

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BARNETT/PAGAN-BARNETT,
Minors.

UNPUBLISHED
August 26, 2014

No. 319054
Wayne Circuit Court
Family Division
LC No. 10-491722-NA

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Respondent-mother, A. Barnett, appeals as of right the trial court's order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (likelihood of harm to the child if returned to the parent). We affirm.

I. FACTS

A. THE CHILD'S REMOVAL

Children's Protective Services removed the older child from Barnett's home on January 9, 2010, and placed the child with a relative because Barnett was mentally ill and receiving treatment in Oakwood Psychiatric Hospital. Barnett admitted that police had taken her to the hospital because of a psychotic episode at the pretrial hearing on February 4, 2010. A doctor prescribed her medication. Barnett also indicated that she was pregnant. The trial court made the child a temporary ward of the court, placed her with a paternal aunt, and ordered the Clinic for Child Study to evaluate Barnett.

B. BARNETT'S PROGRESS

Dr. Kai Anderson, a psychiatrist at the Clinic of Child Study, indicated in his report that Barnett reported that she was hospitalized because she called the police after hearing and seeing things. Anderson reported that Barnett's psychotic symptoms had subsided and that she heard voices less frequently, but she still reported anxiety and nervousness. Anderson indicated that Barnett began smoking marijuana at age 16 and was smoking marijuana daily by age 20 to "calm down." Anderson diagnosed Barnett with schizophreniform disorder. Anderson indicated that Barnett had a positive prognosis if she remained compliant with psychiatric care "including use of medication" and stopped using marijuana.

Michelle Davis, the child's foster care case manager, requested that Barnett's service include parenting classes, psychological and psychiatric evaluations, and drug screens. The trial court ordered those services and monthly medication reviews. During her pregnancy, the Department agreed it was appropriate for Barnett to stop taking her medication. Barnett initially failed to comply with drug screens and tested positive for marijuana. But beginning in February 2011, Barnett tested negative for marijuana. Barnett's foster care case worker, Denise Smith, indicated that several drug screens were negative and she believed that Barnett was no longer using marijuana. Barnett also completed parenting classes and visited the child regularly.

Barnett delivered her second child in August 2011. The baby was born healthy and tested negative for marijuana. The Department allowed Barnett to take the baby home from the hospital. Smith indicated that the Department planned to return Barnett's older child to her care when Barnett had necessary furniture, such as a bed and stove. Barnett participated in regular, unsupervised visits with the older child in her home.

At a permanency planning hearing in December 2011, Smith testified that Barnett's psychiatrist had prescribed an antidepressant that Barnett was not taking. Smith requested that Barnett receive a new psychological evaluation and medication review. Smith explained that "[Barnett] has been on medications in the past. It's my understanding that [Barnett] feels that she doesn't need them and that's why she's not taking them Other than that, parents appear to be in compliance." Barnett testified that the psychiatrist's office had told her that she did not need medications. The trial court ordered a new psychological evaluation to determine whether Barnett required medication. At a permanency planning hearing in February 2012, Smith testified that Barnett's weekend overnight visits with the older child were going well and her drug screens were negative. Smith had no concerns about Barnett's parenting skills.

At a permanency planning hearing in June 2012, Smith testified that the Department had returned the older child to Barnett's in March. Smith reported that the psychiatric evaluator's report recommended that Barnett continue to receive psychiatric services and medications. The Department asked the trial court to keep the case open to ensure that Barnett received mental health services and took her prescribed medication.

C. THE CHILDREN'S SECOND REMOVAL

In August 2012, Children's Protective Services removed both children. Amber Pollina, a Children's Protective Services worker, testified that she had received a complaint that the children were dirty and unkempt. According to Pollina, Barnett had dropped the children off with a relative and stated that she did not feel that she could care for them, and Barnett posted on Facebook that she wanted to kill herself and did not want her children. Barnett admitted that she was not taking the medication for her schizophrenia. Pollina believed that the children were at imminent risk of neglect.

The trial court held a trial on the petition on October 23, 2012. Pollina testified that she received a referral about the children on August 13, 2012. According to Pollina, Barnett left the children with a relative because she could not care for them, was not taking her medication, was incoherent, and had no food in the home. Barnett was hospitalized from June 25, 2012 to July 16, 2012, and was diagnosed with acute exacerbation of paranoid schizophrenia. Pollina testified

that the children were with a maternal uncle. The trial court authorized the petition and placed the children with the maternal uncle.

D. THE TERMINATION PETITION

At a permanency planning hearing in December 2013, Smith testified that the children were moved twice and were now placed with a maternal aunt. According to Smith, the children were doing well but Barnett was not visiting them regularly. Barnett now had medication and stated that she was working with Team Mental Health. Smith wanted Barnett to take her medications as prescribed and participate in counseling. The trial court adopted Smith's recommendations.

In March 2013, Smith reported that Barnett was participating in counseling and saw her psychiatrist for monthly medication refills. According to Smith, Barnett did not understand that it was important to talk to her psychiatrist on a regular basis. However, Barnett was visiting the children regularly and visitations were going well. The children's guardian ad litem argued that, after three years, the children were not closer to reunification with Barnett, and she supported filing a petition to terminate Barnett's parental rights.

In April 2013, Smith testified that she placed the children with a different, paternal aunt because of the maternal aunt's illness and surgery. Barnett's Team Mental Health records showed that she had not received treatment from them since July 2012. Barnett had tested positive for marijuana and stopped participating in drug screens. Barnett was visiting the children only sporadically. Smith could not say whether Barnett was taking her medication on a regular basis. The trial court ordered supervised visitation at the Department and indicated that if Barnett did not make progress in three months, it would order the Department to petition to terminate Barnett's parental rights.

In July 2013, foster care worker Nicole Reinert testified that Barnett had moved about an hour away to Adrian, Michigan. According to Reinert, she was attempting to locate a drug screening agency in that area. Barnett's therapist travelled to Adrian, but Barnett missed half of the therapist's visits. Reinert twice took the children to Adrian to visit, but it was a very long trip for them. Barnett told Reinert that she did not intend to move back to the Wayne County area.

Reinert stated that she believed that terminating Barnett's parental rights would be in the children's best interests. Reinert reported that the children had been moved twice since the last hearing and had been "tossed around from relative to relative." According to Reinert, the children were starting to exhibit behavioral problems. The trial court ordered the Department to petition to terminate Barnett's parental rights.

E. THE TERMINATION HEARING

At the September 24, 2013 termination hearing, Emily Cook testified that she was the children's foster care worker and had received their case in August 2013. According to Cook, Barnett attended all but one of her supervised visits. Cook testified that Barnett had trouble controlling the children, who would run out of the parenting room and run around in the lobby and kitchen, or climb the stairs. Barnett used her phone extensively during the visit to photograph the children, text on Facebook, and take phone calls.

Cook testified that Barnett’s therapist reported that she was unable to continue working with Barnett. Cook believed that Barnett was compliant with her medication. However, Barnett’s therapist reported that she was concerned with Barnett’s emotional stability, anxiety, depression, and coping skills, and believed that Barnett might attempt to harm herself. Smith testified that Barnett had a history of starting and stopping her medication because she would feel better, would think she did not need them, or would think they were making her sick. Smith testified that she believed terminating Barnett’s rights would be appropriate because “[Barnett], through no fault of her own, due to her mental health issues and her ongoing substance abuse issues, is not able to provide appropriate care, supervision.”

Cook testified that the children were bonded to Barnett and happy to see her. Reinert testified that there was love and affection between Barnett and the children. Smith testified that the children had numerous placements and now had attachment disorders. Smith testified that when she moved the children from the paternal grandfather, “they showed no emotion They didn’t even cry. They will go to pretty much anybody” Smith testified that the children needed a permanent home. Cook testified that the children’s current foster parents were interested in adopting them.

F. THE TRIAL COURT’S FINDINGS AND CONCLUSIONS

The trial court found that Barnett did not have a substance abuse issue. However, the trial court found that she “has serious mental health issues” and was not able to parent the children. The trial court found that there was no likelihood that Barnett would be able to become mentally well. The trial court found clear and convincing evidence supporting termination under MCL 712A.19b(3)(c)(i), (g), and (j), and that terminating Barnett’s parental rights was in the children’s best interests.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.¹ The trial court clearly errs when there is evidence to support its determination, but we are definitely and firmly convinced that it made a mistake.²

B. LEGAL STANDARDS

MCL 712A.19b(3)(c)(i) provides that the trial court may terminate a parent’s rights if there is clear and convincing evidence that:

¹ MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

² *Id.*

[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

This statutory ground exists when the conditions that brought the children into foster care continue to exist despite "time to make changes and the opportunity to take advantage of a variety of services."³

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's 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.

MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here 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.

The trial court may consider the parent's mental health and whether the parent's mental illness affects the parent's ability to parent a child when determining whether it is reasonably likely that the child will be harmed if returned to the parent's home.⁴

C. APPLYING THE STANDARDS

Barnett contends that the trial court clearly erred when it found statutory grounds supported terminating her parental rights because she made substantial and significant progress on her service plan. We disagree. We conclude that Barnett's ongoing mental health problems supported the trial court's decision to terminate Barnett's parental rights.

A parent's compliance with his or her service plan is evidence of the parent's ability to provide the child with proper care and custody.⁵ But a parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home.⁶

³ See *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

⁴ See *In re Utrera*, 281 Mich App 1, 25; 761 NW2d 253 (2008).

⁵ *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

⁶ MCL 712A.19a(5); *In re Trejo Minors*, 462 Mich 341, 360-363; 612 NW2d 407 (2000); *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014).

Here, it is undisputed that Barnett made significant progress on portions of her service plan. It is clear that the trial court considered this because it found that Barnett's substance abuse issues were not a barrier to reunification. Barnett also complied with her service plan in other ways, such as by taking parenting classes and regularly visiting the children.

However, substance abuse was only one of the reasons why the children were placed in foster care. The trial court initially removed Barnett's oldest child because Barnett experienced a psychotic episode and required hospitalization. Barnett was diagnosed with schizophreniform disorder. After reunifying the oldest child with Barnett, the trial court later removed both of Barnett's children because Barnett was again hospitalized and was subsequently unable to take care of the children. Pollina testified that the children were in imminent danger of neglect. Barnett continued to experience episodes of paranoid schizophrenia.

Throughout the pendency of the case, the trial court ordered Barnett to comply with the mental-health portion of her service plan by participating in psychiatric services, counseling, and taking medication. In Barnett's initial psychiatric evaluation, Anderson reported that Barnett had a good prognosis if she consistently took medication and received psychiatric services. According to Smith, Barnett never consistently took her medication and never consistently participated in psychiatric services. For instance, Barnett was supposedly receiving mental health services from Team Mental Health as of March 2013, but Smith discovered that Team Mental Health had not provided Barnett services since June 2012. Barnett moved an hour away from her children and her therapist, and her therapist was no longer able to continue providing therapy. Cook testified that Barnett's therapist reported that she was concerned with Barnett's emotional stability, anxiety, depression, and coping skills, and believed that Barnett might attempt to harm herself.

Given this evidence, we are not definitely and firmly convinced that the trial court made a mistake when it found that Barnett continued to experience mental health issues that prevented her from being able to parent her children, it was not reasonably likely that Barnett would be able to parent her children in the future, and it was likely that the children would be harmed if returned to Barnett's care. The trial court gave Barnett three and a half years to demonstrate that she could make the necessary changes to her mental health that would allow her to keep her children safe, but she could not do so. We conclude that termination was appropriate under MCL 712A.19b(3)(c)(i), (g), and (j).

III. THE CHILDREN'S BEST INTERESTS

A. STANDARD OF REVIEW

The trial court must order the parent's rights terminated "if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of evidence on the whole record that termination is in the children's best

interests.”⁷ We review for clear error the trial court’s determination regarding the children’s best interests.⁸

B. LEGAL STANDARDS

To determine whether termination of a parent’s parental rights is in a child’s best interests, the court should consider a wide variety of factors that may include “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.”⁹ The trial court may also consider “the parent’s visitation history and compliance with court-ordered plans, the children’s well-being while in care, and the possibility of adoption.”¹⁰

C. APPLYING THE STANDARDS

Barnett contends that the trial court erred when it found that terminating her parental rights was in the children’s best interests because they were bonded to her. We disagree.

Here, Smith, Reinert, and Cook each testified that Barnett and the children were bonded and had a loving and affectionate relationship. But much of the remaining record indicated that termination was in the children’s best interests. Barnett had an uneven visitation history. She visited the children regularly when she felt well, and failed to visit them when she was ill. The children had been in foster care an extensive period of time. They were developing behavioral problems and attachment disorders. Barnett also unevenly complied with the mental-health aspect of her service plan, and it was unclear when—if ever—the trial court would be able to safely return the children to her care. Smith testified that the children needed stability and permanence. Given the evidence in this case, we are not definitely and firmly convinced that the trial court made a mistake when it found that terminating Barnett’s parental rights was in the children’s best interests.

IV. CONCLUSION

We conclude that the trial court did not clearly err when it found that the Department proved statutory grounds that supported terminating Barnett’s parental rights. Despite a lengthy period of time and extensive services, Barnett was not able to get her mental health issues under control so that the trial court could safely return her children to her care. We also conclude that

⁷ *White*, 303 Mich App at 713; MCL 712A.19b(5).

⁸ MCR 3.977(K); *Mason*, 486 Mich at 152.

⁹ *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted).

¹⁰ *White*, 303 Mich App at 714.

the trial court did not clearly err when it determined that termination was in the children's best interests.

We affirm.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot