

STATE OF MICHIGAN
COURT OF APPEALS

In re GONZALES, Minors.

UNPUBLISHED
October 19, 2017

Nos. 337412; 337413
Ottawa Circuit Court
Family Division
LC No. 15-080734-NA

Before: BOONSTRA, P.J., and METER and GADOLA, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother and respondent-father each appeal as of right the order terminating their parental rights to two minor children, NG and MG, under MCL 712A.19b(3)(c)(i) and (g).¹ We affirm.

This case primarily involves mother's failure to rectify her issues with substance abuse and both parents' inability to provide proper care and custody for their children. In January 2015, a drug screen revealed that NG had morphine in her system at birth. In September 2015, the Department of Health and Human Services (DHHS) filed a petition for child-protective proceedings regarding NG (MG had not yet been born). The trial court placed NG in the custody of the DHHS. The DHHS then placed NG with a maternal relative.²

In November 2015, the trial court held a dispositional hearing during which a caseworker for the DHHS testified that she developed a case-service plan for mother that included a referral for a psychological evaluation, parenting-skills classes, substance-abuse services, and classes through Pathways. The caseworker testified that father's plan was in development and that it would involve, among other things, a psychological evaluation and parenting services. The trial court ordered that mother and father participate in and benefit from their case-service plans.

¹ The trial court terminated mother's parental rights under MCL 712A.19b(3)(c)(i) and (g), but it terminated father's parental rights solely under MCL 712A.19b(3)(g). Also, another of mother's children, IM, was subject to the proceedings. However, IM was discharged from the case on the recommendation of Child Protective Services after IM's father (who was not a party to the proceedings) was granted sole physical and legal custody of her.

² The maternal relative also had custody of another of mother's children, AM, who was not subject to these proceedings.

In December 2015, mother gave birth to MG. MG's drug screen revealed positive results for methadone and opiates. Mother also tested positive for methadone and opiates at the hospital. MG was removed from mother's care at the hospital. MG was experiencing withdrawals, and she was placed in the Neonatal Intensive Care Unit at Helen DeVos Children's Hospital. The trial court added MG to the ongoing case, authorized the amended petition, and put her in the custody of the DHHS. The DHHS placed MG with the same relative as NG.

In August 2016, MG underwent open-skull surgery to correct a congenital defect. Both parents arrived late to the hospital, so they were not able to see or comfort MG before she was put under anesthesia. The foster-care worker and the foster parent were also at the hospital. Mother and father then left the hospital during the surgery without telling anyone, including medical staff, where they went. Father eventually returned near the end of the surgery, but mother did not return until later that night. MG had to stay in the Intensive Care Unit after the surgery due to concerns that she might need a blood transfusion. Mother and father were told that they could stay in MG's room overnight, but they chose to leave the hospital, again without telling anyone. Father did not return at all the next day, claiming it was because he had to work. Mother did not return until noon the next day. MG was considered "medically fragile," because she had been diagnosed with neonatal abstinence syndrome, hemangioma, a congenital skull defect, Spina Bifida, plagiocephaly, reticulosis, and a heart murmur. She also required continuous follow-up appointments with a pediatric neurosurgeon, plastic surgeon, cardiologist, and ophthalmologist. Both children had eczema.

Throughout the case, both parents minimally complied with the case-service plan and failed to benefit adequately from it. Mother and father only sporadically followed through on the referrals from their caseworker. Mother was discharged from at least one program due to noncompliance. The parents did not meaningfully attend the children's medical appointments. Both parents refused drug screens at certain points. When mother did take a drug screen, her methadone levels were two to three times higher than the therapeutic range for her prescribed methadone use. A caseworker testified that mother was "very dependent" on methadone after a year and a half of treatment, and mother testified that she was still "a little" dependent on opioids. However, mother also testified that she did not think methadone was a problem for her.

Mother's employment throughout the case was very sporadic—she went through six different jobs during the proceedings. Father was employed full-time, but the caseworker was concerned that the amount he earned was not enough to meet the financial needs of the family. Additionally, mother and father's housing situation was precarious throughout the case. Mother got an apartment, but was evicted from that apartment due to fraud. Mother and father then lived with a family member until that family member was evicted. Eventually they got a new apartment. However, their caseworker had concerns about their ability to afford the new apartment.

Mother argues that the trial court failed to make an individualized determination regarding NG's best interests, and instead, only focused on MG's medical needs in finding that termination was in both children's best interests.³ We disagree.

To terminate parental rights, the trial court must find by a preponderance of the evidence that termination was in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings of fact are reviewed for clear error. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "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." *Id.*

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "[T]he trial court has a duty to decide the best interests of each child individually." *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). However, the trial court must only address each child's best interests individually when their best interests "significantly differ." *In re White*, 303 Mich App 701, 715-716; 846 NW2d 61 (2014). This Court in *In re White* stated:

We conclude that this Court's decision in *In re Olive/Metts, Minors* stands for the proposition that, if the best interests of the individual children *significantly* differ, then the trial court should address those differences when making its determination of the children's best interests. It does not stand for the proposition that the trial court errs if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child's best interests. [*Id.*]

In determining the child's best interests, the trial court may consider the child's bond to his or her parents; the parents' parenting ability; the child's need for permanency, stability, and finality; and the advantages of a foster home over the parents' home. *In re Olive/Metts*, 297 Mich App at 41-42. "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the children, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. The trial court may also consider a parent's substance-abuse problems and willingness to participate in counseling. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

Regarding medical conditions, the trial court did note that "one [child]" had more severe medical issues than the other, and stated, "We have children with special medical needs, one with extreme medical needs." While MG did have much more serious medical problems than NG, the evidence presented demonstrated that NG also suffered from eczema. A caseworker

³ Mother conceded that statutory grounds existed to terminate her parental rights. Her argument on appeal is limited to the issue of the trial court's best-interests finding regarding NG.

stated at a review hearing, “[Mother] struggles with the fact that her children have eczema and what eczema looks like, and if that’s a continued concern as a parent, she can make a medical appointment, or if she were to attend one of the medical appointments, she can address that with the doctor” The trial court discussed that the parents’ inability to make or attend medical appointments even “when they had concerns” demonstrated that they did not have the ability to care for the children.

Mother argues that the trial court “relied exclusively” on MG’s medical conditions and mother’s inability to care for those conditions in finding that termination of her rights to NG was in NG’s best interests. This is simply not accurate. Although it is true that the trial court placed some emphasis on MG’s medical conditions, it did not exclusively rely on those facts in finding that termination of mother’s parental rights was in both children’s best interests. The trial court also thoroughly discussed the children’s need for permanence, stability, and clarity. The trial court indicated that the children had “two sets of adults interested in their life,” which could cause confusion. The trial court noted that it would provide clarity for the children to have defined roles for the two sets of adults and to know which set of adults were their parents. This is supported by the fact that mother testified that the children called both her and the foster mother “mom.” The trial court also relied on the “opinion of experts,” who opined that termination would be in both children’s best interests.

The trial court also discussed the children’s likelihood of being adopted. It noted that the same foster mother wanted to adopt both children, which would also preserve their bond with another of mother’s children, AM, who was with the same foster mother. The trial court also discussed mother’s priorities in life and her failure to sufficiently prioritize the children.

Both NG and MG needed permanence, stability, and clarity. They both had a likelihood of being adopted by the same foster mother. Mother did not prioritize things that needed to be prioritized. The trial court did not err in discussing those factors together, rather than individually. To do so would have been redundant, and redundancy in best-interests determinations is not encouraged by published Michigan case law. See *In re White*, 303 Mich App at 715-716.

Mother also argues that terminating her parental rights to NG was not necessary to provide NG with permanency, because she was placed with a relative. We disagree. The trial court actually noted that the fact that the children were placed with a relative typically would not support termination. However, the trial court also noted that mother’s relationship with the relative foster mother had “soured.” This is supported by mother’s allegations that the children were not being adequately cared for in the foster home, based on the children having “rashes,” which the evidence demonstrated were symptoms of eczema. Moreover, as discussed above, the trial court thoroughly discussed how having two sets of adults in the children’s lives could cause confusion regarding whom to bond with and whom to look to for permanence and stability. The trial court opined that, although being placed with a relative typically leaned in favor of not terminating parental rights, in this case, the opposite was true so that the children could have clearly defined roles for the adults in their lives.

Accordingly, we are not “left with a definite and firm conviction that a mistake has been made,” *In re HRC*, 286 Mich App at 459, and we hold that the trial court did not clearly err in determining that termination of mother’s parental rights was in NG’s best interests.

Father argues that the trial court clearly erred in finding that clear and convincing evidence supported terminating his parental rights to NG and MG under MCL 712A.19b(3)(g). We disagree.

In order to terminate parental rights, the trial court must find that a statutory ground for termination has been established by clear and convincing evidence. MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court’s determination for clear error. *Id.* As noted, “[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 at 459. We give deference to the “trial court’s special opportunity to judge the credibility of the witnesses.” *Id.* “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights . . .” *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

The trial court terminated father’s parental rights to the children under MCL 712A.19b(3)(g), which states,

(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.

“A parent’s failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody.” *In re White*, 303 Mich App at 710.

Father admitted that he failed to provide proper care and custody for the children. Father admitted to the allegation in the petition that he was incarcerated for domestic violence, which resulted in his inability to provide proper care and custody for NG. Additionally, father indicated at the termination hearing that he agreed with the trial court’s concerns that he was not presently able to provide proper care and custody for the children and that he might not be able to do so if they were returned to him. Indeed, he stated, “I totally agree with you” when the court expressed concerns over his ability to address medical needs, and he stated that he needed a few more months to become ready to parent. Moreover, in his brief on appeal, father states, “[I]t could be concluded that [father] conceded a present issue with providing proper care and custody.” Therefore, we conclude that father failed to provide proper care and custody, and the trial court did not clearly err when it found the same. Accordingly, father’s argument on appeal

hinges on the trial court's findings with regard to whether there was a reasonable expectation that father would be able to provide proper care and custody within a reasonable time considering the children's ages.

The trial court discussed father's failure to comply with and benefit from the case-service plan, stating, "And the parties, through their lack of participation—or lack of benefit from the case service plan, have not shown me that they're going to be able to [provide proper care and custody within a reasonable time considering the children's ages]." And as noted above, "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710. In this case, father's case-service plan required him to, among other things, complete a domestic-violence class, complete a parenting-skills class, and submit to random drug screens. Father missed many classes and refused to submit to drug screens. A caseworker testified that father completed a parent-nurturing class. However, the caseworker also stated that father seemed to not understand the basic needs of the children. The caseworker also stated that father's participation in counseling was not meaningful and that he "wasn't invested in the group"

Father claims that he would take off work for "really important" medical needs "like a surgery." Yet, father's behavior demonstrated a different story. MG actually had open-skull surgery. In spite of this, father was late to the hospital, did not get to see or comfort MG before she was put under anesthesia, left the hospital during the surgery, and did not stay overnight in MG's room, despite being told he could do so. A caseworker testified that father only attended 2 out of 10 medical appointments.⁴ This is counter to what father now argues he would do if he were given more time. Father testified that he would be able to provide proper care and custody within three months from the date of the termination trial. But father then goes on to say in his brief on appeal that, although it would be "necessary for [father] to pay attention to and stay on top of appointments, diagnoses, treatment [sic] and follow up[, i]t likely would not be easy for [him]."

Under all the circumstances, we are not "left with a definite and firm conviction that a mistake has been made," *In re HRC*, 286 Mich App at 459, and we hold that the trial court did not clearly err in finding that clear and convincing evidence supported terminating father's parental rights to the children under MCL 712A.19b(3)(g).

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Michael F. Gadola

⁴ Father states on appeal that he cannot be faulted for the failure to *make* appointments, but the focus here is on attendance at the appointments.