

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTENOR, Minors.

UNPUBLISHED
March 21, 2017

No. 334026
Ingham Circuit Court
Family Division
LC No. 15-000337-NA

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

PER CURIAM.

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

I. FACTUAL BACKGROUND

In March 2015, shortly after giving birth to the older child, Children's Protective Services (CPS) investigated a complaint that respondent was homeless and abusing substances. Respondent attempted to pick up the child from a relative's house while intoxicated and high. Around the same time, respondent was determined to have a blood alcohol content of 0.311 while pregnant with the younger child. When CPS attempted to remove the older child, respondent became belligerent and combative. She ultimately refused to provide CPS with the child's belongings.

The trial court removed the older child and placed her with her maternal grandparents. When the younger child was born, the trial court also placed her with the maternal grandparents. Throughout the pendency of the case, respondent arrived visibly intoxicated at therapy sessions and parenting, refused to provide substance abuse screening, failed to attend parenting time sessions, and became hostile and aggressive with service providers. At the termination hearing, the children's case worker testified that they were doing very well in their placement and were bonded to their caregivers.

The trial court found that clear and convincing evidence supported terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). It found that respondent had failed to acknowledge or participate in treatment for her substance abuse problem, had neither participated in nor benefitted from services, and was only able to provide the children with proper care when she was sober. It also found that respondent was not able to provide the

children with the permanency or stability that they needed, and that the maternal grandparents were meeting the children's needs. It ultimately concluded that terminating respondent's parental rights was in the children's best interests.

II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We also review for clear error the trial court's determination regarding the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

III. STATUTORY GROUNDS

Respondent argues that the trial court improperly found that statutory grounds existed to terminate her parental rights because she participated in some services, and there was no evidence that she recently tested positive for alcohol. We disagree.

The trial court must find the existence of a statutory ground by clear and convincing evidence to terminate a parent's parental rights. *Mason*, 486 Mich at 166. Clear and convincing evidence is "evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (quotation marks and citation omitted, alteration in original).

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

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

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.

And 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.

A parent's failure to comply with his or her service plan is evidence that the parent will not be able to provide a child with proper care and custody and that the child may be harmed if returned to the parent's home. *White*, 303 Mich App at 710-711. Additionally, the trial court may properly consider the parent's substance abuse when determining whether it is reasonably likely that the child will be harmed if returned to the parent's home. See *In re AH*, 245 Mich App 77, 87; 627 NW2d 33 (2001).

In this case, the trial court ordered a variety of services to help respondent address her substance abuse issues, but she refused to participate in them. The children were in foster care for over a year and 10 months, respectively. During that time, respondent engaged in threatening conduct toward her therapists, service providers, and other persons attempting to take advantage of therapy services. Respondent refused to provide substance abuse screening and missed 23 substance abuse screens. Despite this, there was evidence that respondent continued to abuse alcohol—testimony established that respondent showed up to therapy sessions and parenting time while visibly intoxicated and smelling of alcohol. Given respondent's utter refusal to admit that she had a problem and engage in services, no amount of additional time would have allowed respondent to address her substance abuse issues. We conclude that respondent's failure to participate in her service plan and her unaddressed substance abuse supported the trial court's finding that clear and convincing evidence established grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

IV. BEST INTERESTS

Respondent next argues that the trial court erred by finding that terminating her parental rights was in the children's best interests because she was strongly bonded with them, they were placed with relatives, and the trial court could have instead initiated a guardianship. We disagree.

The trial court should weigh all the evidence available to determine the children's best interests. *White*, 303 Mich App at 713. 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." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Even if the parent and children are strongly bonded, if there is a serious dispute about whether a parent has a *healthy* bond with the children, termination may be in the children's best interests. See *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2001), overruled in part on other grounds by *In re Sanders*, 495 Mich 394, 422-423 (2014). The trial court may also consider the parent's compliance with his or her case service plan. *White*, 303 Mich App at 714.

Though the trial court may not consider the advantage of a foster home in determining whether it has statutory grounds to terminate a parent's parental rights, after the statutory grounds are met, the trial court may consider the advantages of a foster home placement to determine the child's best interests. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415

(2009). The trial court may terminate a parent's parental rights if doing so is in the children's best interests, even if the child is placed with relatives and a guardianship is an option. See *In re Gonzales/Martinez*, 310 Mich App 426, 435; 871 NW2d 868 (2015).

In this case, the trial court explicitly considered the children's placement with relatives when considering the children's best interests and it was not required to initiate a guardianship. The trial court did consider the possibility of guardianship in this case, but at the time of termination, respondent was also combative with service providers, and the maternal grandparents had requested to no longer supervise visitation at their house because of issues with respondent. The trial court was also wary about leaving the children in "legal limbo," which would be contrary to their permanency and finality.

The remainder of the record also supported the trial court's determination regarding the children's best interests. While it is undisputed that respondent and the children had a bond, that bond was not a healthy one because respondent had demonstrated that she was unable to remain sober enough to parent the children. Respondent had a poor record of complying with or benefitting from her service plan. And the children needed and deserved permanency, stability, and finality. Considering the entire record in this case, we are not definitely and firmly convinced that the trial court made a mistake when it found that terminating respondent's parental rights was in the children's best interests.

We affirm.

/s/ Jane M. Beckering
/s/ Peter D. O'Connell
/s/ Stephen L. Borrello