STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of D. D. KELLY, Minor.

UNPUBLISHED
October 22, 2013

No. 315025
Wayne Circuit Court
Family Division
LC No. 10-495130-NA

Before: MURPHY, C.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Appellant minor appeals as of right an order dismissing the petition to terminate respondent's parental rights over the appellant minor. We affirm.

The sole argument on appeal by the child, who was born in 2009, is that the trial court clearly erred in failing to find that petitioner proved by a preponderance of the evidence that termination of respondent's parental rights was in 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 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 Minors,* __ Mich App __; __ NW2d __, issued May 9, 2013 (Docket No. 311610), slip op at 3. "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).

Respondent concedes on appeal, as she did below, that petitioner proved by clear and convincing evidence that at least one statutory ground for termination listed in MCL 712A.19b(3) existed. With respect to whether termination is in a child's best interests, the court may consider a parent's history, psychological evaluations, parenting techniques during

parenting time, the parent's bond with the child, parenting skills and ability, participation in treatment programs, the foster care environment and whether the child is flourishing in that environment, the child's age, the probability of adoption, the parent's continued involvement in situations involving domestic violence, and the child's need for permanency, stability, and finality. *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012); *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). A child's placement with relatives weighs against termination, and "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App at 43, citing *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010).

At the conclusion of a two-day best-interests hearing, the hearing referee stated as follows:

> I'm not going to terminate parental rights at this time. I want the mother's home to be investigated, her current placement. She has not gotten herself in a position where I believe she can fully care for the child, but has made many improvements since this case has come before the Court. She did get a GED. She is enrolled in school. If the screen is clean, that would be a big step forward for her. She has a home she alleges that has not been investigated, and I want that home investigated.
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> . . .
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> [T]here is no other plan for this kid at this time. I mean we're talking about maybe putting him up for adoption, but there's no family willing and ready to adopt. And so as a part of the plan for the future -- if he's moved to another family, then I would hope that you find a family that's maybe willing to consider an adoption as opposed to having him placed in a foster home and then into a – you know – and then seeking yet another adoptive home. We need to have a concurrent plan. So right now my plan is for the mother to get -- to have her home assessed. If she's free of drugs and her home is suitable, then I'm going to authorize at the beginning, unsupervised visits with the mother in that home, as long as she's clean and in compliance with the service plan, doing the drug screens, meeting with the Department of Human Services and cooperating, then I'll authorize unsupervised visits. If the home is not suitable – that's why we are coming back early to see what the situation is. But at this time I'm going to dismiss the Permanent Custody Petition. I don't believe it's in [the child's] best interest at this point of his life.

The petitioner filed a motion for review of the referee's recommendation, and the trial court allowed the referee's recommendation to stand.

We acknowledge that there was sufficient evidence in the record that would have supported a conclusion by the trial court that terminating respondent's parental rights was in the

child's best interests. However, we cannot conclude that the trial court committed *clear error* in finding to the contrary. There was testimony of a close bond between respondent and the child, and respondent, a very young mother, had completed parenting classes, obtained her GED, and was enrolled in a medical assistant program at Everest Institute. The foster care specialist who was in favor of termination admitted that there was a "strong bond" between respondent and the child and that the child "becomes excited to see her." Moreover, the child was being cared for by his maternal grandmother at the time of the termination proceedings. The grandmother testified that she would no longer consider adopting the child because it was causing stress related to her employment, where, when the child was sick and could not go to daycare, she would have to call in sick, creating an attendance problem for her. The grandmother testified that she would not consider a guardianship absent some assistance to address the occasional issue regarding her employment. That said, the grandmother also testified:

> *Q.* Have you indicated to your daughter and to others that you were willing to have the [child] stay with you for that period of time until she can get herself on her feet?
>
> *A.* Yes, I have.
>
> *Q.* Are you asking the Court, if the Court should see fit not to terminate your daughter's rights, that she be allowed to give you some assistance with [the child] while he is with you during this period of time.
>
> *A.* Yes.

The grandmother also indicated that she did not "want [the child] to be in the system." At the subsequent review hearing in the trial court, respondent's counsel indicated that the child remained with his grandmother, that she was providing care for the child, and that she "was willing to continue to provide for the child while [respondent] further completes whatever she has to do[.]"

In *In re Mason*, 486 Mich at 164, our Supreme Court stated as follows regarding care by relatives:

> Indeed, a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), which expressly establishes that, although grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required when the children are "being cared for by relatives." Thus the boys' placement with respondent's family was an explicit factor to consider in determining whether termination was in the children's best interests, yet placement with relatives was never considered in this regard.

On the existing record, we cannot conclude that the trial court's best interests ruling was clearly erroneous, as we are not left with a definite and firm conviction that a mistake was made. The referee was able to hear the testimony of respondent and observe her demeanor on the stand,

and we give deference to the special opportunity of the court to judge the credibility of the witnesses who appeared before it. *In re Miller*, 433 Mich at 337. Under the circumstances presented, we are not prepared to interfere with the decision to give the young mother a chance to redeem herself, despite some poor choices and behaviors in the past.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens