STATE OF MICHIGAN

COURT OF APPEALS

In re HEMENWAY, Minors.

UNPUBLISHED
September 29, 2022

No. 360518
Shiawassee Circuit Court
Family Division
LC No. 21-014306-NA

In re BRIGGS/COLEMAN/HEMENWAY, Minors.

No. 360519
Shiawassee Circuit Court
Family Division
LC No. 21-014306-NA

Before: K. F. KELLY, P.J., and LETICA and RICK, JJ.

PER CURIAM.

In these consolidated appeals,[1] in Docket No. 360518, respondent-father appeals by right the trial court's order terminating his parental rights to the minor children RH and LH. In Docket No. 360519, respondent-mother appeals by right the trial court's order terminating her parental rights to RH and LH, as well as four other minor children, CB, MB, NB, GC. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Respondent-mother and respondent-father were married and had two children together, RH and LH. Both respondents had other children from prior relationships. Respondent-mother's other children, CB, MB, NB, and GC, were involved in this case but respondent-father's other children were not. The parties had a history with Child Protective Services (CPS) concerning a variety of

[1] This Court consolidated these appeals "to advance the efficient administration of the appellate process." *In re Hemenway Minors*, unpublished order of the Court of Appeals, entered March 25, 2022 (Docket Nos. 360518 and 360519).

issues such as improper supervision, physical neglect, "deplorable" home conditions, and substance abuse. The children were removed by CPS in April 2021 after an incident in which respondent-mother dropped the three younger children off at her grandmother's house without food, diapers, or extra clothes because "someone was at her house and her and [respondent-father] were in big trouble." Respondents then failed to respond to several phone calls made to them by CPS.

After adjudication, the initial permanency goal was reunification, and the case service plan included therapy, drug screens, and parenting classes. Respondents initially attended parenting time regularly and their interactions with the children were mostly appropriate. However, from early July 2021 until September 2021, respondents stopped attending parenting time and cut off all contact with petitioner Department of Health and Human Services (DHHS) and their attorneys. This led to suspension of their parenting time, and DHHS sought termination of respondents' parental rights. Ultimately, the trial court ordered that the parental rights of both respondents to all six children be terminated. This appeal followed.

II. STANDARDS OF REVIEW

To terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the enumerated statutory grounds has been established. MCL 712A.19b(3). We review for clear error a trial court's finding "that a ground for termination has been proven by clear and convincing evidence . . . ." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (quotation marks and citations omitted). We also review for clear error a trial court's finding that termination is in the child's best interest. *Id.* "A trial court's decision is clearly erroneous if 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, citation, and brackets omitted).

III. DISCUSSION

A. STATUTORY GROUNDS

Respondents argue that the trial court erred by finding that petitioner established a ground for termination of parental rights by clear and convincing evidence. We disagree.

The statutory grounds for termination of parental rights are found in MCL 712A.19b(3), which states in relevant part:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Termination under subparagraph (c)(*i*) is appropriate when "the totality of the evidence" supports a finding that the parent "had not accomplished any meaningful change in the conditions" that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Additionally, the court must find that "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." MCL 712A.19b(3)(c)(*i*). The determination of what constitutes a reasonable time includes analyzing both how long the parent will take to improve the conditions and how long the child can wait for the improvements to occur. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991).

Respondents failed to meaningfully engage with DHHS during the pendency of the case. The caseworker testified that they missed numerous drug screens, failed to provide documentation of employment or other services, failed to keep DHHS apprised of their home address, and missed 47 of 61 scheduled parenting times. Other barriers existing at the start of the case were housing and employment; at the time of termination, respondents lived in a one-bedroom home that was too small for six children, and respondent-mother failed to obtain employment despite having been instructed to do so. The children ranged in age from 5 to 15 years old, the case had been ongoing for nearly a year, respondents went several months without seeing the children, respondents did not have a clear idea of when or how they would obtain suitable housing, and respondents failed to put into place an adequate plan to ensure ongoing sobriety.

The primary condition that resulted in the initial adjudication was respondents' problem with substance abuse. During the pendency of the case, respondents at one point went more than two months without communicating with DHHS or exercising any parenting time, and both respondents testified that this was because of their addictions. In September 2021, respondents did attend an inpatient detox program and subsequently attended addiction counseling, but the court did not find their testimony about their ability to remain sober to be credible, and we "must defer to the special ability of the trial court to judge the credibility of witnesses." *In re Medina*, 317 Mich App 219, 227; 894 NW2d 653 (2016) (quotation marks and citation omitted).

For these reasons, we conclude there was sufficient evidence in the record to find that there was no likelihood that the conditions would be rectified within a reasonable time. Therefore, the court did not err by finding that MCL 712A.19b(3)(c)(*i*) was established by clear and convincing evidence.[2]

[2] As petitioner concedes, we cannot affirm the court's findings under subparagraph (g) because the trial court applied an outdated version of this provision. MCL 712A.19b(3)(g) was amended effective June 12, 2018. See 2018 PA 58. Under the version of the statute in effect before these proceedings were initiated, termination was appropriate if "[t]he parent, *without regard to intent*, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the

B. BEST INTERESTS

Turning next to the question of whether termination was in the children's best interest, respondents contend that the trial court erred by finding that termination of their parental rights was in the best interests of the children. We disagree.

If the trial court finds that a statutory ground for termination of parental rights has been established, it must order termination of parental rights only if it finds by a preponderance of the evidence that doing so is in the best interests of the child.[3] MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In making this determination, the trial court may consider factors such 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." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (quotation marks and citation omitted). Other factors that the trial court can consider include the parent's compliance with the service plan and the parent's visitation history. *Id*. at 714.

The court primarily based its finding on the children's need for permanence. The court emphasized that the children needed dependable caregivers who could consistently meet their needs and respondents failed to demonstrate their ability to do so. Given the discussion above of

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child's age." MCL 712A.19b(3)(g) (emphasis added). However, under the current version of the statute, which was in effect at the time of the termination order, termination is appropriate if "[t]he parent, *although, in the court's discretion, financially able to do so*, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g), as amended by 2018 PA 58 (emphasis added). In this case, the trial court applied the previous version of MCL 712A.19b(3)(g). Accordingly, it has not been established whether respondents were financially able to provide for the minor children's care and custody. Nevertheless, to reiterate, this error was not outcome-determinative because the court properly found that subparagraph (c)(*i*) was established. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011) ("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.").

[3] We reject respondent-mother's contention that reversal is required because the trial court failed to articulate the preponderance-of-the-evidence standard when making its best-interest determination. Absent clear and convincing evidence to the contrary, we maintain a presumption that the trial court knows the law. See *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001) ("[A]bsent clear evidence that the sentencing court incorrectly believed that it lacked discretion, the presumption that a trial court knows the law must prevail."). Respondent-mother does not point to any instance in the record in which the trial court applied a lower standard than preponderance of the evidence. Instead, respondent-mother simply states it is "unclear as to what evidentiary standard the trial court was applying." We therefore reject her speculative assertion since the trial court is presumed to know and follow the law.

respondents' problems with substance abuse, housing, visitation, and maintaining contact with DHHS, there was ample evidence in the record to support this finding.[4]

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Anica Letica
/s/ Michelle M. Rick

[4] Respondent-mother argues, and petitioner appears to concede, that the trial court clearly erred when it terminated her rights to her three oldest children because the court did not consider the fact that the children were placed with relatives when it determined it was in the children's best interest for termination to occur. While it is true that "[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," *In re Olive-Metts*, 297 Mich App at 43, a "relative" does not include a biological parent. *In re Mota*, 334 Mich App 300, 321; 964 NW2d 881 (2020) ("[A] child's biological parent is not that child's 'relative' for purposes of [MCL 712A.19a]."). Because respondent-mother's three oldest children were placed with their biological fathers, the trial court was not required to consider this factor when making its best-interest determination. See *In re Schadler*, 315 Mich App 406, 413; 890 NW2d 676 (2016) ("[B]ecause BS's biological mother was not a 'relative' for purposes of MCL 712A.19a, the trial court was not required to consider that relative placement."). Thus, despite petitioner's apparent concession, we reject this claim of error.