety plan,[3] respondent had agreed to provide PM with the medications and medical attention necessary to control PM's sickle cell disease and not to leave PM and AG in the care of a certain uncle with a substance abuse problem and an untreated medical condition that limited his ability to care for the children. The petition alleged that Boone checked the prescriptions respondent had for PM and discovered that PM's 30-day supply of hydroxyurea was full, despite being filled on January 23, 2018, that PM's seven-day supply of an antibiotic, Sulfame, was full, despite being filled on September 15, 2017, and PM did not have any iron pills. As a result of not being provided the proper medications and medical attention, PM was experiencing severe pain.

A preliminary hearing was held before a referee the same day the petition was filed. Respondent testified to her involvement with CPS since January 2017 and to the terms of the safety plan she had signed. She admitted that the uncle cared for AG and PM while she was at work, despite the fact that she had agreed not to allow the uncle to care for them. Regarding PM's medical care, respondent testified that, with the exception of having missed one dosage in April 2018, she was medicating PM as prescribed. Respondent said that Boone found a full prescription for an antibiotic that had been filled on September 15, 2017, because PM did not need to take that medication, and a full bottle of the medication that had been filled on January 23, 2018, because respondent lost that pill bottle after having the prescription filled. Respondent also testified that she did not get PM's prescriptions refilled in March 2018 or April 2018 because her cell phone was broken, and that she had to reschedule PM's March 2018 appointment at Helen DeVos Children's Hospital because she lacked transportation.

Boone also testified at the preliminary hearing. She recounted the services in which respondent had participated as part of the prior CPS case,[4] and opined that respondent had not demonstrated much of a benefit from these services. She testified that the CPS caseworker, Brandy Hann, closed the case nevertheless because AG and PM were being cared for by their aunt, T. Thomas. Since the close of the CPS case, however, Thomas had stopped caring for AG and PM, and concerns arose that respondent was not giving PM her medications as prescribed and was failing to take PM to her doctor's appointments. In addition to her testimony regarding the unused medications she found in respondent's home, Boone reported that respondent had called personnel at Helen DeVos Children's Hospital because that PM was in severe pain. She also reported that PM had missed her last three monthly doctor's appointments, appointments that were necessary to monitor PM's blood levels and spleen, and that transportation should not have been a problem because respondent regularly utilized a Medicaid transportation service. Regarding the uncle, he was not an appropriate caregiver for the children because he regularly used crack cocaine, had drug paraphernalia around his home, and had an untreated medical condition that limited his ability to care for the children. Boone also testified that respondent lacked the necessary parenting skills

[3] The safety plan came about because of respondent's involvement with Children's Protective Services (CPS) from January 2017 to January 2018.

[4] Respondent participated in the Families First and the Families Together Building Solutions programs, received services from Good Samaritan, Wraparound, and Early-On, attended individual counseling, and obtained a psychological evaluation.

to care for AG and PM, as was evidenced by her inability to control them and her failure to discipline them.

The referee concluded that probable cause existed to find that the allegations in the petition were true, authorized the petition, and entered an order removing AG and PM from respondent's care. The referee concluded that it was contrary to the welfare of AG and PM to remain in respondent's care because respondent lacked the parenting skills necessary to ensure their safety and wellbeing. The referee further concluded that PM would be harmed if she remained in respondent's care. Respondent was granted supervised visitation.

On May 29, 2018, Boone filed an amended petition that sought to add TH to the proceeding. In addition to the allegations in the April 13, 2018 petition, the amended petition alleged that, on May 17, 2018, TH was removed from his father's care because he was physically abusing TH, and TH was placed in respondent's care. The amended petition sought the removal of TH from respondent's care on grounds that the gas at respondent's home was turned off and that respondent failed to provide TH with a safe environment "as evident by there being marijuana, a marijuana grinder, and scissors with marijuana residue on them accessible to [TH]." A preliminary hearing was held two days later before a referee. Subsequently, the referee authorized the petition and granted respondent supervised visitation with TH.

On June 12, 2018, the trial court held a combined adjudication and dispositional review hearing for respondent. After successfully proposing an amendment to the already amended petition,[5] respondent entered a plea of admission to the allegations. The trial court accepted respondent's plea, exercised jurisdiction over the children on grounds that respondent maintained an unfit home, failed to provide necessary care for the health and morals of the children, and posed a risk of harm to the children, and entered a corresponding order. During the dispositional portion of the hearing, Lucy Schaffer, a foster-care worker, recommended that respondent complete and benefit from a case service plan which included a substance abuse evaluation, drug screens, the Families First program, the Families Together Building Solutions program, education on sickle cell disease, anger management classes, parenting classes, individual counseling, and visitation. The judge ordered respondent to comply with a case service plan and continued respondent's supervised visitation, but granted DHHS the discretion to allow unsupervised visitation.[6]

[5] Respondent asked to change the statement supporting the allegation that she failed to provide a safe environment for TH from "as evident by there being marijuana, a marijuana grinder, and scissors with marijuana residue on them accessible to [TH]" to "as evident by admitting to use of marijuana while [TH] was in her care."

[6] At a regularly scheduled review hearing on August 9, 2019, the trial court set aside respondent's plea admission, noting that it may have been defective under *In re Ferranti*, 504 Mich 1; 934 NW2d 610 (2019) (holding it was plain error to fail to advise parents in a preadjudication status conference of the consequences of their pleas and of the rights they were giving up). Respondent waived notice of the adjudication hearing, signed an advice of rights form that complied with *In re Ferranti*, and entered a plea of admission to the allegations contained in the petition as amended

The report of respondent's progress at dispositional review hearings held in August 2018 and November 2018 was generally positive. At the August review hearing, Schaffer testified that respondent was participating in a variety of services, regularly submitting clean drug screens, and attending twice-weekly visitation. At the November hearing, the judge observed that respondent was maintaining housing and employment, and continued to submit clean drug screens. Schaffer expressed concern that respondent did not appreciate the severity of PM's sickle cell disease; respondent was insufficiently engaged with the doctors during PM's medical appointments, and had stated during a Families Together Building Solutions session that PM's disease was not that severe because "it was not like she was going to die from it." Schaffer also noted that respondent and Mueller were living together[7] and participating in visitation together and explained that the first half of the visitation period was supervised, but the second half was unsupervised so that Schaffer could determine whether respondent was implementing the parenting skills that she was learning through her services. The trial court ordered that respondent and Mueller be granted at least one overnight visit per week before the end of December 2018, in order to test their parenting skills and their ability to provide PM with the medical care that she needed.

The overnight visit occurred from December 8, 2018 to December 9, 2018. On December 11, 2018, petitioner filed a motion to modify parenting time to return supervised parenting time. On December 9, 2018, after the visit had ended, TH disclosed that respondent and Mueller had been hitting one another during the visit, that Mueller had grabbed respondent by the neck and choked her and that Mueller had told him not to tell anyone about the fight. CPS opened an investigation into the matter, and petitioner requested that visitation be returned to supervised with no requirement for overnight visitation pending the outcome of CPS's investigation. At a hearing on the motion held two days later, petitioner informed the court that Mueller had been arrested for violating his probation and confined to jail. The parties stipulated that visitation would return to supervised, with agency discretion to allow for unsupervised visitation, and the trial court entered a corresponding order.

The case took a turn for the worse in the beginning of 2019. Subsequent to a February 2019 review hearing, the trial court entered an order barring contact between respondent and Mueller, who had been released from jail and was again in a reentry program. In May 2019, Andrea Hagen, a foster-care supervisor at Holy Cross Services, testified that respondent consistently attended visitation and continued to participate in the supportive visitation program that addressed her parenting skills, but she expressed concern about respondent's parenting skills and discipline style and was in the process of enrolling her in the Effective Black Families Parenting Program.[8] Hagen also recommended another psychological evaluation to determine what additional services could be provided to respondent to help her advance because she was not

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on June 12, 2018. The judge entered an order of adjudication and assumed jurisdiction over the children on the same bases as previously entered. Respondent does not challenge this proceeding.

[7] After completing a reentry program at KPEP in Kalamazoo, Mueller arranged for his probation to be moved to Ottawa County so he could live with respondent.

[8] The record suggests that Hagen was unable to enroll respondent in the program because it was not reasonably available geographically.

progressing. In addition, respondent had been evicted and, at the time of the hearing, was living in a hotel.

At the August 2019 review hearing, Eren Phelps, the supervisor at respondent's visitations, informed respondent's newly assigned foster-care worker Kelsie Szost that respondent had a difficult time controlling the children during visitation. Phelps had to end one visit early because the children were so out of control that Phelps feared that the children's safety was in jeopardy, and respondent was unable to deescalate the situation. Respondent admitted that she had a difficult time controlling TH because he had "outbursts" when he did not get his way. After the trial court's re-adjudication of respondent (see note 6), the parties stipulated to grant respondent six additional months to rectify the concerns in the petition. At the November 2019 review hearing, Szost testified that, while respondent regularly attended visitation, she was not engaged during the visits and would often be on her cell phone, which caused the children to act out and fight for her attention. In addition, respondent remained without housing; she testified that she was living at a friend's home and was on a waitlist for housing. The trial court warned respondent that her parental rights would be terminated if she did not obtain and maintain safe, suitable, and independent housing, engage with her children during visitation, and demonstrate that she was benefitting from individual counseling and her case service plan.

In January and February of 2020, respondent was living at Every Woman's Place, a shelter for women, and was regularly attending individual counseling, receiving domestic violence services, participating in parenting classes, and had an appointment with a community mental health facility to address any underlying mental health concerns. At a February 2020 dispositional review hearing, Szost requested that the permanency plan be changed to adoption because respondent was not progressing and the children's foster parents were willing to adopt. Respondent admitted that she was having a difficult time obtaining housing and did not contest Szost's recommendation that the permanency plan be changed to adoption because she wanted the best for her children. Respondent alternatively proposed that guardianship be given to the children's foster parents. The trial court continued its prior orders, but changed the permanency planning goal from reunification to a concurrent goal of reunification and adoption.

On March 5, 2020, petitioner filed a petition requesting the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*) and (*ii*) and (*g*). An evidentiary and termination hearing was scheduled for April 14, 2020, but adjourned because of the COVID-19 pandemic. Subsequently, a dispositional review and permanency planning hearing was held via video in May 2020. Szost informed the court that respondent had obtained housing. Respondent said she believed the termination petition was premature because she had obtained housing and transportation since the filing of the petition, and remained employed, although she was temporarily laid off because of the COVID-19 pandemic. She also asked the court to order marriage counseling services for her and Mueller because they planned to stay together and wanted to work on their relationship.[9] Mueller was present and also asked the court to end the no-contact order between him and respondent because they were planning on his moving into her home. The

[9] It would appear that after getting out of jail for the probation violation, Mueller moved to Arizona for a while, but then returned to Michigan and may have moved in with respondent in March 2020.

trial court continued its concurrent plan of adoption and reunification, ended the no-contact order between respondent and Mueller, and ordered that respondent and Mueller participate in joint counseling.

The termination hearing was held June 9, 2020, via video. Szost, Hagen, Phelps, N. Jamieson, foster-father for PM and AG, B. Cook, foster-mother for TH, and respondent testified.[10] After hearing the evidence, the trial court concluded that clear and convincing evidence established grounds for termination under MCL 712A.19b(3)(c)(*i*), and (*ii*) and (*g*), and that a preponderance of the evidence indicated that termination was in the children's best interests. The court subsequently entered the order from which respondent now appeals.

II. DISCUSSION

Respondent challenges the trial court's order terminating her parental rights.

A. STANDARD OF REVIEW

We review for clear error a trial court's findings that a ground for termination has been established, and that termination is in the child's best interests. Factual findings are also reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Only one statutory ground is required for termination. *In re Powers Minor*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

B. STATUTORY GROUNDS

Respondent argues that the trial court erred in finding that a statutory ground existed to terminate her parental rights. We disagree.

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(c)(*i*) and (*ii*) and (g). Termination of parental rights is appropriate under MCL 712A.19b(3)(c)(*i*) when:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

[10] Mueller was again incarcerated, following another incident of domestic violence that occurred shortly before the termination hearing.

> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Ruling from the bench, the trial court began by observing that, prior to the termination hearing, it had reviewed "the previous file and the reports that were given to the [c]ourt over the last couple of years." The court found that respondent had resolved the issues of housing and transportation, albeit after petitioner had filed the termination petition, and it declined to find her emotionally unstable. However, the trial court found clear and convincing evidence that respondent had failed to rectify her lack of appropriate parenting skills and that, because of this this failure, the court "really would fear for the children's safety being around her for long periods of time unsupervised." While no parent can be expected to be perfect, we are not left with a definite and firm conviction that the trial court made a mistake. See *In re Mason*, 486 Mich at 152.

Evidence presented at the termination hearing established that respondent demonstrated a general lack of parenting skills throughout this case. Phelps testified that she was the case aid in charge of supervising respondent's in-person parenting time throughout 2018, up until January 15, 2019, and then again from July 2019 until COVID-19 restrictions paused in-person visitations.[11] Phelps recounted that, during in-person visits, respondent often failed to effectively control her children, often argued with them, and would attempt to discipline them by yelling at them or threatening that, unless they behaved, the visit was going to end. Despite repeated suggestions otherwise, respondent would often be on her cell phone during visits and would not provide the children with the affection they desired or with her undivided attention. The children would then compete for her attention by acting out, and respondent would often become frustrated or upset and would defer to Phelps to deescalate the situation. Phelps recounted several specific instances of this dynamic. For example, on one occasion, TH became upset because respondent was on her phone and started to act out. Phelps said that when respondent threatened that the visit would end if he did not behave, TH told respondent "that he hated her and wished that she wasn't his mother." After respondent's poor response to this, Phelps asked her to step away "because it was upsetting [TH] more, so that I could deescalate him." As another example of respondent's disengagement, Phelps recalled that in February or March 2020, just prior to visitation being exclusively via video because of the COVID-19 pandemic, Phelps testified that she had to end an in-person visit early because respondent failed to stop the children from running around inside a library while she used a computer. When Phelps informed respondent that she needed to get the children under control, respondent became upset and told Phelps that the visits were a "waste of time."

Respondent's inability to control the children and her discipline style directly impacted the children's behavior toward each other and contributed to their sometimes acting out following in-person visits with respondent. For example, Phelps testified that, on one occasion, respondent

> physically manage[d] [PM] where she had shoved her in the vehicle and shoved her down onto the floor of the vehicle. [PM] wet herself. The transportation back was

[11] Phelps testified that she broke her leg in January, which occasioned the interruption in her work with respondent.

> a little hard for her. She began to abuse her little brother [AG]. I had to separate them in the back seat, but she could still reach him at arm – arm's length and continued to hit him continuously.

As to behavioral problems following some visits, Szost testified that, when this case was initiated, PM would often throw fits and TH would have "outbursts" when they did not get their way. For example, visitation reports from one reporting period show instances of TH becoming upset and hitting PM, and PM becoming upset and tearing up a card AG was playing with and a box containing TH's new shoes. Szost said that the behavioral problems of PM and TH dramatically improved with their placement in stable foster homes, but resurfaced "like clockwork" after visits with respondent. Similarly, Cook, TH's foster mother, testified that TH's behavioral problems were exacerbated after having contact with respondent. She explained that, once visitation was by video, TH calmed down and was internalizing the techniques that he had been learning to calm his emotions. However, after one of the last in-person visitations with respondent, TH had a tantrum and ripped the screen door off of their home.

This is not to say that respondent was never affectionate and attentive toward her children. Nevertheless, the record supports Phelps's testimony that respondent demonstrated no appreciable benefit from her participation in various parenting support programs, such as Families Together Building Support, Maternal Infant Mental Health, and Foster Care Supportive Visitation, and the trial court's finding that clear and convincing evidence established grounds for termination pursuant to MCL 712A.19b(3)(c)(*i*). Nor did the trial court clearly err in concluding it was unlikely respondent would be able to rectify the conditions that led to adjudication within a reasonable time considering the children's ages. At the time of termination, TH was seven years old, PM was five years old, and AG was four years old. This proceeding spanned more than two years and multiple services, but yielded no demonstrable improvement in respondent's parenting skills.

Respondent contends on appeal that termination was premature because she had obtained housing, a vehicle, was employed, and had taken classes at Every Woman's Place, but she had been unable to demonstrate what she had learned due to COVID-19 restrictions on in-person parenting. In light of the services respondent had received over the course of the previous two years, not to mention the services she received in 2017, during CPS's prior involvement, and the absence of appreciable benefit from those services, we find unpersuasive the suggestion that respondent would have been able to internalize and apply lessons learned during two additional months of services in any significant way.

In light of the record before us, we conclude that the trial court did not clearly err in concluding that there was no reasonable likelihood that respondent would be able to rectify her parenting skills within a reasonable period of time and in terminating respondent's parental rights under MCL 712A.19b(3)(c)(*i*). Because only one statutory ground is needed for termination, we need not address the remaining statutory grounds for termination. See *In re Powers Minors*, 244 Mich App at 118-119 (observing that a court's error with regard to one statutory ground will be harmless if the court properly found another ground for termination).

C. BEST-INTERESTS ANALYSIS

Respondent argues that the trial court erred when it found, by a preponderance of the evidence, that the termination of her parental rights was in the best interests of TH, PM, and AG. Again, we disagree.

If the court determines, by clear and convincing evidence, that at least one statutory ground exists under MCL 712A.19b(3), and that termination of parental rights is in the child's best interests, the court must order termination of parental rights. MCL 712A.19b(5); *In re Ferranti*, 504 Mich 1, 16; 934 NW2d 610 (2019). The petitioner bears the burden to establish by a preponderance of the evidence that termination is in the best interests of the child. *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), citing MCL 712A.19b(5) and *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the 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).

Respondent asserts that the trial court erred in concluding that termination was in the children's best interests because she was bonded with her children and the trial court did not consider the age of the foster parents who intended to adopt them, or their racial differences. Contrary to this assertion, the record shows that the trial court did indeed recognize that respondent and the children were bonded. However, a child's bond with a parent is only one factor in the best-interests analysis. *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The trial court also weighed numerous considerations including the testimonial evidence, the length of time the children had been in care, the likelihood that they would be adopted by their foster parents with whom they had been placed for almost a year, PM's special needs, and ethnic and cultural considerations. The court found some of these factors, such as the parent-child bond and ethnic and cultural considerations, to weigh against termination. But the trial court found that other factors weighed in favor of termination, not least of all PM's special needs, the children's need for permanency and stability, and the undeniable improvement in the children's trauma-related behaviors since they had been in foster care. After giving what appears to be thoughtful consideration to these factors, the trial court concluded that at least a preponderance of the evidence established that termination was in the children's best interests. Given the record before us, we are not left with a definite and firm conviction that a mistake has been made. See *In re Mason*, 486 Mich at 152.

Affirmed.

/s/ Jane M. Beckering
/s/ David H. Sawyer
/s/ Douglas B. Shapiro