

STATE OF MICHIGAN
COURT OF APPEALS

In re C J H HAMILTON, Minor.

UNPUBLISHED
June 24, 2021

No. 355132
St. Clair Circuit Court
Family Division
LC No. 20-000064-NA

Before: K. F. KELLY, P.J., and SHAPIRO and SWARTZLE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial-court rulings exercising jurisdiction and terminating her parental rights to her minor child, CJH, under MCL 712A.19b(3)(i) (parental rights to one or more siblings terminated because of neglect or abuse and prior attempts to rehabilitate the parent have been unsuccessful) and (j) (reasonable likelihood the child would be harmed if returned home).¹ We affirm.

I. BACKGROUND

This case arose after respondent’s arrest on an outstanding warrant in Michigan for possession and distribution of methamphetamines. Before her arrest, respondent was living in Pennsylvania, where she gave birth to CJH in October 2019. Shortly after his birth, CJH’s pediatrician noticed some abnormalities and CJH was referred for therapy. About the same time, Pennsylvania officials opened an investigation into respondent after receiving a report of possible neglect. Pennsylvania officials visited respondent’s home, but did not remove CJH from her care. Soon after, respondent returned to Michigan where she was arrested on the outstanding warrant.

In Michigan, Children’s Protective Services (CPS) opened an investigation into respondent after learning that CJH was left without proper care and custody after respondent’s arrest. CJH was eventually placed in foster care. During its investigation, CPS learned that respondent’s parental rights to her two other children, JS and CH, had previously been terminated. In the two prior cases, the Michigan Department of Health and Human Services (DHHS) identified

¹ The child’s father is not a party to this appeal.

respondent's barriers to reunification as homelessness, lack of income, untreated mental-health issues, and substance abuse.

After CJH's removal, CPS workers met with respondent and established a parenting-time schedule. In addition, respondent was required to complete random drug screens. On February 25, 2020, respondent participated in a supervised parenting-time visit with CJH, during which the CPS workers noticed CJH's apparent "flat affect" and his apparent lack of bond with respondent. Respondent exhibited "erratic" behavior. The CPS workers asked respondent to complete a drug screen by oral swab, which indicated that respondent was positive for methamphetamines, cocaine, and marijuana. The next day, respondent completed another drug screen as part of her pretrial-release conditions in her pending criminal case. As part of her conditions, respondent was prohibited from consuming various substances, including marijuana. This drug screen, which was completed by urinalysis, showed only that respondent was positive for marijuana. Later, the trial court terminated respondent's parenting-time visits with the child, based on the case workers' testimony regarding respondent's erratic behavior. At about this same time, respondent pleaded guilty in her criminal case and was sentenced to a term of 18 months to 10 years in prison.

During the adjudication bench trial, the trial court heard testimony from CPS workers who spoke about respondent's erratic behaviors and her continued failure to address her barriers to reunification. The workers also testified about the CPS cases regarding respondent's two previous children, JS and CH. The trial court was presented with evidence showing a positive drug screen for marijuana, cocaine, and methamphetamines. There was record evidence of respondent's conviction and sentence related to possession and distribution of methamphetamines. Further, the trial court heard testimony about the accuracy of the drug-screening procedures and respondent's attempts to sabotage the drug screens. Finally, respondent's testimony touched upon the quality of her living situation and her decision to leave Pennsylvania after learning of CJH's medical condition. The trial court concluded that a statutory basis for exercising jurisdiction over CJH existed under MCL 712A.2(b)(1) and (2).

At the dispositional portion of the hearing, the trial court concluded that statutory grounds existed to terminate respondent's parental rights under MCL 712A.19b(3)(i) and (j). In terminating respondent's parental rights, the trial court looked to the circumstances of the cases involving her other two children—homelessness, lack of income, untreated mental-health issues, and substance abuse—and stated its conclusion that these circumstances persisted. The trial court also concluded that termination of respondent's parental rights was in CJH's best interests.

This appeal followed.

II. ANALYSIS

A. JURISDICTION

Respondent first argues the trial court erroneously exercised jurisdiction because the record contained evidence that respondent was properly caring for CJH, and aside from one drug test, the accuracy of which she contested, respondent had consistently tested negative for methamphetamines.

“To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists.” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). “Jurisdiction must be established by a preponderance of the evidence.” *Id.*, citing MCR 5.972(C)(1). This Court reviews the trial court’s decision to exercise jurisdiction for clear error in light of the court’s findings of fact. *Id.* “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 COH*, 495 Mich 184, 203-204; 848 NW2d 107 (2014) (cleaned up). Under the clear-error standard, “a reviewing court should not substitute its judgment on questions of fact unless the factual determination clearly preponderates in the opposite direction.” *Id.* at 204 (cleaned up).

“Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional.” *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). In the adjudicative phase, the trial court determines whether it may exercise jurisdiction over the child. *Id.* “In order to find that a child comes within the court’s jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, either at trial or by plea.” *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008).

In this case, the trial court exercised jurisdiction under MCL 712A.2(b)(1) and (2), which provide:

The court has the following authority and jurisdiction:

* * *

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

On appeal, respondent points to several factors which she believes support the conclusion that the trial court erroneously exercised jurisdiction over CJH. Respondent argues that she had two stable jobs and a safe home in Pennsylvania, that Pennsylvania officials never removed CJH from her care, and that there was no evidence showing that she had ever harmed CJH. According to respondent, the only reason she came back to Michigan was to address her arrest warrant and

“get her life on track.” She further argues that she arranged for CJH’s care with an aunt in Michigan ahead of her return, and notes witness testimony that she “showed love and care” to CJH. Finally, although respondent acknowledged the positive drug screen for methamphetamines, she argued that this test was a “false positive.”

We conclude that the record contains sufficient evidence to support the trial court’s exercise of jurisdiction under MCL 712A.2(b)(1) and (2). First, the trial court noted that this was respondent’s third CPS case in Michigan, and that Pennsylvania officials also had an open case for CJH. Second, the trial court stated that the previous cases arose from respondent’s homelessness, lack of income, untreated mental-health issues, and substance abuse, and that those conditions continued to exist. Third, the trial court pointed out that respondent left Pennsylvania “knowing that her child needed medical involvement for [the] condition that was identified with regard to his brain,” without obtaining the necessary treatment. Fourth, while the trial court acknowledged the witness testimony that respondent was attentive toward CJH, it also noted that the witness observed respondent with CJH for only 30 minutes. Fifth, noting the difference in the types of drug screens, the trial court concluded that respondent continued to use drugs throughout this case. Finally, the trial court found that the environments that respondent provided for the child in both Pennsylvania and Michigan were inappropriate.

Each of the trial court’s conclusions were supported by evidence in the record. We may reverse the trial court only if we conclude the trial court made a “clear error in light of the court’s findings of fact.” *In re BZ*, 264 Mich App at 295. Here, the trial court’s conclusions were supported by evidence in the record. The trial court did not clearly err in exercising jurisdiction under MCL 712A.2(b)(1) and (2).

B. STATUTORY GROUNDS

Respondent next argues the trial court clearly erred when it found that statutory grounds existed to terminate respondent’s parental rights. “The clear error standard controls our review of both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009) (cleaned up). “A decision qualifies as clearly erroneous when, 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.” *Id.* (cleaned up). “Clear error signifies a decision that strikes us as more than just maybe or probably wrong.” *Id.* This Court defers to “the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). In this case, the trial court found statutory grounds to terminate respondent’s parental rights to CJH under MCL 712A.19b(3)(i) and (j). MCL 712A.19b(3)(i) states that termination is appropriate when “[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent has failed to rectify the conditions that led to the prior termination of parental rights.”

It is uncontested that respondent's parental rights to two of her other children were terminated. On appeal, respondent apparently takes issue with the trial court's conclusions that she continued to experience untreated mental-health concerns and lingering substance-abuse issues. Respondent points to her participation in counseling ordered by the Michigan Department of Corrections and her assertion that the positive drug screen for methamphetamines was a "false positive," as evidence that she had rectified the barriers identified in her previous cases involving JS and CH. Under this Court's clearly erroneous standard, we will only disturb a trial court's factual findings when we are "left with the definite and firm conviction that a mistake has been made." *In re Williams*, 286 Mich App at 271 (cleaned up). As noted by the trial court, respondent's substance-abuse issues in CH's case related to respondent's use of marijuana, a substance she was prohibited from consuming as part of her bond conditions. Respondent openly admitted using marijuana and all 10 drug screens admitted into evidence verified her continuing use of marijuana. We cannot find clear error with regard to the trial court's finding that respondent's substance abuse issues remained where respondent herself acknowledged frequent use of marijuana.

In addition to respondent's testimony, the trial court was presented with witnesses who testified about respondent's "erratic" behavior, which they believed to be the result of respondent's untreated mental-health and substance-abuse issues. This Court defers to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App at 33. Absent compelling evidence to the contrary, it would be inappropriate for this Court to conclude that the trial court clearly erred in finding that respondent continued to struggle with her mental-health and substance-abuse issues—and, we decline to do so. Indeed, the record shows that respondent failed to participate in mental-health treatment until she was ordered to do so by the Department of Corrections and that she repeatedly tested positive for substances. These facts support the trial court's conclusion that respondent continued to struggle with mental-health and substance-abuse issues.

The trial court did not clearly err when it found that statutory grounds existed to terminate respondent's parental rights under MCL 712A.19b(3)(i). Because only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, we need not address respondent's arguments regarding the other statutory grounds for termination. See *In re Ellis*, 294 Mich App at 32.

C. BEST INTERESTS

Finally, respondent argues that the facts presented at trial were not sufficient to support the trial court's conclusion that termination of her parental rights was in CJH's best interests. This Court reviews for clear error a trial court's determination regarding best interests. *In re Williams*, 286 Mich App at 271.

"Once a statutory basis for termination has been shown by clear and convincing evidence, the court must determine whether termination is in the child's best interests." *In re LaFrance*, 306 Mich App 713, 732-733; 858 NW2d 143 (2014), citing MCL 712A.19b(5). "The focus at the best-interest stage has always been on the child, not the parent." *In re Payne/Pumphrey/Fortson Minors*, 311 Mich App 49, 63; 874 NW2d 205 (2015) (cleaned up). "Best interests are determined on the basis of the preponderance of the evidence." *In re LaFrance*, 306 Mich App at 733.

“In assessing whether termination of parental rights is in a child’s best interests, the trial court should weigh all evidence available to it.” *In re Payne/Pumphrey/Fortson Minors*, 311 Mich App at 63. In determining the best interests of the child, the trial court should consider “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, the advantages of a foster home over the parent’s home . . . the length of time the child was in care, the likelihood that the child could be returned to [his] parents’ home within the foreseeable future, if at all, and compliance with the case service plan.” *Id.* at 63-64 (cleaned up).

Respondent makes two arguments in support of her challenge to the trial court’s best-interests determination. First, respondent argues that there was testimony showing a bond between her and CJH. According to respondent, CJH’s “flat affect” was not the result of a lack of bond, but rather the medical conditions that have since been rectified. At any rate, respondent believes that the trial court based its determination regarding the lack of a bond on insufficient evidence because respondent had only been provided three parenting-time visits with CJH. Second, respondent asserts that the positive methamphetamine test was not dispositive of whether termination was in CJH’s best interests.

Initially, we point out that respondent’s argument that CJH’s “flat affect” was the result of his medical condition is essentially the same argument she made to the trial court. The trial court addressed this argument in its analysis and concluded that “there’s more to this than simply flat affect.” The trial court pointed out that in addition to the “flat affect,” CJH had other medical concerns that respondent “did nothing with . . . just kind of carried him along.” The trial court’s conclusion on this point is supported by testimony noting that it was the foster parents, not respondent, who recognized and sought treatment for CJH’s medical needs. While we need not resolve whether CJH’s “flat affect” was the result of a lack of bond or from his medical conditions, there was evidence supporting the trial court’s contention that “there’s more to this than simply flat affect.” Thus, we see no reason to conclude that the trial court clearly erred on this basis.

We next address respondent’s arguments regarding her positive drug screen for methamphetamines. According to respondent, the fact that respondent only tested positive for methamphetamines once shows she is working to keep herself clean. Respondent also believes that the positive test result for methamphetamines was, at best, inconclusive. In respondent’s view, it was error for the trial court to reach a best-interests determination on an inconclusive fact. We note this Court’s review of a best-interests determination should maintain “focus on the child rather than the parent.” *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). In making arguments regarding the conclusions that should be drawn with respect to respondent’s positive drug screen, respondent fails to place the emphasis where it should be—on CJH. As the trial court noted, the positive test result for methamphetamine only came after workers observed that respondent appeared high at her parenting-time visit with CJH. And, as noted earlier, there is no question that respondent frequently consumed marijuana even though she was barred from using the substance as part of her bond conditions. The trial court focused on CJH by questioning whether it was in CJH’s best interests to maintain respondent’s parental rights where the evidence showed respondent was high while with the child. Even though respondent disputes the validity of the drug screen, we do not find clear error where the trial court was presented with testimony of the drug screen’s validity, especially in light of her frequent use of marijuana.

As a final note, we point out that while respondent takes issue with two conclusions by the trial court regarding CJH's best interests, these were not the only bases on which the trial court determined termination was in CJH's best interests. The trial court also discussed respondent's parenting ability in relation to the loss of rights to her other two children, her history of domestic violence, and the care CJH has received from his foster parents. These are amply supported by the record and provide further grounds for the trial court's best-interests determination.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro
/s/ Brock A. Swartzle