STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
February 21, 2013

In the Matter of BAKER/HOLMGREN/ GALLIMORE, Minors.

No. 311839
Eaton Circuit Court
Family Division
LC No. 06-016173-NA

Before: FITZGERALD, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to three minor children. We affirm.

Respondent argues that the trial court erred in determining that termination was in the children's best interests. We disagree. A trial court's determination that termination is in the best interests of a child is reviewed for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "A finding 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." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (internal quotation marks and citations omitted).

If the trial court determines that at least one statutory ground for termination exists, the court must order termination if the trial court affirmatively finds that it is in the best interests of the children. MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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." *Id*. at 41-42 (citations omitted).

Here, the court looked to § 23 of the Child Custody Act (CCA), MCL 722.21 *et seq*., in making the best-interests determination. Although the concerns underlying the CCA best-interests factors may be applicable to termination hearings, the trial court is under no obligation to make findings in connection with the factors. *In re JS & SM*, 231 Mich App 92, 102; 585 NW2d 326 (1998), rejected in part on other grounds by *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). However, if the trial court wishes to refer to the CCA best-interest factors, it may do so. *In re JS & SM*, 231 Mich App at 102-103.

MCL 722.23 lists the following factors:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

Citing *Bowers v Bowers*, 190 Mich App 51, 475 NW2d 394 (1991) (a child-custody case), respondent asserts that the trial court erred in determining that termination was in the best interests of the children because the trial court improperly excluded the preferences of two of the children. MCL 722.23(i). Again, however, the court was not obligated to consider the

preference of the children because the CCA best-interests factors do not have to be considered in a proceeding such as the present one. *In re JS & SM*, 231 Mich App at 102.[1]

Respondent also maintains that many of the other factors supported maintaining her parental rights and that the trial court made improper conclusions concerning them.

In regard to factor (a), the trial court determined that it favored termination because although respondent clearly showed that she loved her children, she did not translate that emotion into fostering emotional ties with the children and providing for their fundamental needs. There was evidence that although respondent loved her children, there did not appear to be a strong bond during parenting time. Specifically, the children did not seem to demonstrate grief when visitation would end. There was also evidence that respondent had not effectively addressed her substance-abuse issues despite their impact on her ability to parent her children. The court noted that respondent was giving one child half of the recommended dose of the child's prescription medication and then selling the other half. The trial court specifically found that even though respondent felt love for the children, "[l]ove is also expressed by providing for the children, dealing with their fundamental needs and providing . . . emotional ties." In light of all the evidence, including the evidence concerning respondent's skills and abilities related to parenting, the trial court did not clearly err in finding that respondent did not translate her love for the children into actions benefitting them, and therefore we find no error with respect to factor (a).[2]

For factor (b), the trial court determined that termination was favored because of respondent's mental-health and substance-abuse issues. The trial court did acknowledge that the mental-health issues were not respondent's fault, but noted that respondent had failed to take advantage of the services offered to deal with the issues and to improve her parenting skills. The evidence supported this conclusion. There was testimony that respondent was prescribed medication that she failed to obtain. Additionally, respondent failed to complete the parenting classes that were offered and would sometimes become defensive and resistant to suggestions concerning how to parent. The court also noted that respondent's continued drug use showed "either a lack of capacity or a lack of disposition or both of not wanting to create an environment that is loving for her children." As noted by a substance-abuse therapist:

> [W]hen you have a period of . . . 12 or more years of almost daily use other than when a person is pregnant, . . . and then continuing to use after the

[1] We note that "there is no authority that permits a trial court presiding over a juvenile matter to conduct in camera interviews, on any subject whatsoever, with the children." *In re HRC*, 286 Mich App 444, 453; 781 NW2d 105 (2009).

[2] While the trial court's findings with regard to factor (a) overlapped to some extent with the findings concerning factors (b) and (c), this is certainly no basis for reversal, especially because the court was not even obligated to address the CCA factors in the first instance.

> children are born and continuing to use after the children are taken away it . . . speaks to the priority and the value of what the substances are to that person, . . . and the fact that she continued to use after her children were gone was substantial.

The trial court did not err in determining that termination was favored by this factor.

For factor (c), respondent quotes at length from the court's findings but does not challenge them or point to anything in them that did not support the best-interests finding. The same lack of a developed argument is apparent for factors (d), (f), and (k). "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).

When discussing factor (e), the trial court held that termination was favored because of respondent's relationship history. The court acknowledged respondent's recent marriage, but concluded that permanence of a family unit had not been shown. Respondent testified that she had just gotten married a few days before the termination hearing. She also said that her relationship with her current husband had been on and off for the past three years. She said that some of her anxiety had been created by problems with her husband and that she had had conflicts with previous boyfriends, including a situation in which she had been an "aggressor." In light of the evidence, the trial court's finding concerning factor (e) was not clearly erroneous.

In regard to factor (g), the trial court held that it favored termination because of respondent's mental-health issues. The trial court once again acknowledged that respondent's mental-health problems were not her fault, but observed that she was at fault for failing to take medication prescribed to deal with her problems and for failing to "participate in all the mental health opportunities that have been given to her." There was evidence presented that respondent did indeed fail to take full advantage of opportunities to address her mental-health issues and thus become a better parent. Therefore, the trial court did not clearly err in determining that this factor favored termination.

As for factor (h), the trial court determined that it favored termination because of one child's difficulties in school and the progress that had been made while the child was in foster care. This finding was supported by the record.[3]

Concerning factor (j), the court concluded that respondent had some willingness to foster relationships between the children and their fathers, but did not "have the ability at this point to

[3] Respondent appears to suggest, in an oblique and difficult-to-understand manner, that the trial court should have considered the other children's records. However, respondent herself *concedes* that no records were provided concerning the other children.

make that happen based on all the other issues that I've addressed." Given the evidence outlined above, this finding was not clearly erroneous.

With regard to factor (l), the trial court mentioned one particular child with unique needs and indicated that this child needed stability that could not be provided by respondent. The evidence supported this finding by the trial court. Respondent contends that this issue was already taken into account by way of factors (d), (e), and (h). However, the trial court did not err by reemphasizing the special problems of one of the children. We again point out that the trial court was not even obligated to review the CCA factors in the first instance.

Respondent's appellate arguments are without merit, and in light of all the evidence, the trial court did not clearly err in its best-interests determination.[4]

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Michael J. Kelly

[4] Although not crucial to our decision, we note that respondent herself admitted that at the present time it was not in the children's best interests to be in her care. Respondent admitted that it would take "some time" to fix her problems.