

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 15, 2013

In the Matter of SIMS, Minor.

No. 314718
Wayne Circuit Court
Family Division
LC No. 10-497574-NA

Before: BOONSTRA, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to her minor child, NAS, under MCL 712A.19b(3)(a)(i), (g), and (k)(i). We affirm.

I. FACTUAL PROCEEDINGS

NAS was born in August 2010 and she was removed from respondent on October 25, 2010, because respondent used cocaine during her pregnancy, NAS tested positive for cocaine, and NAS's father¹ had a violent past and refused to take drug screens. Initially, NAS was placed with two different foster families before the father's sister (NAS's aunt) took custody of NAS.

Before moving to Ohio around August 2011, respondent was given a treatment plan that included individual therapy, domestic violence counseling, substance abuse therapy, drug screens, and parenting classes. Respondent did not complete the treatment plan. While living in Ohio, respondent visited NAS one time, on November 4, 2011. NAS cried during the entire visit and did not recognize respondent as her mother. In February 2012, respondent moved to New Jersey, and she began participating in her treatment plan. Respondent completed parenting classes and attended individualized therapy to address substance abuse, parenting, and domestic violence (although respondent failed to submit documentation indicating that she completed the individualized therapy), and she participated in randomized drug screens (but the documentation did not provide the dates of respondent's participation). Respondent did not visit NAS again until October 22, 2012, and NAS again cried throughout the visitation and screamed for her aunt.

¹ The trial court also terminated the father's parental rights; however, he is not appealing the trial court's termination order.

A permanent custody trial was held in January 2013. The evidence showed that respondent was not in compliance with her treatment plan from August 2011 through February 2012. While respondent began participating in her treatment plan after February 2012, she had only visited NAS twice, and there was no bond between respondent and NAS. Moreover, respondent never financially supported NAS and she admitted that New Jersey would not be a good place for NAS. Following closing arguments, the trial court terminated respondent's parental rights and NAS was made a permanent ward for the purposes of adoption planning. Respondent now appeals as of right.

II. ANALYSIS

A. STATUTORY GROUNDS FOR TERMINATION

Respondent contends that the trial court clearly erred when it found a statutory basis for termination of her parental rights. This Court reviews for clear error a trial court's factual finding that a statutory termination ground has been established. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (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.* Due regard must be given to the trial court's special opportunity to judge the credibility of the witnesses. *Id.*, citing MCR 2.613(C).

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). 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 Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). If a statutory ground for termination is established and the trial court finds "that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). [*In re Ellis*, 294 Mich App at 32-33.]

1. MCL 712A.19b(3)(a)(i)

MCL 712A.19b(3)(a)(i) provides that the trial court may terminate parental rights when the child was deserted under the following circumstance:

(i) The child's parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.

The trial court clearly erred in terminating respondent rights under MCL 712A.19b(3)(a)(i) because she has been clearly identified as NAS's parent throughout these proceedings. Thus, respondent is not "unidentifiable." However, this error does not result in a reversal

because only one statutory ground need be established by clear and convincing evidence. *In re Ellis*, 294 Mich App at 32.

2. MCL 712A.19b(3)(g)

MCL 712A.19b(3)(g) provides for termination of parental rights 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 child’s age.” There is evidence to support the trial court’s termination of respondent’s parental rights under this statutory ground. NAS was born in August 2010 and removed from respondent’s care in October 2010. Since that time, respondent has made little to no attempts to have any relationship or involvement with NAS. Respondent herself admits that she has never financially contributed to NAS’s care and that respondent’s current home would not be a good place for NAS. Respondent has moved to two different states and only visited NAS twice. Moreover, respondent has failed to complete her treatment plan, she has never regularly called NAS despite being given opportunities to do so, and even failed to provide NAS with a photograph of herself. The trial court properly terminated respondent’s parental rights under MCL 712A.19b(3)(g).

B. THE CHILD’S BEST INTERESTS

Respondent also argues that termination of her parental rights is not in NAS’s best interests. “[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence.” *In re Moss*, ___ Mich App ___; ___ NW2d ___ (Docket No. 311610, issued May 9, 2013), slip op, p 6 (footnote omitted). “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[.]” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (quotation marks and citations omitted).

In this case, the evidence supported the trial court finding that there was no bond between NAS and respondent. During the only two visits respondent had with the child, NAS cried the entire time, and during the second visitation, NAS repeatedly screamed for her aunt. Respondent admits that she has never provided for NAS financially, and the evidence strongly supports the finding that no bond existed at all between respondent and NAS. On the other hand, the evidence shows that NAS has developed a strong bond with her foster family and they are prepared to adopt her. Thus, the preponderance of the evidence established that termination was in NAS’s best interests.

Affirmed.

/s/ Mark T. Boonstra
/s/ David H. Sawyer
/s/ Christopher M. Murray