

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 21, 2012

In the Matter of E. HOBSON, Minor.

No. 308182
Oakland Circuit Court
Family Division
LC No. 10-779229-NA

Before: SAAD, P.J., and SAWYER and CAVANAGH, JJ.

PER CURIAM.

Respondent appeals a circuit court order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (h). For the reasons set forth below, we affirm.

Respondent gave birth to the child in October 2010. At that time, respondent was incarcerated and her early release date was in August 2011. The child was placed with a relative shortly after the hospital discharged her. By the time of the termination hearing in December 2011, respondent had been convicted of a new offense and sentenced to 7 to 30 years' imprisonment. Her early release date had been changed to February 2018.

Respondent does not expressly challenge the trial court's decision regarding the statutory grounds for termination. The sole issue raised on appeal is whether the trial court properly concluded that termination of her parental rights was in the child's best interests. We review the trial court's decision regarding the child's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K).

"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). In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), the child's "need for permanency, stability, and finality," *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992), and the advantages of a foster home over the parent's home. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

Here, respondent argues that the trial court erred by failing to consider the child's placement with relatives in making its best-interests determination. In *In re Olive/Metts*, _____

Mich App ___; ___ NW2d ___ (Docket No. 306279, issued June 5, 2012), slip op at 4, this Court recently explained:

[B]ecause a child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a), the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child’s best interests. Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child’s best interests, the fact that the children are in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination was in the children’s best interest. A trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best interests determination and requires reversal. [Citations and internal quotations omitted.]

Here, the trial court expressly considered the fact that the child was placed with a relative and that a guardianship with that relative had been proposed in lieu of termination. However, the court ruled that a permanency plan short of termination was not in the child’s best interests because respondent never had custody of the child, the child’s contact with respondent was extremely limited, and respondent would not be available as a parent for at least seven years. Those findings are supported by the evidence and are not clearly erroneous. Further, *In re Mason*, 486 Mich 142, 147, 159; 782 NW2d 747 (2010), is clearly distinguishable. In *In re Mason*, the father helped raise one child before his incarceration, the children visited the father weekly while he was in jail, and the father’s release from prison “was potentially imminent at the time of the termination hearing.” Here, again, respondent never cared for the child and rarely had contact with the child. Further, in light of evidence that respondent did not have a close relationship with the relative caregiver and presented no evidence that the relative was open to a long-term guardianship, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the child’s best interests.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Mark J. Cavanagh