

STATE OF MICHIGAN
COURT OF APPEALS

In re MCGUIRE/WENDORF, Minors.

UNPUBLISHED
May 13, 2021

No. 355228
Branch Circuit Court
Family Division
LC No. 19-005850-NA

Before: MURRAY, C.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to his minor children. Respondent contends that the trial court erred in evaluating the best interests of the minor children without consideration of their relative placement. For the reasons stated in this opinion, we vacate the trial court’s best-interest analysis and remand for further proceedings consistent with this opinion.

“[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). A trial court’s factual findings following a termination hearing are reviewed for clear error. *In re Gonzales/Martinez*, 310 Mich App 426, 430; 871 NW2d 868 (2015). “A finding is clearly erroneous if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.* at 430-431 (quotation marks and citation omitted).

The focus of the best-interest determination is on the child, not the parent. *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). The trial court should “consider such factors as 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.” *Id.* (quotation marks and citation 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 701, 714; 846 NW2d 61 (2014).

A child’s placement with relatives weighs against termination. *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Accordingly, if a child is placed with a relative during termination proceedings, the trial court is required to explicitly consider that factor in

determining whether termination is in the child's best interests. *Id.* "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.* See also *In re Mays*, 490 Mich 993, 994; 807 NW2d 307 (2012).

In this case, in making its best-interest determination, the trial court considered the children's need for permanency and stability. The trial court also found that respondent would not be in a position to care for the children in the foreseeable future given their ages. However, the trial court did not explicitly consider any other best-interest factors, and importantly, that includes the children's relative placement. It is undisputed that the children initially lived with their great-grandparents before being temporarily placed with their paternal aunt during the termination proceedings. As noted, the children's relative placement was a factor that weighed against termination, *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010); MCL 712A.19a(8)(a), and that factor was required to be considered by the court in rendering its decision, *Olive/Metts*, 297 Mich App at 43.

With that in mind, we conclude that the trial court clearly erred by finding that termination of respondent's parental rights was in the children's best interests without considering the children's relative placement. See *Gonzales/Martinez*, 310 Mich App at 430. We vacate the trial court's best-interest analysis and remand this case to the trial court for further proceedings consistent with this opinion. See *Olive/Metts*, 297 Mich App at 43.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Karen M. Fort Hood

/s/ Elizabeth L. Gleicher