

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 26, 2013

In the Matter of A. R. NEELY, Minor.

No. 316417
Huron Circuit Court
Family Division
LC No. 12-004251-NA

Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

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

Respondent argues that the trial court erred by finding clear and convincing evidence that the statutory grounds for termination were met and that it was in the child's best interests to terminate respondent's parental rights. We review a trial court's findings of fact and decision to terminate parental rights for clear error. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008); *In re CR*, 250 Mich App 185, 194; 646 NW2d 506 (2002). Clear error exists where, although there may be evidence to support a finding, "the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re LE*, 278 Mich App at 18. Deference is granted to the trial court's "special opportunity to judge the credibility of witnesses." *Id.*

The statutory grounds cited by the trial court are MCL 712A.19b(3)(g) and (3)(j), which provide as follows:

(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.

* * *

(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.

Only one ground for termination of parental rights needs to be established. *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000).

Respondent argues that the trial court was "hasty" in terminating her parental rights because she did not have an opportunity to participate in services due to changes in her caseworker and time spent in jail. ARN was removed from respondent's care on April 25, 2012, and the dispositional review hearing was held over one year later on May 1, 2013. Respondent was incarcerated from May 19, 2012, through November 20, 2012, and was again incarcerated before the termination hearing due to heroin possession in March 2013. Respondent had three foster-care workers during this period of time.

Respondent was able to participate in services during her incarceration. However, but for three drug tests, she failed to attempt to participate in services while not incarcerated. She failed to keep in contact with petitioner despite knowing that petitioner was attempting to provide services to her and that her parental rights could be terminated if progress was not shown. Petitioner hoped to arrange counseling services to address respondent's difficulties with substance abuse, mental health, and relationships. Respondent admitted that she did not have contact with petitioner after she was released from jail in November 2012, and she failed to attend a December review hearing, which led to the issuance of an arrest warrant. She attributed her failure to participate in services after the January 16, 2013 review hearing to her continued relationship with ARN's father, which she stated had a negative influence on her.¹ Then in March 2013, she overdosed on heroin provided by a stranger whom she met at a gas station the same day that she was present at a pretrial hearing addressing the possible termination of her parental rights. Additionally, there was evidence that respondent did not have stable and adequate housing or income. The trial court did not err by finding that the statutory ground for termination found in MCL 712A.19b(3)(g) was met with clear and convincing evidence.

Additionally, the evidence demonstrated "a reasonable likelihood . . . that the child will be harmed if . . . she is returned to the home of the parent." MCL 712A.19b(3)(j). Respondent's failure to utilize the services petitioner offered was "evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *In re Trejo*, 462 Mich at 346 n 3. Indeed, the record shows that during the pendency of these proceedings, respondent continued to engage in high risk and sometimes criminal behavior. The fact that she could not elevate the goal of doing what she needed to reunify with ARN above her own personal desires, even when she knew what was at stake, is strong evidence that ARN would be at risk of harm if returned to respondent's care and custody. The trial court did not err by finding that the statutory ground for termination found in MCL 712A.19b(3)(j) was met with clear and convincing evidence.

¹ ARN's father's rights were terminated, and he has not appealed.

Once the petitioner establishes a single statutory ground for termination under MCL 712A.19b(3), the trial court must order termination if it finds that doing so is in the child's best interests. MCL 712A.19b(5); MCR 3.977(H)(3); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The court must weigh all evidence in the record to determine whether termination of parental rights is in the child's best interests. *In re Trejo*, 462 Mich at 353. The court should consider the parent's capacity to care for the child and the child's "need for permanency, stability, and finality." *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). Other considerations may include the respondent's amount of meaningful contact with the child, the bond between the respondent and the child, and how the child is doing in the placement. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

Respondent argues that she hoped to get a college education and live with a family member while working with a friend, implying a positive future for ARN. However laudable her plans and goals, the evidence presented revealed that she had significant obstacles to overcome in order to reach them. Moreover, she evidenced no ability or desire to confront and deal with those obstacles. "[T]he Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). ARN was removed from respondent's care when she was less than five months old, and respondent had not seen ARN since she was around 11 months old. As the trial court noted, respondent was not able to give an adequate, stable, and permanent home to this child. There were no offers of a suitable placement with a relative. And given the child's age, she had good prospects of being adopted. Under the circumstances, it was in ARN's best interests to terminate respondent's parental rights.

Affirmed.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Jane M. Beckering