

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 19, 2013

In the Matter of A. W. STODOLA, Minor.

No. 313973
Delta County Circuit Court
Family Division
LC No. 12-000704-NA

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her child under MCL 712A.19b(3)(g) and (j). We affirm.

Petitioner sought jurisdiction over the minor child after receiving several complaints that respondent was not providing care for her six-week-old infant. Petitioner alleged that respondent had a long history of drug abuse that had continued following the birth of her child, preventing her from properly caring for her son. In particular, petitioner claimed that respondent had repeatedly left her child in the care of inappropriate individuals, and alleged that she had also neglected her child's serious medical condition.

During the adjudication trial, testimony was offered in support of the petition, including respondent's own admissions regarding drug use before and during her pregnancy. During a break in the trial, respondent was arrested on felony charges of conspiracy to commit larceny from a person. Following her arrest, respondent indicated that she wished to enter a no-contest plea as to the petitioner's allegations and to voluntarily release her parental rights. The trial court developed the record to make it clear that respondent's decision to enter the plea and voluntarily release her parental rights was not caused by the arrest, which all agreed reflected poor timing. The record indicated that respondent had reached her decision and conveyed it to her attorney as the trial was proceeding and prior to the arrest. Respondent then entered a no-contest plea. With all of the parties in agreement, the trial court next admitted additional testimony and exhibits for purposes of supporting the no-contest plea and using the evidence at a

later date relative to any termination proceedings.¹ The trial court then ruled that there existed a preponderance of evidence supporting the exercise of jurisdiction over the child. The trial court noted that, despite respondent's wish to voluntarily release her parental rights, the petitioner had not asked for termination at the initial dispositional trial. And the trial court was concerned that respondent might be making a rash decision and wanted to give her additional time to think it over. The trial court directed petitioner to file a supplemental petition for termination, which was subsequently filed and authorized by the court. The supplemental petition sought termination under MCL 712A.19b(3)(g) and (j).

At the next hearing, the trial court announced that it had been informed that respondent had changed her mind and no longer desired to have her parental rights terminated. Subsequently, a best-interest hearing relative to termination was conducted. At the start of the hearing, the trial court stated and confirmed that the hearing was "a bifurcated hearing," as the court "ha[d] found that the prosecutor ha[d] proven one or more statutory grounds exist that would warrant termination of parental rights[.]" The parties proceeded without objection. In a written opinion entered after the best-interest hearing, the trial court stated that it was incorporating by reference its findings at the adjudication trial and, with respect to MCL 712A.19b(3)(g) and (j), "now makes this finding by clear and convincing evidence, as opposed to a preponderance of the evidence." We note that the nature of the evidence at the best-interest hearing closely paralleled the evidence presented at the adjudication trial.² The trial court further concluded in its written opinion that it was in the best interests of the child to terminate respondent's parental rights.

On appeal, respondent argues that the trial court clearly erred in finding that there was clear and convincing evidence supporting the statutory grounds for termination of parental rights and in finding that termination was in the child's best interests. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proven by a preponderance of the evidence that termination of parental rights is in the

¹ "If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true." MCR 3.971(C)(2). "[T]he plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent." MCR 3.971(B)(3)(e).

² Respondent makes no argument that it was improper for the trial court to rely on evidence presented at the adjudication trial to support the termination decision in regard to the statutory grounds. Indeed, respondent was essentially agreeable with the process; therefore, any challenge would have been waived. Further, as noted earlier, the plea could be considered in the termination proceedings. MCR 3.971(B)(3)(e). And because the Michigan Rules of Evidence did not apply at the termination hearing, MCR 3.977(H)(2), the trial court could properly consider exhibits and testimony elicited at prior hearings. *In re King*, 186 Mich App 458, 465; 465 NW2d 1 (1990). The court could also take "judicial notice of its own files and records[.]" *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). Even assuming any procedural error, it was rendered harmless considering the similarity in the evidence presented at the adjudication trial and the termination (best-interest) hearing. *Id.* at 131.

best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). “This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, “regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We hold that the trial court did not commit clear error when it terminated respondent’s parental rights. The evidence demonstrated that respondent had: (1) repeatedly failed to comply with services, (2) repeatedly failed to follow through with treatment for her substance issues, (3) been evicted from her provided housing for failure to follow house rules, (4) failed to develop a bond with her child, (5) increased her drug use during her pregnancy with the knowledge that doing so could cause a miscarriage, (6) continued her abuse of drugs and alcohol after the infant’s release from the hospital, and (7) allowed persons who engaged in drug use and other unlawful activities to be in her apartment and around the child. Therefore, when proper deference is afforded to the trial court’s findings, it cannot be said that the trial court clearly erred when it found statutory grounds in support of termination and also found termination to be in the best interests of the child. To the extent that respondent argues that reunification services were not provided or were inadequate, the record belies the argument, as multiple services, including housing assistance, were provided.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello