

STATE OF MICHIGAN
COURT OF APPEALS

In re M. A. CALDWELL-KING, Minor.

UNPUBLISHED
April 22, 2021

No. 355194
Huron Circuit Court
Family Division
LC No. 19-004705-NA

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court’s order terminating her parental rights to her minor child, MK, under MCL 712A.19b(3)(c)(i), (c)(ii), (j), and (k)(iv). We affirm.

I. BACKGROUND

On December 27, 2018, MK was admitted to a hospital, where she was diagnosed with a spiral fracture to her right arm. Respondent-mother gave various accounts regarding how the child was injured, but in all of those accounts, respondent-mother was alone with the child when the injury occurred. Respondent-mother later admitted that she had lied about the child’s injury, and explained that the child, who was only five months old, had pinched her and that she had responded by handling the child in a manner that caused the arm fracture. In response to the child’s injury, the Department of Health and Human Services (DHHS), filed a petition to remove MK from the care of respondent-mother and respondent-father,¹ and to terminate respondent-mother’s parental rights, because her physical abuse resulted in serious bodily injury to the child.²

¹ After respondent-father participated in and benefited from services, the trial court returned the child to his care. No issues regarding respondent-father’s parental rights are before this Court on appeal.

² In her appellate brief, respondent-mother concedes that the DHHS was mandated by statute to file a petition seeking termination of her parental rights to MK, because of the nature of the child’s injuries.

At a preliminary hearing, respondent-mother entered a plea of admission to the allegations set forth in the initial petition. In furtherance of that plea, respondent-mother admitted that she had broken MK's arm out of frustration when the child had pinched her. The trial court accepted respondent-mother's plea of admission and concluded that statutory grounds existed to exercise jurisdiction over the child. On appeal, respondent-mother does not challenge the validity of her plea or of the trial court's adjudication.

Because the petition requested termination of respondent-mother's parental rights, the trial court scheduled the matter for a disposition hearing. At that hearing, the trial court ordered respondent-mother to participate in services, but deferred consideration of the request for termination to a future date. The trial court explained that it was granting respondent-mother time to engage in services, attend parenting-time sessions, and demonstrate that she was a fit parent. The parties agreed to the trial court allowing respondent-mother time to participate in services. During one of the subsequent hearings, the trial court indicated that the request for termination of respondent-mother's parental rights had been denied.

Throughout the proceedings in this case, respondent-mother was offered various services under a parent-agency-treatment plan, and she initially made progress with services. In October 2019, however, respondent-mother began a relationship with Corey Visscher, a man who had recently been released from prison and who had an extensive criminal history. Respondent-mother began to regress. She disengaged from her services and was not forthcoming about her relationship with Visscher. She did not consistently submit to drug screens, and when she did, she had several positive results for cocaine, marijuana, and oxycodone. Respondent-mother also served time in jail for the criminal conviction arising from her physical abuse of MK. At the time of termination, respondent-mother was continuing her relationship with Visscher, was pregnant with Visscher's child, was expressing signs of frustration with MK during parenting time, and had failed to take responsibility for the fact that she had caused MK's spiral fracture.

After the trial court conducted several hearings and provided respondent-mother with the opportunity to engage in services, the DHHS filed a new petition to terminate respondent-mother's parental rights. The trial court conducted an evidentiary and termination hearing over several days. The trial court concluded that statutory grounds for termination of respondent-mother's parental rights existed under MCL 712A.19b(3)(j) and (k)(iv), as well as under Subsection (3)(c). With regard to Subsection (k)(iv), the trial court stated that it was "unequivocally clear" that the child had suffered abuse at the hands of respondent-mother, resulting in the serious impairment of a limb. With regard to Subsection (j), the trial court stated that respondent-mother had "not placed the child first," that she "still deals with anger and frustration issues," and that she was still involved with Visscher. The trial court also noted that there were "multiple drug tests that have been missed or positive tests," and concluded that if respondent-mother "were to get care and custody of [MK] I believe that the possibility of harm is almost a certainty." The trial court concluded that the termination of respondent-mother's parental rights was in the best interests of MK because respondent-mother had failed to demonstrate that she would be able to provide the child with safety and stability.

Respondent-mother now appeals.

II. ANALYSIS

A. FAILURE TO RULE ON INITIAL PETITION

Respondent-mother first argues that the trial court erred by failing to rule on the initial termination request at the initial dispositional hearing. As a result, she contends, the statutory grounds for termination set forth in the initial petition were not proven by legally admissible evidence, the proceedings that followed were erroneous, and the record established during those proceedings was tainted. Although we conclude that the trial court committed procedural error, we further conclude that this error did not affect respondent-mother's substantial rights.

In the trial court, respondent-mother did not object to the trial court's failure to enter an order denying the initial request for termination. Indeed, respondent-mother agreed to the trial court's decision to allow her time to participate in services. Respondent-mother also never objected to the trial court's consideration of the record at the termination hearing. Even if respondent-mother's actions in the trial court could be construed as a waiver, we assume, without deciding, that this issue is subject to plain-error review. See *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019); *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Under the plain-error standard, respondent-mother must establish that (1) error occurred; (2) the error was plain, i.e., clear or obvious; and (3) the plain error affected their substantial rights." *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019) (cleaned up). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App at 9.

If the DHHS determines that a parent has abused her child and the abuse includes "loss or serious impairment of an organ or limb," the DHHS is required to submit a petition requesting the termination of parental rights at the initial dispositional hearing. MCL 722.683(1)(a)(iv); MCL 722.683(2). Child-protective proceedings are divided into the adjudicative phase and the dispositional phase. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). The question during the adjudicative phase is whether the trial court can exercise jurisdiction over the child to enter dispositional orders. *In re Ferranti*, 504 Mich at 15. "The court can exercise jurisdiction if a respondent-parent enters a plea of admission or no contest to the allegations in the petition, see MCR 3.971, or if the Department proves the allegations at a trial, see MCR 3.972." *Id.*

If the trial court assumes jurisdiction over the child and the child is placed into care, the initial dispositional hearing is to be held within 28 days of the adjudication. MCR 3.973(C). At the initial dispositional hearing, the trial court has a wide range of remedies available for disposition and has "broad authority" to enter orders that are in the best interests of the child. MCR 3.973(F)(2); MCL 712A.18f; *In re Ferranti*, 504 Mich at 16. The trial court may enter an order terminating parental rights under MCL 712A.19b(3) at the initial dispositional hearing if a termination petition was filed. MCL 712A.19b(4).

MCR 3.977(E), which governs the termination of parental rights at the initial dispositional hearing, provides:

The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that

additional efforts for reunification of the child with the respondent shall not be made, if

(1) the original, or amended, petition contains a request for termination;

(2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;

(3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:

(a) are true, and

(b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m);

(4) termination of parental rights is in the child's best interests.

“At an initial disposition hearing, a court can terminate parental rights on the basis of legally admissible evidence that had previously been introduced at the adjudication trial or legally admissible evidence presented for the first time at the dispositional hearing.” *In re Mota*, __ Mich App __, __; __ NW2d __ (2020) (Docket No. 351830); slip op at 13.

Generally, the trial court must “state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated.” MCL 712A.19b(1); MCR 3.977(I)(1). The trial court's findings need not be extensive because “brief, definite, and pertinent findings or conclusions on contested matters are sufficient.” MCR 3.977(I)(1). Furthermore, the trial court must “issue an opinion or order regarding a petition for termination of parental rights within 70 days after the commencement of the initial hearing on the petition.” MCL 712A.19b(1). Yet, “[t]he court's failure to issue an opinion within 70 days does not dismiss the petition.” MCL 712A.19b(1). Moreover, the denial of a termination petition triggers the administration of services and visitation, if appropriate. *In re HRC*, 286 Mich App 444, 464; 781 NW2d 105 (2009).

Based on the record in this case, it appears that the trial court concluded that the termination of respondent-mother's parental rights was not in the best interests of MK at that time, and therefore denied the initial termination petition, as it subsequently noted in a later hearing. Yet, the trial court failed to definitively state, on the record or in writing, its findings of fact and conclusions of law on the initial termination petition. See MCL 712A.19b(1); MCR 3.977(I)(1). The trial court also failed to “issue an opinion or order regarding a petition for termination of parental rights within 70 days after the commencement of the initial hearing on the petition.” MCL 712A.19b(1). The trial court, therefore, failed to proceed as required by the court rules.

On plain-error review, however, we cannot say that respondent-mother's substantial rights were affected or that the integrity, fairness, or public reputation of the proceedings were seriously

affected by the trial court's procedural error. The trial court did not rule on the initial termination petition because it wanted to allow respondent-mother an opportunity to participate in services and visitation with the goal of reunification. Until October 2019, respondent-mother was progressing toward the goal and, as noted by the trial court, was on her way to reunification. Consistent with this, the trial court ordered respondent-mother to complete and benefit from a treatment plan. Moreover, the parties and trial court appear to have operated with the understanding that the trial court had denied the initial termination petition because it found that termination of respondent-mother's parental rights was not in the best interests of MK. Accordingly, respondent-mother, in fact, benefited from the trial court's error.

B. STATUTORY GROUNDS

Respondent-mother next argues that the trial court erred in finding that clear and convincing evidence was presented to terminate her parental rights under MCL 712A.19b(3)(c)(i) and (c)(ii). Respondent-mother does not, however, challenge the trial court's finding that statutory grounds existed to terminate her parental rights under MCL 712A.19b(3)(j) and (k)(iv). Because only one statutory ground for termination need be proven, we need not address respondent-mother's arguments regarding MCL 712 A.19b(3)(c)(i) or (c)(ii). See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). In any event, while respondent-mother's failure to challenge the trial court's findings with respect to MCL 712A.19b(3)(j) and (k)(iv) constitutes abandonment of any challenge to those statutory grounds for termination, *People v Smith*, 439 Mich 954; 480 NW2d 908 (1992), we briefly set forth findings with respect to them.

Termination of parental rights is appropriate under MCL 712A.19b(3)(j) and (k)(iv) when:

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

* * *

(iv) Loss or serious impairment of an organ or limb.

MCL 712A.19b(3)(j) considers both physical and emotional harm to a child. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

MK was removed from respondent-mother's care because the child presented to the hospital with a broken arm and respondent-mother's explanation for the child's injury was not consistent with the medical evidence. Respondent-mother later admitted that she had lied, and that MK's injury occurred because she became frustrated when the child pinched her. Throughout the pendency of this case, respondent-mother never accepted responsibility for MK's injury and maintained that the injury was an accident. After receiving 18 months of services that were aimed at addressing her mental-health issues, anger-management problems, and parenting skills,

respondent-mother continued to become “noticeably frustrated” with MK during supervised visits, and the case worker expressed concern regarding how respondent-mother would act in an unsupervised setting.

Additionally, respondent-mother’s controlling behavior and tendency to lash out was noted by her service providers. Respondent-mother’s therapist testified that she had only just begun addressing her own trauma that involved parental failure to protect and she had further work to do on addressing her parenting skills and borderline personality disorder. Respondent-mother demonstrated a propensity to self-medicate, tested positive for cocaine, oxycodone, and marijuana, and stopped taking her prescribed psychiatric medications.

Finally, the evidence demonstrated that respondent-mother prioritized her relationship with Visscher over regaining custody of MK and withdrew from any service provider who recommended that she end her relationship with Visscher. Respondent-mother was warned that failure to end her relationship with Visscher would result in the termination of her parental rights because Visscher posed a risk of harm to MK. Despite numerous warnings and respondent-mother’s claim that she ended her relationship with Visscher in January 2020, respondent-mother became pregnant with Visscher’s child in February 2020. Thereafter, respondent-mother sent Visscher text messages stating that the trial court was trying to control her life, that she would not end their relationship because of the trial court, that she was going to keep their relationship on the “down low” until this case was over, and invited him to one of her prenatal doctor’s appointments. MK came into care because of physical abuse and the evidence demonstrated a reasonable likelihood that MK would be harmed if returned to respondent-mother’s care. Although the trial court may have entertained some inadmissible evidence regarding Visscher and his criminal record, adequate admissible evidence supported that his presence in respondent’s life demonstrated that she had not rectified the conditions that brought the child into care, and that a risk of harm remained. Even absent respondent-mother’s abandonment of this issue, we discern no clear error with respect to the trial court’s findings under MCL 712A.19b(3)(j) and (k)(iv). *In re Ellis*, 294 Mich App at 33.

C. BEST-INTERESTS ANALYSIS

Finally, respondent-mother 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 MK.

This Court reviews for clear error a trial court’s decision regarding a child’s best interests and the decision to terminate parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App 76, 83 (2013). “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App at 459 (cleaned up).

If the trial court determines, by clear and convincing evidence, that one or more 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 at 16. 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). “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). “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.

Throughout this proceeding, respondent-mother failed to demonstrate that she would prioritize MK or would be able to provide a safe and stable home for MK. At the time of termination, MK was still quite young and vulnerable at two years old. MK had been placed in respondent-father’s care and the evidence demonstrated that respondent-mother continued to pose a risk of harm to MK. Respondent-mother missed drug screens and tested positive for drugs on multiple occasions. Respondent-mother’s parenting time never advanced to unsupervised. It was reported that respondent-mother was disengaged during parenting time, became frustrated with MK, and lacked a bond with the child. Respondent-mother lacked candor with her therapists, determined that she had no further issues to work on with her therapists, and stopped taking her prescribed psychiatric medications. Despite respondent-mother’s belief that she had no further issues to work on in therapy, testimony was presented that respondent-mother had only just begun to work on her prior trauma and had further work to do on addressing her parenting skills. The trial court did not err by concluding that termination of respondent-mother’s parental rights was in the best interests of MK.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle