

STATE OF MICHIGAN
COURT OF APPEALS

In re PHELPS/TELLO, Minors.

UNPUBLISHED
August 19, 2021

No. 356549
Ingham Circuit Court
Family Division
LC Nos. 19-001325-NA;
19-001326-NA;
19-001327-NA

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

PER CURIAM.

Respondent-mother appeals as of right the trial court’s order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist); (g) (failure to provide proper care or custody); and (j) (reasonable likelihood of harm if returned to parent).¹ For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

In October 2019, the Department of Health and Human Services (DHHS) filed a petition requesting that the trial court take jurisdiction over the minor children. The petition included allegations that respondent-mother left the children with a neighbor for approximately eight weeks because she had been evicted from her residence. The petition also alleged that respondent-mother was incarcerated for retail fraud. It further alleged that respondent-father was incarcerated because of criminal sexual conduct (CSC) charges. At the preliminary hearing, a Children’s Protective Services (CPS) investigator testified there were concerns of substance abuse, ongoing

¹ Respondent-father’s parental rights to two of the minor children were also terminated in this proceeding, but he is not a party to this appeal. Therefore, unless otherwise indicated, the term “respondent” as used in this opinion refers to respondent-mother. The third minor child’s father was deceased when the petition was filed.

homelessness, and criminal behavior. The petition was authorized. Two of the minors were placed with a best friend's parents, and the other minor was placed with his best friend's mother.

In October 2019, both respondents entered an admission plea to several of the allegations. Respondent-father testified that he was currently incarcerated on new CSC charges and was not able to take custody of the minor girls. The trial court found that one or more of the statutory grounds had been met and that the minor girls came within the jurisdiction of the court. Respondent-mother testified that she had been fired from her job a few weeks before the hearing, had been evicted, and was living out of her car. She also testified that she had admitted marijuana and sporadic "crack" use to a CPS investigator, but denied using heroin. The trial court found that the minor boy came within the jurisdiction of the court. The minor children remained in their placements, and respondent-mother was granted supervised parenting time.

Respondent-mother's progress with the case service plan was poor, and she failed to participate in the vast majority of her drug screens. In June 2020, the trial court held a show cause hearing based on respondent-mother's noncompliance. Respondent-mother admitted that she missed drug screens that she was ordered to attend from November 2019 to March 2020 and did not complete her psychological evaluation. At the termination hearing one of the foster care workers testified that respondent-mother attended 4 out of 170 total drug screens offered.² She also testified that three of the four screens respondent-mother completed were positive for more than just marijuana. Respondent-mother also missed her first and second appointments for her psychological evaluation and substance abuse assessment. In addition, she failed to successfully complete inpatient or outpatient substance abuse treatment. Respondent-mother continued to struggle to find stable housing or employment.

In October 2020, DHHS filed a supplemental petition for termination of respondent-mother's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). On February 5, 2021, the trial court issued an oral opinion on the matter noting that there had not been any progress in this case because there was "one disappointment after another in terms of [respondent's] ability to accept and take services so that she can become a parent again" The trial court stated that there were too many barriers, and that "[respondent] had a long track record of homelessness, drug addiction, evictions, failure to participate in services, domestic violence, criminality, neglect." The trial court concluded that petitioner had demonstrated by clear and convincing evidence that the facts in the supplemental petition were true and that termination of respondent's parental rights was appropriate under MCL 712A.19b(3)(c)(i), (g), and (j).

Further, the trial court found that a preponderance of the evidence demonstrated that termination of respondent's parental rights was in the best interests of the children. The trial court stated: "[T]he children are safe currently. They are well cared for at this time. That if there is much of a parent child bond that at this time it is outweighed by the children's need for permanency, safety, stability . . ." The trial court also found that reasonable opportunities and

² Because of COVID-19, drug screens were unavailable from late March to early June 2020. A foster care worker testified that the 170 total drug screens did not include drug screens that were unavailable because of COVID-19.

efforts were made to preserve the family, and that the parents had an ample opportunity to take advantages of services and did not. In accordance with its findings, the trial court entered an order terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j) and that termination of respondent's parental rights was in the minor children's best interests. This appeal ensued.

II. ANALYSIS

In her appeal, respondent argues that the trial court erred by determining that termination of respondent's parental rights was in the best interests of the children because a long-term guardianship with the caregivers was a better option. The trial court terminated respondent's parental rights because of substance abuse, lack of employment, and lack of housing. All were adjudicated barriers toward reunification. However, respondent argues, she was in a detox program at the time of the termination hearing and the court's decision, and if the trial court had extended this case respondent would have complied with and benefited from the detox program and become substance-free. The DHHS worker stated that the current placements would be long-term if needed, and although the GAL recommended termination, she was open to a juvenile guardianship because the placements had become licensed.

In their appeal, petitioner argues that the trial court properly found that it was in the minor children's best interests to terminate respondent's parental rights. Although there was testimony that there was a bond between respondent and the children, as noted by the trial court, the bond was diminished because respondent was not consistent with parenting time. Respondent did not have any visits or talk to the children during the two months before the trial, which made them feel like she was not interested in them. The children needed permanence, stability, and finality, but respondent could not provide a safe and stable home for them or financially support them. In addition, respondent could not provide stability because of her drug abuse. The foster parents provided for the children, and the children were safe and well cared for, while respondent did not have suitable housing. Respondent was not a suitable caregiver because she failed to address her substance abuse issues. The trial court adequately weighed the bond between respondent and her children because the children's need for permanence, finality, and stability outweighed any bond respondent had with her children.

Generally, we review for clear error the trial court's decision that termination is in the child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A decision is 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.* at 41 (quotation marks and citation omitted).

After a trial court has found there is a statutory ground for termination, it must find that "termination is in the child's best interests before it can terminate parental rights." *Id.* at 40. For purposes of the best-interests analysis, the focus is on the child and not the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). A trial court has "a duty to decide the best interests of each child individually." *Olive/Metts Minors*, 297 Mich App at 42. However, a trial court does not err by failing to explicitly make individual factual findings regarding each child's best interests. *In re White*, 303 Mich App 701, 716; 846 NW2d 61 (2014). Instead, a trial court is required to explicitly address the best interests of the individual children when their interests significantly

differ. *Id.* at 715. A trial court’s decision that termination of parental rights is in the best interests of the child must be supported by a preponderance of the evidence. *Moss*, 301 Mich App at 90.

A trial court should “weigh all the evidence available to determine the children’s best interests.” *White*, 303 Mich App at 713. A variety of factors may be considered by the trial court, including “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 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.” *Id.* at 714. A trial court may also consider whether it is likely the child could be returned to the parent within the foreseeable future. *In re Jones*, 316 Mich App 110, 120; 894 NW2d 54 (2016).

Here, respondent initially argues that the trial court did not address the bond between respondent and the minor children. The record reveals that contrary to respondent’s assertion, the trial court did consider the bond between respondent and her children, but concluded that it was outweighed by their need for permanency, safety, and stability. A foster care worker testified that although respondent had a bond with the minor children, in part because of their ages, the children became visibly withdrawn when respondent’s attendance at parenting time became more inconsistent. Testimony revealed and the trial court seemed to agree that this reaction by the minor children evidenced the children’s need for permanency. Further, it was unlikely that respondent would be able to provide permanency for the children within a reasonable time. Throughout the case, respondent failed to engage in drug screens or obtain stable housing and employment. In addition, both of the foster care placements offered to provide permanency for the children, and the children were bonded with the placements. On this record we cannot conclude that the trial court erred by concluding that the bond was outweighed by the children’s need for safety, permanency, and stability. See *Jones*, 316 Mich App at 120.

Respondent next argues that she had the ability to parent the children because she raised them by herself until they became teenagers. However, at the adjudication respondent admitted allegations of previous CPS interventions in June 2013, August 2016, and February 2019. She also admitted that she left the children with her neighbor because she was evicted and living out of her car, and she did not visit her children often during that time because she could not provide for them. Further, a foster care worker testified that respondent was not able to progress to unsupervised parenting time because they could not confirm that she was participating in any services or drug screens. Given respondent’s lack of attention to the children and her ongoing addictions and homelessness, evidence existed in this record that respondent lacked the ability to parent the children.

Respondent admits that she could not provide permanency and stability, but argues that we could take judicial notice “that for an *unskilled* woman, obtaining new employment and housing during Covid-19 is a nightmare of monumental proportions.” However, respondent has not supported her argument with any authority. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). A party abandons an issue by failing to address the merits of his or her

assertions. *Woods v SLB Prop. Mgt., LLC*, 277 Mich App 622, 626; 750 N.W.2d 228 (2008); as quoted in *In re Conservatorship of Murray*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 349068); slip op at 14. Because respondent has failed to adequately brief this argument, it is abandoned. See *id.* Further, respondent’s argument is without merit. Under MRE 201, a court may take judicial notice of adjudicative facts. And, this Court may take judicial notice for the first time on appeal. *2 Crooked Creek, LLC v Cass Co Treasurer*, 329 Mich App 22, 50; 941 NW2d 88 (2019), aff’d but criticized on other grounds ___ Mich ___ (2021). However, “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” MRE 201(b). Respondent has not provided any evidence that the proposed fact is generally known by the population of Ingham County. Even presuming that finding employment and housing was more difficult because of the COVID-19 pandemic, it is impossible to determine whether finding employment and housing was a “nightmare of monumental proportions,” and it would not be appropriate to take judicial notice of that fact. See MRE 201(b). However, the trial court afforded respondent ample opportunities to find employment and housing. It was respondent’s inability to follow through or stay focused on the task of gaining employment or housing that ultimately led the trial court to conclude that respondent was either unable or unwilling to do so.

Respondent also admits that the foster homes had advantages because she did not have a home, but argues that DHHS did not provide her with any housing or employment assistance. Again, respondent simply makes this statement but then fails to provide this Court with any authority to support it. See *Murray*, ___ Mich App at ___; slip op at 14. However, in the interests of justice we will examine the issue.

Termination of parental rights is premature when a respondent is not given an adequate and meaningful opportunity to participate in services. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). “While the [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). We begin by noting that respondent’s statement regarding housing is not in accord with our review of the record. DHHS provided some assistance to respondent to help her obtain housing and employment. One of the foster care workers testified that she talked to respondent about going to Lansing Housing Commission or a shelter, but respondent, for no real reasons refused. Another foster care worker testified that she referred respondent to Michigan Works. In addition, respondent cannot establish that DHHS failed to use reasonable efforts to reunify her with the minor children, because the record reveals she largely failed to participate in the services that DHHS actually offered. See *Frey*, 297 Mich App at 248. Respondent did not consistently communicate with her foster care worker, failed to attend family team meetings to discuss her progress, and failed to complete most of her drug screens.

Respondent also argues that although the trial court found substance abuse, lack of employment, and housing to be barriers toward reunification, she was in a detox program at the time of the termination hearing and the court’s decision. However, respondent did not inform the trial court that she was in a detox program until *after* the trial court terminated respondent’s parental rights. Further, it was not certain that respondent would have complied with and benefited from the detox program. One of the foster care workers testified that when respondent did show

up to a detox facility, a majority of the times she left against medical advice. Less than two months before the termination hearing, in December 2020, respondent entered detox but left against medical advice.

Respondent also argues that the trial court clearly erred by failing to consider a long-term guardianship. Again, respondent has abandoned this argument because she has not provided any authority to support her argument that the trial court was required to consider a long-term guardianship. See *Murray*, ___ Mich App at ___; slip op at 14. Again, in the interests of justice we consider the issue. We begin our discussion of this issue by noting that respondent never asked the trial court to consider a guardianship at any stage of the proceedings. Although respondent contends that two of the minor children were teenagers,³ and older children are not easily adopted, the placements offered to provide permanency and both of the older minor children and the paternal grandmother offered to adopt them if respondent’s parental rights were terminated.

Respondent’s failure to comply with and benefit from the case service plan and the minor children’s need for permanence clearly outweighed respondent’s bond with the children. Following our review of the record, we conclude that the trial court did not clearly err by finding that termination of respondent’s parental rights to the minor children was in their best interests.

Respondent also argues that the trial court clearly erred by not continuing the case because respondent had entered into a detox program. Again, respondent has abandoned this argument because she has not provided any legal authority to support her argument that the court should have continued the case. See *Murray*, ___ Mich App at ___; slip op at 14. Further, respondent has waived this issue because it was not included in her statement of questions presented. See MCR 7.212(C)(5); *Seifeddine v Jaber*, 327 Mich App 514, 521; 934 NW2d 64 (2019). Nevertheless, respondent’s argument is meritless.

We review a trial court’s ruling on a request for adjournment for an abuse of discretion. See *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). MCR 3.923(G) provides:

(G) Adjournments. Adjournments of trials or hearings in child protective proceedings should be granted only

- (1) for good cause,
- (2) after taking into consideration the best interests of the child, and
- (3) for as short a period of time as necessary.

A trial court may only find good cause for adjournment if a “legally sufficient or substantial reason” is shown. *Utrera*, 281 Mich App at 11. In this case, respondent cannot show that there was good cause to adjourn because she waited until the eve of the termination hearing to commit to resolving her issues with substance abuse. At the time of the termination hearing, the minor

³ Respondent’s statement was not accurate as only one of the children was a teenager at the time of the hearing. The other child was 12.

children had been in care for approximately 15 months. In that time, respondent failed to successfully complete detox treatment. As discussed previously, respondent left detox early against medical advice *in December 2020*. Even if respondent successfully completed detox and inpatient treatment, it is not likely that respondent would be able to care for the children within a reasonable time. As previously noted, testimony was presented that indicated that respondent would need a minimum of six months following treatment before she would be able to think about unsupervised visitation with the minor children. On this record, the trial court did not abuse its discretion by denying respondent's request to adjourn to allow respondent to complete detox.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher