STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of S. A. VANHORN, Minor.

UNPUBLISHED
October 31, 2013

No. 313616
Isabella Circuit Court
Family Division
LC No. 2011-000031-NA

In the Matter of E. L. SEBENICK, Minor.

Nos. 313635 & 313636
Isabella Circuit Court
Family Division
LC No. 2011-000032-NA

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

In these consolidated cases, respondents appeal as of right the trial court's orders following a hearing that terminated their parental rights to two minor children. Respondent-mother is the mother of S.A. and E.L., while respondent-father is the father of E.L. We affirm.

Respondent-mother challenges only the trial court's finding that termination was in the children's best interests. Respondent-father challenges both the trial court's conclusion that at least one statutory ground for termination was proven and its finding that termination was in E.L.'s best interest. We review for clear error a trial court's factual findings, including its determination that a statutory ground for termination of parental rights has been proven by clear and convincing evidence. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id*.

We also review for clear error the trial court's decision regarding a child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). That is, we must find the decision is "more than just maybe or probably wrong." *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999) (internal quotation marks and citation omitted). "The overriding concern is the child's best interests." *McIntosh v McIntosh*, 282 Mich App 471, 475; 768 NW2d 325 (2009). "[T]he preponderance of the evidence standard applies to the best-interest determination." *In re Moss Minors*, 301 Mich App 76, 78; ___ NW2d ___ (2013).

The first petitions in these cases were authorized on March 10, 2011, after a Child Protective Services (CPS) worker verified that respondent-mother had allowed her brother to provide unsupervised care for her children and that the brother had a history of sexually abusing animals and children, the latter of which he admitted. At that time, there was one petition for S.A. and one for her two brothers, who are not subjects of this appeal. After E.L. was born, he was added to the boys' petition. The children were immediately removed from the care of their parents and were placed together in the same foster home. After 18 months of erratic participation, unstable and unsuitable housing, and minimal progress, petitioner filed a petition seeking termination. A hearing was held in October 2012, after which the court terminated respondents' parental rights to S.A. and E.L., but found termination was not in the best interests of the other two boys because they had formed a bond with respondents. All the children, however, remained together in the foster home. This appeal followed.

The trial court did not err in finding each of the grounds for termination was satisfied. MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions that led to adjudication) was met because respondents throughout the proceedings had never had stable housing, they repeatedly occupied either uninhabitable dwellings or homes where sexual offenders lived or frequented (which the court found could happen again), and they were unwilling and inconsistent participants in the services offered. MCL 712A.19b(3)(g) (failure to provide proper care or custody) was met because there was no improvement in their housing situation, they were erratic in taking their medications, were resistant to and inconsistent in their case plans, and had not shown they learned from the classes they completed. Even respondent-father's new therapist, who had noted his progress, recognized respondent-father was at least six months away from his goal. And, the therapist was only working on individual counseling, not on parenting skills.

It is not at all apparent that respondent-father's criminal history played any part in the trial court's decision, other than the fact that it made the issue of finding appropriate housing more difficult. Though respondent-father testified that he was unaware of the risk S.A. was in when they stayed at the home with respondent-mother's brother, even after that danger was made known, the couple resided in other homes where registered sex offenders resided or visited.

We disagree with respondent-father that the lack of progress was due to petitioner's failure to provide adequate services. Petitioner may offer services to a parent during a termination proceeding in an effort "to rectify the conditions that caused the child's removal from his or her home." MCL 712A.18f(1). "While the DHS 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).

The CPS workers testified at length about the extensive services they offered, including helping respondents with paperwork, making appointments, making chore lists, taking them to appointments, and making numerous referrals. Although respondent-father testified that CPS workers did nothing to help, the trial court had the discretion to credit the testimony of the CPS workers. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). As in *Frey*, 297 Mich App at 248, the record shows that "services were proffered, but respondents failed to either participate or demonstrate that they sufficiently benefited from the services provided."

We also conclude that the trial court did not err in finding that termination was in the best interests of S.A. and E.L. Once a statutory ground for termination is established, the trial court must then determine whether termination is in the best interests of the child. MCL 712A.19b(5). "[A]t the best-interest stage, the child's interest in a normal family home issuperior to any interest the parent has." *In re Moss Minors*, 301 Mich App at 89. "[T]he trial court has a duty to decide the best interests of each child individually." *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012).

The trial court in this case found that termination was in the best interests of S.A. because "[s]he feels secure and safe with her foster parents and does not want to go back home." Given her age, she needed permanency. The trial court also found termination was in E.L.'s best interest because he had lived in foster care all his life. There was "very little, if any" bond between him and respondents and he viewed the foster parents as his family. Although respondents argue that there is insufficient evidence of a lack of bond between them and the children, that is at odds with the testimony of other witnesses that S.A. "feels secure and safe with her foster parents and does not want to go back home." She referred to her foster parents as her family and called her biological parents by their first names, she was afraid to go back to respondents' care, and she had "the opposite" of a strong bond with respondents.

E.L. had been placed in the foster home immediately upon his birth. Throughout the proceedings, respondents were allowed only supervised visitation twice a week for a total of four or five hours a week—and even less when they missed visits. Witnesses testified that respondents simply could not make themselves attend many morning visitations and there were several concerns about them paying equal attention to the children, yelling at the children, taking smoke breaks, and respondent-father's failing to interact with the children and texting or taking telephone calls during visits. During visits, respondent-mother "struggled and often lost her temper, became easily frustrated, especially when the children were crying or if they were unpleasant." There was little evidence of a bond of any strength between respondents and the infant E.L., and under the circumstances, no reason to infer one had been formed in the short time they had together.

There was also ample evidence that neither respondent had progressed sufficiently in improving their parenting skills.

Respondent-father also argues that the trial court's decision was contrary to the preference that siblings are kept together, if possible. The trial court specifically recognized that "in most cases it would be in each of the children's to keep brothers and sisters together, however if keeping the children together is contrary to the best interest of the individual child, the best interest of that child will control." See *In re Olive/Metts Minors*, 297 Mich App at 42. The reasoning is that

> if keeping the children together is contrary to the best interests of an *individual* child, the best interests of *that* child will control. Incumbent on the trial court therefore, is the duty to apply all the statutory best interests factors to each individual child. To fully discharge this duty, and arrive at a decision that serves a particular child's best interests, trial courts must recognize and appreciate that implicit in the best interests factors themselves is the underlying notion that as

> children mature their needs change. And, as a child progresses through the different life stages, what they need from each parent necessarily evolves therewith. Thus, what may be in the "best interests" of an eight-year-old child may materially differ from the "best interests" of that child's thirteen-year-old sibling. Accordingly, the best interests factors must be fluid enough in their application to accommodate these differences. Indeed, unyielding judicial adherence to the notion that a child's best interests requires that siblings remain in the same household, may very well, in some cases, create a judicial straightjacket that brings an individual child's personal growth to a screeching halt. [*Foskett v Foskett*, 247 Mich App 1, 11-12; 634 NW2d 363 (2001) (citation and internal quotation marks omitted; emphasis added by *Foskett* Court).[1]]

It is clear from the record that the court considered the children individually when making its best-interest determination. Moreover, all four children were kept together in the same foster home.

Finally, the trial court's decision to terminate does not result in more instability in the children's lives, even if there are numerous other parties that are found suitable who are competing to adopt the children. Regardless of whoever ultimately adopts the children, the first step to permanency must be termination of respondents' parental rights, and the foster family can maintain for as long as necessary the stability that S.A. and E.L. had experienced since being taken into care while progress continues to be made toward permanency.

Affirmed.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens

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[1] As noted in *In re Olive/Metts Minors*, 297 Mich App at 42, "While *Foskett* . . . [was a] child custody dispute[] in which the children's best interests were analyzed under the framework of the Child Custody Act, MCL 722.21 *et seq*., the same principle—that each child be treated as an individual—applies with equal force in termination-of-parental-rights cases under the juvenile code, MCL 712A.1 *et seq*."