

STATE OF MICHIGAN
COURT OF APPEALS

In re TORRES/PAYNTER, Minors.

UNPUBLISHED
November 23, 2021

No. 356422
Wayne Circuit Court
Family Division
LC No. 2019-002939-NA

Before: M. J. KELLY, P.J., and STEPHENS and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right the February 9, 2021 order terminating her parental rights to her children RET and MAP under MCL 712A.19b(3)(h) and (j). Because the trial court did not clearly err by finding termination of respondent’s parental rights was in the children’s best interests, we affirm.

I. BASIC FACTS

This case arises following respondent’s incarceration for several felonies, including carjacking, assault with intent to do great bodily harm less than murder, and receiving and concealing stolen property. While this case was pending, the trial court in her criminal case sentenced her to 7 to 20 years’ incarceration for the carjacking conviction. Respondent testified at the evidentiary hearing on the supplemental petition to terminate her parental rights to the children that, although she had suggested “quite a few” people to care for the children while she was incarcerated, none of them were able to do so. Based on the record, the potential relative placements included one suggested relative who stated she was not willing to take the children and another who was unsuitable because she lived in Florida. Additionally, the children’s maternal grandmother was not appropriate because she had an extensive history with Child Protective Services, including the termination of her parental rights to a child. The children’s maternal aunt, who was 19 years of age, was also considered. However, she was unemployed and was residing with the maternal grandmother and would have to move out of that home first. The children were placed together in a foster home. The caseworker testified that the children were doing well, all their needs were being met, and they were thriving in that home. The home was preadoptive for both children, and they were “very bonded with the foster family.” Finally, the foster parents are appropriately meeting RET’s special needs.

Following the hearing, the trial court found statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(h) and (j), and it found that termination of respondent's parental rights was in the children's best interests.

II. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent only challenges the trial court's finding that termination of her parental rights is in the children's best interests. This Court reviews the trial court's ruling that termination is in the child's best interests for clear error. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "A finding is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

B. ANALYSIS

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). "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 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 701, 714; 846 NW2d 61 (2014). Placement of the child with a relative weighs against termination; therefore, if the child is placed with relatives at the time of termination, the trial court must consider that placement when evaluating the children's best interests. *Olive/Metts*, 297 Mich App at 43. The trial court is not required to place the child with relatives, however. *Id.*

Respondent argues that it was not in the children's best interests to terminate respondent's compliance with her case services plan. However, regardless of respondent's compliance with the case services plan, respondent testified that she would be incarcerated for carjacking for a minimum of seven years, that she was in no position to care for the children, and that none of the potential relative placements that she had identified were able to care for the children. Thus, although compliance with a case services plan can weigh against termination, respondent's compliance in this case does not change the fact that she will be unable to provide any direct care for the children for a minimum of seven years and that, despite suggesting several potential relative placements, she is not able to provide them with proper care by assuring they are cared for by a suitable relative.

Next, respondent argues that the trial court erred because it did not adequately consider the children's bond to respondent. The trial court considered respondent's bond with the children. The court found that given MAP's young age when she came into care and the length of time that had elapsed without seeing respondent, MAP did not have a bond with respondent. Respondent, in fact, testified at the termination hearing that she did not have a very strong bond with MAP because MAP was separated from respondent at a very early age. Although respondent testified

that she had a strong bond with RET, the evidence of the bond was that RET had asked about and sent letters to respondent. However, it had been over seven months since RET had seen respondent, and RET told her therapist that she wanted her foster parents to adopt her. Thus, the trial court's finding that the bond between respondent and RET was diminishing was not clearly erroneous. In light of the evidence presented, the trial court's findings relating to the bond between respondent and the children was adequate and was not clearly erroneous.

Finally, respondent argues that the trial court erred by not properly considering relative placements for the children and by not requiring petitioner to conduct a more thorough investigation into possible relative placements. Yet, as stated above, respondent suggested several relative placements. Each was investigated and found inappropriate. Respondent has not presented any evidence indicating that the reasons for rejecting the placements were either invalid or had been corrected by the time of termination. Accordingly, given that there is no evidence to suggest it was warranted, we conclude that there is no reversible error in the court's failure to require a more thorough investigation into relative placements.

Finally, the trial court's finding that it was in the children's best interests to terminate respondent's parental rights considered the children's need for permanency and stability. Both were in a preadoptive foster home, were bonded with their foster parents, and were thriving. In contrast, respondent was unavailable to provide direct care because of her incarceration and she was unable to identify a relative placement despite having several months to do so. Based on the record before this Court, the trial court did not clearly err by finding termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Michael J. Kelly
/s/ Cynthia Diane Stephens
/s/ James Robert Redford