

STATE OF MICHIGAN
COURT OF APPEALS

In re L. J. FORKER-COUSINS, Minor.

UNPUBLISHED
June 24, 2021

No. 354877
Van Buren Circuit Court
Family Division
LC No. 10-016896-NA

Before: STEPHENS, P.J., and BECKERING and O’BRIEN, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court order terminating her parental rights to the minor child, LFC, under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist) and (j) (reasonable likelihood of harm if child is returned to parent’s home). The trial court also terminated the parental rights of the child’s father, who is not a party to this appeal. We affirm.

I. BACKGROUND

Respondent-mother’s parental rights had been terminated to one child in 2007. Two additional children, who were not the children of LFC’s father, were removed from respondent-mother’s care when she stabbed LFC’s father in the chest in their presence. In 2018, LFC’s father and respondent-mother’s first mutual child was removed from their care for failure to rectify the conditions that led to the removal of the two other children. LFC was born in February 2019. A termination hearing had been scheduled for the three older children, and the Department of Health and Human Services (DHHS) submitted a petition to remove LFC from her parents’ care and terminate their parental rights. The petitioner alleged that respondent-mother would need more services than could be offered to ensure that LFC was safe in her care, that she failed to benefit from offered services, and that respondent-mother and LFC’s father continued to violate a no-contact order and engage in domestic violence. After the petition was authorized, the trial court assumed jurisdiction on the basis that respondent-mother’s custody of LFC posed a substantial risk of harm.

Caseworker, Lydia Chapa, testified at respondent-mother’s dispositional hearing that respondent-mother showed up to her twice weekly supervised visits on time and was attentive to and interactive with LFC. Chapa testified that respondent-mother was cooperative and

recommended that respondent-mother continue with counseling and literacy classes and take another parenting class.

When the trial court held a review hearing on August 13, 2019, LFC's father was incarcerated on charges of third-offense domestic violence against respondent-mother. Chapa testified that LFC was visibly attached to respondent-mother, who finished a parenting course and continued to engage in parenting time and have good visits. A recent parenting-time visit was unsupervised and both parents attended because respondent-mother was at LFC's father's home at the time of the unsupervised visit. Barriers to reunification included housing and emotional stability, and Chapa was helping respondent-mother look for suitable housing. At another review hearing on November 12, 2019, Chapa testified that LFC was doing well in her placement. Respondent-mother had been unable to find housing, but she had not missed any visits with LFC and was still engaged in counseling. Chapa testified that respondent-mother needed to maintain emotional stability and demonstrate her learned parenting skills before having unsupervised visits. Chapa testified that respondent-mother's psychological assessment indicated that she was "unlikely to benefit from parenting skills" and that she had undergone training before without gaining "any significant parenting skills or insight."

At the next hearing in February 2020, Chapa testified that LFC was "doing phenomenal" in her placement. Chapa testified that she recommended a petition be filed to terminate respondent-mother's parental rights because she had not reduced barriers and was not benefiting from services. Respondent-mother's visits increased to four hours per week, but were still supervised and she had "begun disengaging" with LFC. Respondent-mother often needed to be redirected to give LFC age-appropriate food and toys and to engage with LFC instead of speaking with the case aide. Further, respondent-mother was renting a room in a house with four other renters, one of whom had a history of criminal sexual assault and one who was on the registry for abuse and neglect. Chapa spoke with respondent-mother about finding more appropriate housing.

Some of respondent-mother's visit reports indicated that respondent-mother was disengaged, distracted by her phone, and wanted to end visits early. Respondent-mother's visits were virtual with LFC from March 2020 through June 2020 because of COVID-19. She missed approximately half of the virtual visits, but when she did participate, it was difficult to engage with LFC over the phone because of her young age. At their first in-person visit in June, respondent-mother played with LFC for a little while, but then was ready to go before the end of the visit.

At a June 23, 2020 hearing, Chapa testified that respondent-mother told her about two domestic violence incidents with LFC's father. The prosecution filed a petition to terminate respondent-mother's parental rights in July 2020 under MCL 712A.19b(3)(c) and (j).

At the termination hearing, respondent-mother's therapist, Elizabeth Bass-Boshoven, testified that respondent-mother attended her every-other-week counseling appointments regularly and was an "open and active participant" who was willing to do anything for her relationship with her children. Bass-Boshoven testified that respondent-mother made progress with her initial goals of addressing her anger, violence, setting boundaries, having healthy relationships, and practicing gratitude. Bass-Boshoven evaluated respondent-mother's progress by her self-report that she was more stable and self-oriented and less reactive to issues with family members. Respondent-mother spoke with her about ending her relationship with LFC's father and how to keep herself safe when

he was released from jail. Bass-Boshoven testified that when respondent-mother had the opportunity to re-engage in a relationship with LFC's father, she chose not to. Bass-Boshoven did not have concerns about respondent-mother's ability to respond to anger without violence and maintain healthy relationships. Bass-Boshoven did not know that respondent-mother and LFC's father were living together as recently as June 2020 or about the domestic violence incidents that happened at that time.

Kimberly Tucker, a case aide with Samaritas, testified that she supervised respondent-mother's visits with LFC since September 2019. Tucker did not know of respondent-mother missing any visits, but testified that respondent-mother was not "constantly engaging like she should." She did not hold, touch, or hug LFC much during the visits. Instead, respondent-mother only stayed engaged with LFC for approximately one quarter of each visit and would try to talk to Tucker "most of the time." She seemed bored and would play on her phone or just look around. Tucker encouraged respondent-mother to get on the floor and play with LFC, and respondent-mother only did so one time. Tucker would also bring age-appropriate toys because respondent-mother tried to get LFC to play with toys too young for her. Respondent also frequently brought other people to her visits so that she could speak with them instead of interacting with LFC. Tucker testified that respondent-mother always tried to soothe LFC by feeding her, to the point at which she would make three bottles within a two-hour visit, which was not appropriate, and LFC would get sick. Tucker thought that respondent-mother and LFC had a bond, but not "as a mother." She thought that respondent-mother was engaging in the visits for something to do, rather than for LFC. Respondent-mother attended approximately half of her virtual visits during COVID-19, which Tucker testified were not an ideal setting in which to establish a bond with a nonverbal child. Tucker saw that LFC was calmer with her foster parents and had a really good bond with them.

Chapa testified that she saw respondent-mother and LFC's father together in August 2020. She thought that although respondent-mother was attending her counseling, she was not benefiting because she continued to be in a relationship with LFC's father. Further, Chapa did not see that respondent-mother was putting into practice any of the skills that she learned from parenting classes or from Chapa. Chapa testified that respondent-mother loved LFC and had concern for her well-being, but she continued to not understand what was age-appropriate for LFC. Respondent-mother would come to visits on time and with the "necessary supplies," but Chapa had to remind respondent-mother to engage with LFC instead of engaging with Chapa. Respondent-mother was affectionate with LFC. Overall, Chapa estimated that 40% of respondent-mother's visits were good, while in the rest, respondent-mother was not engaged with LFC despite all the parenting instruction she received. Further, although Chapa had been helping respondent-mother search for housing, respondent-mother remained without a home at the time of the termination hearing.

Chapa testified that respondent-mother followed the case service plan, but respondent-mother never demonstrated that she was able to stay away from LFC's father, whom Chapa continued to have concerns about because he never addressed his anger or domestic violence. Chapa testified that LFC was extremely bonded with her foster parents and was thriving in their care, where she had been her entire life along with her older siblings.

Respondent-mother testified that she wanted LFC living with her. She thought that she benefited from her counseling, and cooperated in obtaining services, including taking extra

parenting classes. She looked for housing, but COVID-19 impacted her efforts. She applied to approximately 30 places, including one home in August 2019 that had a five-year waiting list. Respondent-mother denied being with LFC's father at the time that Chapa testified about seeing them together. Respondent-mother testified that the last time she saw LFC's father was when he "put a hit out" on her, and she contacted the police after that. She had been in a relationship with him at that point, but he had not contacted her since then. Respondent-mother wanted to reunify with LFC, and she thought that she could provide for LFC.

Respondent-mother's cousin by marriage and LFC's foster parent, testified that she was interested in adopting LFC. Respondent-mother asked about LFC's doctor appointments at the very beginning of the case, but she had never gone to an appointment and then did not ask again until LFC was about three months old. LFC was now 18 months old and "ahead developmentally." The foster parent testified that when respondent-mother would overfeed LFC, she would come home from visits sick to her stomach, refuse to eat, and throw up during the night. This only happened on visit days. The foster parent took LFC to a doctor and figured out that it was a result of overfeeding, so the foster parent began providing the snacks for the visits and the issue stopped happening. The foster parent testified that LFC was very bonded with her three siblings.

The trial court found that there was clear and convincing evidence to support termination under MCL 712A.19b(3)(c)(i) and (j). The trial court stated that it had been well over a year since the dispositional hearings and respondent-mother had been dealing with these issues for years. Although respondent-mother was engaged in services, she had not benefited from the services or improved her parenting skills. The trial court stated that although respondent-mother went to visits with LFC, she did not always engage with her. The trial court explained that Chapa had seen respondent-mother and LFC's father together as recently as August 2020, and respondent-mother had resided with him as recently as June 2020. Further, respondent-mother had not been successful in finding housing. The trial court also stated that LFC was doing well in the foster parents' care along with LFC's three siblings. The trial court found that it was unlikely that respondent-mother could rectify the issues within a reasonable amount of time considering LFC's age. Further, the trial court found that there was a reasonable likelihood of harm were LFC returned to respondent-mother's care because she had an inability to parent, had no housing, had no clear source of income, and could not care for herself, "let alone her child."

The trial court also found that it was in LFC's best interests that respondent-mother's parental rights be terminated. The trial court acknowledged that LFC was in the care of a relative and that she had been there since she was born. The trial court explained that, although respondent-mother loved LFC, the bond was not a strong one of mother and child, she did not always participate in the visits, and respondent-mother could not provide LFC with a home and did not have the skills to parent her. The trial court explained that LFC was now 18 months old and needed permanency, stability, and finality. The trial court stated that the advantages of the foster home were great. The trial court explained that respondent-mother had been receiving services for four years and there had not been the improvement or change that would allow LFC to be in her care.

II. STATUTORY GROUNDS

Respondent-mother argues that the trial court erred by finding that petitioner established statutory grounds for terminating parental rights. We disagree.

This Court reviews for clear error a trial court's finding that a statutory ground for termination existed. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). Clear error exists when this Court has a definite and firm conviction a mistake has been committed. *Id.* A trial court's finding of a statutory ground for termination must be supported by clear and convincing evidence. *Id.* at 21-22. If this Court concludes that the trial court did not clearly err by finding one statutory ground for termination, this Court does not need to address the additional grounds. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

At the time of the termination proceedings in August and September 2020, respondent-mother had been in a relationship off and on with LFC's father since at least 2016. Throughout that time, respondent-mother engaged in counseling, parenting classes, and literacy classes, among other services, but she continued to engage in a violent relationship with LFC's father, failed to improve her parenting skills or demonstrate other benefits from therapy, and failed to obtain and maintain suitable housing. Although respondent-mother points to the COVID-19 pandemic as affecting her ability to obtain and maintain housing, LFC was in care for over a year before March 2020, and respondent-mother showed no progress in obtaining housing during that period. Additionally, her parental rights had been terminated to three children because these issues were ongoing and recurring. See *In re White*, 303 Mich App 701, 712-713; 846 NW2d 61 (2014).

Further, LFC had been in care from the time that she was born, and in the 18 months that followed, respondent-mother continued her volatile relationship with LFC's father. Respondent-mother admitted that domestic violence had happened in front of the children, and the three domestic violence incidents known to have occurred between the parents since LFC's case opened indicated that the risk of harm still existed. Six months after LFC entered care, LFC's father was incarcerated for assaulting respondent-mother. After the trial court ordered that the parents not have contact with each other, respondent-mother continued to speak to a visit supervisor about missing LFC's father and sending him letters. After LFC's father was released from jail, respondent-mother and LFC's father were in a relationship and lived together again until two further domestic violence incidents occurred as recently as June 2020. Even after these incidents, in August 2020, only days before the termination hearing was to begin, Chapa saw them together. Accordingly, respondent has not demonstrated any benefit from the services addressed at helping her to separate from LFC's father to keep herself and LFC safe.

Additionally, visit supervisors observed that although respondent-mother appeared to love LFC, respondent-mother had to be encouraged to engage with her, as respondent-mother would more often sit silently and watch her or talk to the visit supervisors. Respondent-mother overfed LFC on multiple occasions to the point at which she was sick, even with the visit supervisor encouraging her to soothe LFC in other ways. Respondent-mother also showed an inability to understand age-appropriate toys or playground equipment, and overall demonstrated a lack of benefit from her service plan. Therefore, the trial court did not clearly err by finding that termination of respondent-mother's rights was proper under MCL 712A.19b(3)(j). *In re Terry*, 240 Mich App at 22.

The record also supports the trial court's conclusion that MCL 712A.19b(3)(c)(i) had been established. The trial court entered respondent-mother's initial dispositional order in May 2019, which was more than a year before the termination hearing and well beyond the 182 days required under MCL 712A.19b(3)(c). Further, the conditions that led to the petition were respondent-

mother's history of termination of parental rights and domestic violence with LFC's father, violations of a no-contact order with LFC's father, and her failure to benefit from services, and these conditions continued to exist at the time of the termination hearing. Although respondent-mother attended parenting time, parenting classes, literacy classes, and counseling, she did not demonstrate progress or benefit beyond improving her literacy skills. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Specifically, respondent-mother was disengaged during parenting time, showed a lack of understanding for age-appropriate activities, needed to be encouraged to engage with LFC, and did not have the skills to soothe LFC beyond overfeeding her to the point at which she became sick.

Further, respondent-mother maintained a pattern of a violent, on-again/off-again relationship with LFC's father. Although respondent-mother denied that Chapa saw respondent-mother and LFC's father together in August 2020, there was no reason to disbelieve the testimony of the caseworker who had worked with the family for approximately 18 months at that point. See *In re White*, 303 Mich App at 711. Moreover, respondent-mother herself testified that, as recently as June 2020, she was living with LFC's father and there were two additional domestic violence incidents. At that point, LFC, and the DHHS case, was approximately 16 months old, indicating that despite respondent-mother's parenting classes, domestic violence classes, and regular counseling, she was not able to safely disengage from LFC's father, which was one of the most significant barriers to respondent-mother's ability to take LFC into her care. Additionally, respondent-mother did not tell her counselor that she was living with LFC's father or about the domestic violence incidents, limiting the impact of Bass-Boshoven's testimony that respondent-mother was improving in her ability to maintain healthy relationships and separate herself from LFC's father.

Covid-19, as mother argues, impacted housing availability. The evidence at the termination hearings was that respondent-mother could not always meet in-person and that one of the apartments had a five-year waiting list in August 2019, well before the pandemic. While we disagree with the trial court's finding on this issue it is not a basis for reversal in light of the other evidence.

Finally, the trial court did not err by finding that respondent-mother was not reasonably likely to rectify the conditions in a reasonable time considering LFC's age. See *In re Williams*, 286 Mich App at 272-273. LFC had been in care since she was in the hospital after birth, and she was 18 months old at the time of the termination hearing. See *Matter of Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991). Despite the long period in which LFC had been in care, there is no indication that after respondent-mother had already engaged in parenting classes without gaining insight into parenting, engaged in regular counseling without freeing herself from a dangerous domestic violence situation, and made no progress in obtaining suitable housing in those 18 months, that she would be able to do so in a reasonable amount of time to provide the stability, permanency, and finality for LFC. Respondent-mother attributed her issues in obtaining housing to COVID-19, but LFC had been in care for over a year by the time COVID-19 became an issue in March 2020. Respondent-mother had not made progress in that year, and there is no indication that she would make more progress than that in a reasonable time. *In re Williams*, 286 Mich App at 272-273. Therefore, the trial court did not err by finding that evidence supported termination under MCL 712A.19b(3)(c)(i). See *In re Terry*, 240 Mich App at 22.

III. BEST INTERESTS

Lastly, respondent-mother argues that the trial court erred by finding that termination of her parental rights was in LFC's best interests. We disagree.

This Court reviews for clear error a trial court's finding that termination was in a child's best interests. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). A trial court must find by a preponderance of the evidence that the termination was in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). Under MCL 712A.19b(5), the trial court must find, in addition to statutory grounds for termination, that termination is in the child's best interests. The trial 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 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 focus is on the child rather than the parent. *In re Moss*, 301 Mich App at 87. A trial court must explicitly consider the fact that a child is in the care of a relative at the time of the termination hearing because a relative placement weighs against termination. *In re Olive/Metts Minors*, 297 Mich App at 43.

The trial court explicitly considered that LFC was in a relative placement, addressed her need for permanency, stability, and finality, and found that it was in her best interests that respondent-mother's parental rights be terminated. See *In re Olive/Metts Minors*, 297 Mich App at 41-42. The trial court acknowledged that respondent-mother loved LFC and engaged in services for many years, but found that respondent-mother did not benefit from them and that her bond with LFC was not that of a mother and daughter. LFC had been in the care of the foster family for her entire life, and she was happy, healthy, and developing well. Additionally, multiple people testified about the bond that LFC had with her foster parents. The foster family was also adopting LFC's siblings, with whom LFC was bonded. The trial court found that the advantages of the foster home were significant. Therefore, the trial court did not clearly err by finding by a preponderance of the evidence that termination of respondent-mother's parental rights was in LFC's best interests. See *In re Hudson*, 294 Mich App at 268.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Jane M. Beckering

/s/ Colleen A. O'Brien