STATE OF MICHIGAN

COURT OF APPEALS

In re CHRISTMAS/MUHAMMAD/STRINGER, Minors.

UNPUBLISHED
November 18, 2021

No. 357112
Wayne Circuit Court
Family Division
LC No. 2020-000112-NA

Before: GLEICHER, P.J., and K. F. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to AC, LM, and HS under MCL 712A.19b(3)(a)(*ii*), (c)(*i*), and (j). Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In January 2020, child protective services (CPS) was dispatched to a home in Detroit, Michigan. Although children were heard inside the home, a man was present, but he would not open the door. The police were called and kicked in the door to remove the children. The home was in a deplorable condition with no legal utilities, dirty walls and floors, a collapsing ceiling, exposed wiring, and a flooded basement. There were broken windows and bullet holes in the walls. The children were dirty, hungry, without proper clothing, and were cold to the touch. CPS conducted an emergency removal of the children, and a petition was filed seeking temporary custody of the children.[1]

The trial court authorized a petition and ordered respondent to participate in a case service plan. The case service plan required respondent to participate in a psychological evaluation, individual therapy, and parenting classes. Respondent also needed to obtain suitable housing, a

[1] Prior to the January 2020 removal, respondent was the subject of three prior substantiated complaints. In 2014, there was a substantiated claim of domestic violence, and in 2015, LM tested positive for marijuana at birth. However, services were not provided because the family could not be located.

legal source of income, and participate in supervised visitation with the children. AC and LM were placed with their legal father, and HS was placed with his maternal stepgrandmother.

Respondent did not attempt to participate in any of the services outlined in the case service plan. She also did not participate in visitation with the children after August 2020. On August 6, 2020, respondent reportedly gave birth to a fourth child, PC. However, a hospital birth record was not located. Rather, the caseworker learned of the birth because respondent sought cash assistance. The caseworker attempted to find respondent and PC to determine if the newborn was at risk, but respondent could not be located.

In March 2021, DHHS filed a supplemental petition seeking the termination of respondent's parental rights. Respondent did not appear at the hearing on the petition. The caseworker testified that respondent was not compliant with the case service plan and had a "nonchalant attitude" toward the proceedings. Respondent believed that she would still see her children regardless of the outcome of the hearing. The trial court found statutory bases existed to terminate respondent's parental rights and that termination was in the children's best interests.[2]

II. APPLICABLE STANDARDS

"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) (quotation marks and citation omitted); MCR 3.997(K). A finding is clearly erroneous if this Court "is left with the definite and firm conviction that a mistake has been made." *Williams*, 286 Mich App at 271 (quotation marks and citations omitted). 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). Further, "[t]he interpretation and application of statutes and court rules are . . . reviewed de novo." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

"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). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 32.

III. ANALYSIS

Respondent contests the trial court's findings that statutory grounds existed to terminate her parental rights and that termination was in the children's best interests. We disagree.

[2] The care and custody of AC and LM was assumed by their non-respondent legal father. The parental rights of the unknown father of HS were terminated in the trial court. PC was never located or named in the supplemental petition. The fathers' rights to these children is not at issue in this appeal.

A. STATUTORY GROUNDS

In this case, the trial court found statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(a)(*ii*), (c)(*i*), and (j). Termination is proper under MCL 712A.19b(3)(a)(*ii*) when "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." Respondent submits that clear and convincing evidence warranting termination under this section was not presented. However, the caseworker testified that the last parenting time visit respondent attended with the children was on July 30, 2020, which the trial court later observed was about eight months before the termination hearing. Further, the caseworker noted that respondent had a "nonchalant attitude" toward the children, "it was like she didn't care what happens. You know as far as being involved in their lives." Indeed, respondent conveyed that she did not participate in the case service plan because she would still be able to see her children. The trial court cited this testimony as supporting termination under (a)(*ii*). The caseworker's testimony demonstrated that respondent evaded authorities and any participation in the case evaluation plan even if it precluded any meaningful role in the children's lives. In light of the evidence demonstrating that respondent abandoned and did not seek custody of the children, the trial court did not clearly err in finding a statutory basis for termination under MCL 712A.19b(3)(a)(*ii*).[3]

B. BEST INTERESTS

"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) (brackets omitted), quoting *In re Moss*, 301 Mich App at 87. "Best interests are determined on the basis of the preponderance of the evidence." *LaFrance*, 306 Mich App at 733. The factors to be considered include:

> [T]he 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 her parents' home within the foreseeable future, if at all,

[3] Although only one ground for termination need be established, *Ellis*, 294 Mich App at 32, for purposes of completeness, the trial court also did not clearly err under MCL 712A.19b(3)(c)(*i*) and (j). The conditions that led to the adjudication, specifically, the unsuitable home, were not rectified by respondent. Respondent did not communicate with the caseworker, obtain housing, or a legal source of income. Further, she did not attend a psychological evaluation, therapy, or parenting classes. Rather, respondent continued her pattern of failing to participate in services and evaded any engagement in the case service plan. This complete lack of participation further demonstrated that the children would likely be harmed if returned to respondent's care or home.

and compliance with the case service plan. [*Payne/Pumphrey/Fortson Minors*, 311 Mich App at 63-64 (quotation marks and citations omitted).]

However, "[a] child's placement with relatives is a factor that the trial court is required to consider." *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). And, "a child's placement with relatives weighs against termination." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Nonetheless, a "trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012). "In assessing whether termination of parental rights is in a child's best interests, the trial court should weigh all evidence available to it." *Payne/Pumphrey/Fortson Minors*, 311 Mich App at 63.

Respondent submits that termination was not in the children's best interests because they were all placed with relatives—AC and LM with their legal father, and HS with his maternal stepgrandmother. Further, with respect to AC and LM, respondent contends that the legal father should have obtained a custody order to avoid the need to terminate respondent's parental rights. Although it was contemplated that the legal father of AC and LM would pursue a sole custody order through the friend of the court, an order was never produced. Nonetheless, the caseworker was questioned regarding the best interests of AC and LM in light of the care by their legal father. She opined that termination of respondent's parental rights was still in the children's best interests to prevent her from interfering in the children's lives. Further, the trial court noted that respondent had a history of evading authorities and making her whereabouts unknown and willfully failed or completely refused to comply with the parent agency agreement. Under the circumstances, the trial court did not clearly err in finding that termination of respondent's parental rights to AC and LM was in their best interests.

Additionally, the trial court weighed HS's placement with his maternal stepgrandmother against termination, but further addressed the stepgrandmother's intent to adopt HS as a factor in favor of termination. See *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The trial court also considered that respondent did not demonstrate any desire to be a parent to HS and that termination was in the child's best interests to afford him permanency and stability. Specifically, the trial court cited respondent's disinterest in parenting her children, her continued absence in the children's lives, and that the children had found stability in their respective placements. On this record there is no error warranting reversal.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly