STATE OF MICHIGAN

COURT OF APPEALS

In re N. S. BETHEA, Minor.

UNPUBLISHED
June 19, 2018

No. 341054
Oakland Circuit Court
Family Division
LC No. 2016-844922-NA

Before: BECKERING, P.J., and M. J. KELLY and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child, NS, pursuant to MCL 712A.19b(3)(g), (j), and (k)(*iii*). We affirm.

On appeal, respondent first raises an issue regarding the performance of the first attorney that represented her at trial. On August 3, 2016, petitioner filed a petition, which was later authorized, seeking jurisdiction of NS and to terminate respondent's parental rights based on allegations of abuse. Respondent was appointed counsel, and the adjudication/termination hearing commenced on January 9, 2017, and continued on February 9, 2017, and February 27, 2017. After the parties presented closing arguments, the trial court took a brief break and, following the break, sua sponte dismissed respondent's counsel, stating as follows:

> *The Court*. I -- I apologize for the delay. I did need to take a break. I've been consulting with our Court Administration, and at this time, I -- I think that it's in the best interest of all the parties here, [respondent's counsel], if I dismiss you, and immediately reappoint somebody else. I've already contacted the attorney that will be taking over.
>
> So at this point, I just have some concerns about your -- your conduct and your general understanding of the -- of the proceedings, and I think based on Respondent's reactions that I viewed in court she feels the same way. Is that right ma'am?
>
> *Respondent Mother*. Yes, ma'am.

New counsel was then appointed to represent respondent.

A status conference was scheduled for March 7, 2017, at which respondent's new counsel orally moved for a new trial, arguing that prior counsel was ineffective and his performance

prejudiced respondent. Arguments on respondent's motion were heard on March 14, 2017, and the trial court eventually issued a written opinion. The trial court found that respondent's first counsel's performance was deficient, but concluded that respondent was not prejudiced because the trial court had yet to make any findings. The trial court then permitted respondent, represented by new counsel, "to reopen proofs in order to further examine witnesses and testify if she chooses."

On appeal, respondent argues that she should have been granted a new trial based on the ineffective assistance of her first counsel. We disagree.

"[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001) (quotation marks and citation omitted), overruled on other grounds by *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014); see also *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). "In order to obtain a new trial, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012).

Accepting as true that respondent's first counsel's performance fell below an objective standard of reasonableness, respondent has failed to establish that she was prejudiced by the trial court's refusal to grant a new trial. On appeal, respondent's entire prejudice argument is one sentence: "Respondent-appellant mother argues that the court's decision to replace her ineffective counsel midway through the proceedings and not allow the case to begin again with competent counsel prejudiced her case and was clear error." However, respondent has not explained in what way she was prejudiced.

Contrary to respondent's broad assertion, it does not appear that respondent suffered any prejudice as a result of the trial court's refusal to grant a new trial. Respondent's new counsel reviewed the recordings of the proceedings held before she was appointed, and was then permitted to (1) recall any witness that she wanted to question further and (2) call new witnesses to testify on respondent's behalf. With the aid of new counsel, respondent recalled four witnesses for further questioning and called five new witnesses to testify on her behalf. When the trial court denied respondent's request for a new trial, it had yet to make any rulings; the trial court only found jurisdiction and grounds for termination after respondent, through her new counsel, presented the additional testimony of nine witnesses. Respondent has not identified any additional evidence she would have presented had her first counsel at trial not been ineffective, nor has she explained how she was prejudiced in light of her new counsel's performance before any rulings were made. In other words, respondent has failed provide any basis for us to conclude that "but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *Trakhtenberg*, 493 Mich at 51.

Respondent next contends that the trial court clearly erred by finding that petitioner established a statutory ground for termination. "To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). This Court "review[s] for clear error a trial court's finding of whether a statutory ground for termination has

been proven by clear and convincing evidence." *Id*. "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

In this case, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(g), (j), and (k)(*iii*), which provide as follows:

> (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:
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> * * *
>
> (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.
>
> * * *
>
> (j) There 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.
>
> * * *
>
> (k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:
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> * * *
>
> (*iii*) Battering, torture, or other severe physical abuse.

The record shows that NS suffered significant harm while in respondent's care. This case began when Joseph Quinn, NS's father, called the police over possible abuse of NS. Quinn testified that he called the police after respondent's boyfriend dropped NS off with Quinn and Quinn saw that NS was slumped over in the back seat of the car, her nose was bleeding, and she was crying. Following this incident, NS began living with Quinn full-time. At separate CARE House interviews while in Quinn's care, NS disclosed that respondent had physically abused her—including burning her with cigarettes—and that respondent's boyfriend had molested her.[1] Two doctors that were qualified as experts in child abuse testified that lesions and circular erosions in various stages of healing on NS's skin were consistent with cigarette burns. However, neither could definitively state that the marks were caused by a cigarette; each could

[1] In criminal proceedings, respondent was convicted of second-degree child abuse, and respondent's boyfriend was convicted of three counts of first-degree criminal sexual assault.

only opine that the scars appeared consistent with NS's explanation that the marks were cigarette burns. One of the doctors also examined NS for signs of sexual abuse and found significant evidence of injury to NS's internal genitalia that was consistent with NS's allegations of penetrative sexual abuse.

The detective that investigated respondent's criminal case testified that respondent admitted hitting NS with an open hand hard enough that it made her own hand bleed; hitting NS with a spatula; putting a knife up within inches of NS's throat; telling NS that she was going to cut her if she did not get away from respondent; and punching NS in the stomach. The detective stated that respondent denied burning NS with a cigarette. Respondent denied making some of these statements to the detective and testified that she never hit NS out of anger. However, the trial court largely credited the detective's testimony rather than respondents. Generally, we give deference to the trial court's ability to judge the credibility of witnesses. See *In re Rood*, 483 Mich 73, 112; 763 NW2d 587 (2009). In this case, we have no reason to question the trial court's decision to credit the detective's testimony and discount respondent's, especially because respondent contradicted herself while testifying and denied making certain statements during her criminal trial that the transcripts of that trial showed she made. But regardless of respondent's credibility, respondent corroborated much of the detective's statements regarding her abusive behavior towards NS; respondent admitted to threatening NS with a knife, hitting NS with a belt more times than she could count, hitting NS with her hand so many times that she got a blood blister, and punching NS. With each of these instances, respondent attempted to minimize her role and downplay their severity. For instance, respondent explained that she attempted to punch NS in the thigh, but, because NS moved, respondent unintentionally punched NS in the stomach. Respondent further explained that the belt she used to hit NS was a cloth belt with no buckle, and her strikes never left a mark. Accordingly, based on the extensive history of abuse and respondent's attempts to minimize her role in—and the severity of—the abuse, the trial court did not clearly err in finding by clear and convincing evidence that there was a reasonable likelihood that NS would be harmed if returned to the home of respondent. MCL 712A.19b(3)(j). "Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision." *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

Lastly, respondent contends that the trial court clearly erred by finding that termination was in NS's best interests. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. Appellate courts "review for clear error . . . the court's decision regarding the child's best interests." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83.

As discussed, NS suffered severe physical harm while in respondent's care, which weighs heavily in favor of termination. See *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014) (stating that a court should consider "the child's well-being while in care" in a best-interest determination). NS also suffered extensive emotional harm in respondent's care. The child's therapist testified that NS suffered from PTSD and oppositional defiant disorder. According to the therapist, NS disclosed to her that NS had been sexually abused by respondent's boyfriend and physically abused by respondent, and the therapist believed NS's defiant behavior was a direct symptom of the trauma NS suffered. The therapist testified that, given the severity of

NS's trauma, her disorder may never fully go away. This severe emotional harm suffered by NS while in respondent's care weighed in favor of termination. See *id*.

Respondent's bond with NS likewise supported termination. Respondent has not had contact with NS since June 2015. Witnesses testified that the child never asked about respondent other than to express concern about having to live with her again. NS's therapist testified that NS had a strong emotional bond with respondent, but explained that the bond was built on respondent's abuse of NS. The therapist further explained that this was not unusual when a child experienced trauma at the hands of a parent at such a young age. Respondent's unhealthy bond with NS further supports that termination was in NS's best interests. See *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (directing courts to consider a child's bond with the parent in a best-interest analysis).

The child's therapist also testified that it would be detrimental for NS to have contact with respondent because bringing NS back in contact with her abuser would only reinforce NS's dissociative tendencies and impede her recovery from the trauma. Another of NS's therapists testified that NS was frightened at the thought of being returned to respondent's care and repeatedly asked if she was safe. NS's need to recover from her trauma, which cannot be done with further exposure to respondent, supports that termination was in NS's best interests.

Further, this Court has recognized that it is in a child's best interests to be in a stable placement with loving caregivers. See *In re Olive/Metts*, 297 Mich App at 41. While the record showed that NS's current placement was less than perfect, it also reflected that NS was receiving the love and care that she needed to begin recovering from her trauma. Also, contrary to respondent's claim on appeal, the child would benefit from termination of respondent's parental rights even though her father's parental rights were not also subject to termination; the record shows that the child's stepmother was interested in adopting her, which supports termination. See *id*. at 41-42.. Given all this minor child has endured and, particularly, the significant risk of emotional and physical harm if left in respondent's care, the trial court did not clearly err by finding by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Michael J. Kelly
/s/ Colleen A. O'Brien