

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of B.J. BULLOCK, Minor.

UNPUBLISHED
October 17, 2013

No. 315450
Wayne Circuit Court
Family Division
LC No. 01-395940-NA

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), (j), (k)(ii), and (n)(i). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In 2001, the Department of Humans Services (DHS) began investigating respondent due to alleged physical abuse of her daughter, I.W., causing injuries to the child's face and eye, and a "long, documented, history of active substance abuse." Respondent pleaded guilty to a misdemeanor domestic violence charge and served one year of probation. The trial court took jurisdiction over four of respondent's children, as they were the only ones living with her at the time. Respondent did not participate in her court ordered treatment plan, and she tested positive for cocaine and alcohol. During counseling in 2002, I.W. revealed that respondent had sexually abused her by forcing her to perform cunnilingus on respondent at least five or six times, which resulted in respondent pleading no contest to third-degree criminal sexual conduct charges and receiving a sentence of 1 to 15 years' incarceration. Furthermore, one of respondent's other children disclosed that respondent beat I.W. to the point of unconsciousness, whereafter she continued to kick the child. When respondent had been drinking and fighting with I.W.'s father, she would later beat I.W. and tell her that she was not her child but, rather, her father's child. Respondent admitted to using alcohol and cocaine. The trial court terminated respondent's parental rights to four of her children in 2003. Respondent was released from prison in 2008 and parole in 2011.

In November of 2011, respondent gave birth to B.B., the minor child at issue in this matter. His wellbeing came to the attention of the DHS in October 2012 after allegations were made that respondent and the putative father were involved in a domestically violent relationship and squatting in a home with no lights, gas, or water. When located at the home by DHS personnel, respondent claimed to have moved out and said she was living with a friend. A few days later, respondent moved into the Salvation Army Shelter, but she was forced to leave within

a month because she twice knowingly violated the shelter's no alcohol policy. On December 5, 2012, a petition for permanent custody concerning B.B. was filed, requesting that the trial court take jurisdiction over the child and also terminate respondent's parental rights to the child. The trial court ultimately authorized the petition for permanent custody and took jurisdiction over the child. At a permanent custody trial on February 20, 2013, respondent admitted that she had been in a domestically violent relationship with B.B.'s putative father; she maintained contact with him during the proceedings. She also admitted she had a problem with alcohol and that B.B. was with her when she drank. She knew that she could be removed from the shelter for drinking alcohol. The court terminated respondent's parental rights to the minor child on February 28, 2013.

II. STATUTORY GROUNDS

Respondent first argues that the trial court erred by terminating her parental rights to the minor child because petitioner did not prove at least one statutory ground by clear and convincing evidence. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b has been proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). If the court finds that a statutory ground for termination exists, it shall order termination of parental rights if it also finds "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5). We review for clear error the trial court's decision terminating parental rights. *In re Trejo*, 462 Mich at 356-357; see also MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

The trial court terminated respondent's parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), (j), (k)(ii), and (n)(i), which set forth the following grounds for termination:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The 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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

* * *

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

We conclude that the trial court did not clearly err by finding clear and convincing evidence in support of the statutory ground under MCL 712A.19b(3)(g). The evidence showed that at the time DHS began investigating respondent, she was living with B.B., a baby at the time, in a home with no gas, heat, or electricity. Thereafter, she proved unable to remain in a shelter because she could not refrain from alcohol. Respondent consumed alcohol in front of the minor, was in a domestically violent relationship with the minor child's putative father, and continued to have contact with the putative father during the proceedings. Respondent was not employed and had no legal source of income other than \$130 every two weeks, which she received from the state for her son.¹ The trial court did not err by concluding that respondent had failed to provide proper care and custody to the minor child. Furthermore, in light of respondent's extensive history with CPS, prior termination proceeding in which she failed to participate in or benefit from services, her unstable and unsafe housing, and her continued involvement in domestically violent relationships, the trial court did not err by concluding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child's age.

¹ Respondent testified that one of her daughters also helped her financially with her son.

Moreover, there was clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(i). Respondent's parental rights to four children were terminated in 2003 due in part to severe and chronic physical and sexual abuse of her daughter, I.W. Respondent pleaded no contest to third-degree criminal sexual conduct as a result of the abuse. During the 2003 proceeding, respondent successfully completed parenting classes; however, she never completed drug treatment, drug screens, drug and alcohol assessment, individual counseling, domestic violence counseling, or NA meetings. She never met the conditions that would have allowed her to visit with her four children. Further, she tested positive for cocaine and alcohol. The trial court did not err by concluding that there was clear and convincing evidence that respondent's parental rights to the minor child's four siblings were terminated due to serious and chronic physical and sexual abuse and that prior attempts to rehabilitate respondent were unsuccessful.

In addition, there was clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(j). Respondent physically and sexually abused one of her daughters and pleaded no contest to third-degree criminal sexual conduct in 2002. Evidence showed that she abused the child after fighting with the child's father. Respondent's parental rights to four children were terminated as a result of the abuse. In this case, respondent engaged in another domestically violent relationship with the minor child's putative father in the child's presence and continued to have contact with him during the proceedings. Consequently, clear and convincing evidence existed for the trial court to conclude that there was a reasonable likelihood that the child would be harmed if he returned to respondent's home.

There was also clear and convincing evidence in support of termination pursuant to MCL 712A.19b(3)(k)(ii). Respondent sexually abused the minor child's sibling and pleaded no contest to third-degree criminal sexual conduct in 2002. Respondent engaged in sexual penetration with I.W. at least five or six times. Therefore, there was clear and convincing evidence that respondent abused a sibling of the minor child and that the abuse included criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

Furthermore, there was clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(n)(i). Respondent pleaded no contest to third-degree criminal sexual conduct, MCL 750.520d, for the physical and sexual abuse of her daughter, I.W. Respondent was sentenced to 1 to 15 years' imprisonment. In this case, respondent continued to have contact with B.B.'s putative father despite their engagement in a domestically violent relationship. Respondent admitted that she had a substance abuse problem and that she consumed alcohol while in the presence of the minor child. Respondent was removed from a shelter due to her alcohol use. Therefore, there was clear and convincing evidence that respondent was convicted of a violation of MCL 750.520d and that termination was in the minor child's best interests because continuing the parent-child relationship would have been harmful to him.

Respondent argues that petitioner was obligated to provide services and a parent-agency agreement before terminating her parental rights. Despite respondent's contention, petitioner was not required to make reasonable efforts to rectify the conditions that caused the child's

removal by adopting a service plan because respondent's parental rights to four other children were terminated in 2003. See *In re HRC*, 286 Mich App 444, 462-463; 781 NW2d 105 (2009); MCR 3.965(C)(4)(c)² (reasonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that parental rights of the parent with respect to a sibling have been terminated involuntarily).

III. BEST INTERESTS

Respondent next contends that the court erred by determining that it was in the minor child's best interests to terminate her parental rights because she made positive changes since the 2003 termination proceeding given that she received substance abuse, domestic violence, and individual therapy at Naomi's Nest. Respondent's claim fails.

This Court reviews for clear error the court's decision regarding the child's best interest. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). In reviewing the trial court's findings of fact, this Court gives due regard to the special opportunity of the trial court to judge the credibility of witnesses. *Fried*, 266 Mich App at 541.

Once a statutory ground for termination has been proven, the trial court must determine whether termination is in the child's best interests. *Olive/Metts*, 297 Mich App at 40. Contrary to respondent's contention, the preponderance of the evidence standard applies to the best-interests determination. See *In re Moss*, 301 Mich App 76, ___; 836 NW2d 182, 190 (2013), slip op at 6; see also MCL 712A.19b(3) and (5). In determining whether termination is in the child's best interests, the court may consider the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, and participation in the treatment program; the court may also consider the foster environment, the child's development, the possibility for adoption, and the parent's continued involvement in situations involving domestic violence. *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 court may also consider the child's need for permanency, stability, and finality. *Olive/Metts*, 297 Mich App at 42.

Respondent's parental rights to four children were terminated in 2003 because she sexually and physically assaulted one of her minor daughters five or six times. Respondent pleaded no contest to third-degree criminal sexual conduct in 2002 as a result of the abuse. Respondent also beat that same daughter until she passed out and then proceeded to kick her while she was unconscious. Respondent failed to comply with the majority of her parent-agency agreement during the prior proceeding. Respondent never successfully completed individual counseling, domestic violence counseling, drug treatment, drug screens, drug and alcohol

² Effective September 1, 2013, MCR 3.965 has been amended such that the content of MCR 3.965(D)(2)(c) is now found in MCR 3.965(C)(4)(c).

assessment, and NA meetings. Respondent tested positive for cocaine and alcohol during the 2003 proceedings.

Since 2003, respondent's behavior has not changed. Respondent engaged in a domestically violent relationship with the minor child's putative father while in the same home as the child. Respondent continued to have contact with the child's putative father throughout the proceedings. Respondent did not have suitable housing or income. She lived in a home with the child and his putative father that had no gas, heat, or electricity. Angela Mathis, the DHS caseworker, testified that the home looked like it was abandoned because the backyard was "completely trashed with furniture and garbage." Respondent moved to her friend's place for three to four days and then went to the Salvation Army Shelter. Respondent consumed alcohol in the minor child's presence and was removed from the shelter after three weeks due to her alcohol use. Respondent did not seek any treatment between the 2003 termination proceeding and the investigation leading to the petition being filed in this case.

Moreover, the minor child had developmental challenges at the time he came into petitioner's care. He was 15 months old, had just started to walk, and did not speak much for his age. However, the child did well and matured while in the foster care home. Mathis believed that the child's adult sibling could provide care for him and that he was adoptable. Although respondent and the child had a bond, Mathis and Jennifer Wilson, the child's assigned foster care case manager, opined that the child needed permanence and stability. Therefore, the trial court did not clearly err by determining that petitioner proved by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Jane M. Beckering

/s/ Peter D. O'Connell

/s/ Douglas B. Shapiro