STATE OF MICHIGAN

COURT OF APPEALS

In re J. M. DEBOARD, Minor.

UNPUBLISHED
June 27, 2017

No. 335177
Wayne Circuit Court
Family Division
LC No. 13-513722-NA

Before: MARKEY, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court[1] order terminating her parental rights to a minor child pursuant to MCL 712A.19b(3)(c)(*i*) and (g). We affirm.

Termination of parental rights requires a finding that at least one of the statutory grounds enumerated in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re B and J*, 279 Mich App 12, 18; 756 NW2d 234 (2008). If such a finding is made, the trial court must then order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). Appellate courts review "for clear error both the trial court's decision that a ground for termination of parental rights has been proved by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interests." *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* at 209-210. Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A).

Termination of parental rights was proper under MCL 712A.19b(3)(c)(*i*) and (g) because the conditions that led to the adjudication continued to exist more than 182 days after issuance of the initial dispositional order, there was no reasonable likelihood of their being rectified within a reasonable time, and respondent had been and was still unable to provide proper care for her child. At the time of the adjudication, respondent admitted having a substance-abuse problem

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[1] This case was heard by a referee, whose findings were implicitly adopted by the circuit court upon entry of the order of termination, and thus we will employ the term "referee" often in this opinion.

that affected her ability to care for the child. Respondent admitted having multiple mental health issues and not taking prescribed medication. She admitted having a criminal history. She was on probation for malicious destruction of property and she had been charged with operating a motor vehicle while intoxicated two years earlier. Respondent's older daughter had earlier been removed, in June 2013.

By the time of the permanent custody hearing, which occurred during the summer and fall of 2016, respondent had not addressed any of the pertinent issues. She continued to struggle with substance abuse. She tested positive for THC while at a Genesis treatment program in February 2016 and was discharged from the program in April 2016 due to noncompliance with services. In March 2016 respondent tested positive for buprenorphine. In April and May 2016 respondent tested positive for codeine. She also began drinking and had five alcohol-related incidents in May and June 2016. Respondent missed a drug screen in June 2016.

Respondent's substance use caused her continual involvement with the police. Since April 21, 2016, the police were called four times to respondent's grandmother's house because of respondent's conduct. Respondent was also unable to provide proper care for the minor child because she had not demonstrated the ability to maintain stable housing. Respondent signed a year-long lease *after* the start of the termination hearing and still did not have a crib for the child.

Respondent also never demonstrated that she could financially support her young son. She briefly worked for McDonalds, but was fired, and only began working at Burger King in September 2016. There was no evidence she could maintain employment. There was also evidence that respondent was not adequately addressing her mental health issues. Respondent's case manager at Genesis reported that respondent was not taking her prescription medication. Under all the circumstances, the trial court properly terminated respondent's parental rights under MCL 712A.19b(3)(c)(*i*) and (g).

Respondent argues that she never deserted the child under MCL 712A.19b(3)(a)(*ii*) and there was no evidence that she would harm him in accordance with MCL 712A.19b(3)(j). In her written findings, which applied to both respondent and the child's father, the referee listed MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (c)(*ii*), (g), and (j) as the grounds for terminating parental rights. The referee's written opinion did not clearly distinguish which statutory subsection it relied on for each parent. The facts of the case and the referee's verbal comments suggest that the referee did not actually rely on all five statutory subsections with respect to respondent. Respondent's claim that she never abandoned the child in accordance with subsection (a)(*ii*) is supported by the record, and the referee verbally indicated that she would not be addressing subsection (j). Likewise, there were no new conditions post-adjudication that would support a finding terminating respondent's parental rights under subsection (c)(*ii*). Consequently, it is clear that the above-referenced statutory subsections were likely meant to apply to the child's father only or, possibly, were erroneously applied to respondent. However, because only one statutory ground is required for termination of parental rights, and here the trial court properly terminated parental rights under two other statutory grounds, even if the trial court erroneously relied on MCL 712A.19b(3)(a)(*ii*), (c)(*ii*), or (j), the error was harmless. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent next argues that the referee was not impartial when she questioned the paternal grandmother and respondent. This claim is unpersuasive. A trial court may " 'examine a witness' " if " 'at any time the court believes that the evidence has not been fully developed . . . .' " *In re VanDalen*, 293 Mich App 120, 137; 809 NW2d 412 (2011), quoting MCR 3.923(A). "[A] trial judge has more discretion to question witnesses during a bench trial than during a jury trial. . . ." *In re Forfeiture of $1,159,420*, 194 Mich App 134, 153; 486 NW2d 326 (1992).

The referee questioned the child's relative caregiver about how long the child had been living with her, whether respondent attended the child's medical appointments, whether the child had seen respondent, and whether the child called the caregiver "mom." The referee examined respondent about her employment and housing situation. The referee asked respondent how she paid financial support for her older daughter and whether it was through the Friend of the Court. The referee inquired about why respondent was not participating in Narcotics Anonymous or Alcoholics Anonymous. The referee also asked respondent about her support system.

For termination of respondent's parental rights under MCL 712A.19b(3)(g), the referee had to determine whether respondent could provide proper care for the child within a reasonable time. The referee also had to determine the child's best interests. The questioning regarding respondent's involvement with the child, housing and employment, participation in NA/AA, and ability to pay child support was relevant to whether respondent was committed to and able to care for the child and relevant to the child's best interests. Such questioning on the part of the referee was permissible. MCR 3.923(A); see also *In re Forfeiture of $1,159,420*, 194 Mich App at 153 (holding that the record did not support that the trial judge was biased where "a review of the trial judge's questioning of witnesses" supported that "the judge was merely attempting to . . . elicit additional helpful information to aid in his role as factfinder").

Respondent additionally argues that the referee's findings erroneously indicated that respondent did not have provisions for the child and that she could not pay rent unless the child lived with her. Respondent testified that she was living in Section 8 housing, that her rent and water bill were covered, and that she was only required to pay her electric bill. She testified that she would be downgraded from a two-bedroom to a one-bedroom apartment if the child did not get placed with her.

Respondent had only recently moved into her two-bedroom apartment. Although she claims there was no support for the finding that she did not have provisions for the child, the record shows that respondent admitted that she did not yet have a crib for him. See, generally, *In re Powers*, 244 Mich App at 119. In her oral findings, the referee found that while respondent's housing was stable "today," there was no reason to believe it would remain stable unless the child was placed in the home. In her written findings, the referee acknowledged that respondent resided in Section 8 housing but did not have provisions for her son and had no ability to pay the rent unless the child was placed with her. While the language used may have been imprecise, any error in the wording of the findings by the referee was harmless because the evidence clearly

established that respondent did not maintain stable and appropriate housing for a demonstrable period so as to demonstrate her ability to care for the child.[2]

Termination of respondent's parental rights was also in the child's best interests. The child was doing well in his placement with his paternal grandmother, whom he referred to as "mom." The grandmother wanted "to be able to plan long term for him . . . ." Although there was evidence of a bond between respondent and the child,[3] this bond was not more important than the child's need for a safe, stable home, and his caregiver could provide an appropriate home environment. Respondent used drugs and alcohol, had untreated mental health issues, and could not maintain employment. It was not in the child's best interests to be placed with respondent because her issues would interfere with her ability to properly care for him.

Respondent argues that the referee never addressed why respondent's parental rights should be terminated when the child was in relative care. See *In re Olive/Metts Minors*, 297 Mich App 35, 44; 823 NW2d 144 (2012). Generally, "[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-interest determination and requires reversal." *Id.* at 43. Contrary to respondent's claim, the referee explicitly considered that the child was being raised by his paternal grandmother. In making her best-interests finding, the referee verbally indicated that the child's grandmother was the only parent he has ever known and that she has provided consistent care, love, support, and guidance. Similarly, in her written findings of fact, the referee indicated that termination of parental rights was in the child's best interests because he had been residing in the same home since he was five weeks old and called his grandmother "mom." The referee found that the child's grandmother would protect him from "all persons including her son and [respondent]. It is in his best interest that the parental rights be terminated and he be adopted as only this permanent plan will [ensure] his safety, well[-]being and protection. Respondent's claim is without merit.

[2] Respondent also takes issue, very briefly, with the written finding that respondent "continues to blame others, the system[, and] the court for her loss of children . . . ." We note, initially, that there is some support for this finding in that respondent attempted at the termination hearing to minimize the reason for her older child's removal. At any rate, the gist of the finding is the lack of responsibility placed on herself by respondent; for example, respondent answered "no" when asked if she had a problem with alcohol, when the evidence demonstrated that she did in fact have a very significant problem with alcohol. We find no basis for reversal with regard to this statement in the findings of fact, especially because the pertinent findings for termination were, as noted, supported by clear and convincing evidence.

[3] Respondent takes issue with the finding that there was "no significant parental bond . . . ." While there was evidence of a bond, evidence supports that the bond between the child and his grandmother was greater.

Affirmed.

/s/ Jane E. Markey
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro