

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 27, 2018

In re J. KORPI, Minor.

No. 343251
Marquette Circuit Court
Family Division
LC No. 16-010100-NA

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

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor child, JK, under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist) and (g) (failure to provide proper care or custody). Respondent's sole argument on appeal is that termination was not in JK's best interests. We affirm.

In May 2016, the Department of Health and Human Services (DHHS) filed a petition seeking JK's removal from the home. DHHS alleged that, despite receiving a number of services, respondent was unable to show compliance with the agreed-upon safety plans and that she continued to use controlled substances. Respondent also had a history of two substantiated Children's Protective Services (CPS) cases involving the improper supervision of respondent's older son, BM, which eventually led to BM's guardianship with his grandmother.

Respondent immediately entered an inpatient treatment program and showed some progress. Once discharged, respondent entered a plea of admission. She confirmed her prior CPS cases and indicated that she was working toward obtaining housing and employment. Over the course of the case, respondent was able to obtain housing, but she never established employment. Respondent subsequently suffered a relapse in June 2017 relative to her abuse of narcotics, at which point her attendance at parenting-time visits began to deteriorate. Parenting time was suspended in October 2017 due to respondent's continued problem with substance abuse. Following several months of positive drug screens, DHHS moved to terminate respondent's parental rights. At the conclusion of the termination hearing, the trial court ordered the termination of respondent's parental rights. Respondent appeals the ruling as of right.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to

terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). “A finding . . . is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]” *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). In applying the clear error standard in parental termination cases, “regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court must “state on the record or in writing its findings of fact and conclusions of law[,] [and] [b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient.” MCR 3.977(I)(1).

Respondent does not claim error with respect to the trial court’s conclusion that MCL 712A.19b(3)(c)(i) and (g) were proven by clear and convincing evidence, so that ruling stands. Moreover, the evidence, primarily respondent’s continued use of controlled substances, provided sufficient evidence to support termination under MCL 712A.19b(3)(c)(i) and (g).

With respect to the trial court’s finding that termination of respondent’s parental rights was in JK’s best interests, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. In assessing a child’s best interests, a trial court may consider such factors as a “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). “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 child, the children's well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The trial court may also consider how long the child was in foster care or placed with relatives, along with the likelihood that “the child could be returned to [the] parents’ home within the foreseeable future, if at all.” *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Further, the trial court may consider a parent’s substance abuse problems. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). “The trial court should weigh all the evidence available to determine the children’s best interests.” *White*, 303 Mich App at 713.

Respondent first argues that the trial court failed to properly consider and give deference to the L-GAL’s opinion that termination of respondent’s parental rights was not in JK’s best interests. We disagree.

In support of her argument, respondent cites MCL 712A.17d(1)(b) and (i) for the proposition that the L-GAL’s duties include determining, representing, and advocating for the best interests of the child. Petitioner does not dispute that this language describes the duties of the L-GAL. Rather, petitioner correctly points out that MCL 712A.19b(5) authorizes the trial court to terminate a parent’s parental rights “[i]f 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” (Emphasis added.) Accordingly, it is ultimately the trial court, not the L-GAL, that is charged with making the final determination on whether termination is in the child’s best

interests. We also note that MCL 712A.17d(1)(i) provides that a L-GAL is “[t]o make a determination regarding the child's best interests and advocate for those best interests according to the [L-GAL's] understanding of those best interests.” This language makes clear that a L-GAL's role is to independently determine a minor child's best interests *and then advocate* for those interests to the trial court; such a role necessarily does not entail the L-GAL making the final decision on a child's best interests, nor does the role require the trial court to give deference or any weight to the L-GAL's view. Additionally, the trial court in the instant case respectfully considered the L-GAL's position, but ultimately disagreed with the L-GAL.

Respondent also argues that a State Court Administrative Office (SCAO) memorandum, dated August 22, 2013, supports her contention that the L-GAL's opinion is a factor that should have been considered when determining whether termination of respondent's parental rights was in JK's best interests. As an initial matter, given the clear statutory framework, we question the relevance of any SCAO memorandum. Regardless, the trial court acknowledged that it was familiar with and had reviewed the memorandum, which includes a nonexhaustive list of items that the trial court “*may also wish to consider,*” including the opinion of the L-GAL. (Emphasis added.) The trial court explicitly stated that it appreciated the L-GAL's opinion, but indicated that it did not share the L-GAL's position. Furthermore, the trial court recognized and acknowledged that it must find by a “preponderance of the evidence *on the whole record* that termination was in the child's best interests.” (Emphasis added.) In short, the trial court did not clearly err by “weigh[ing] all the evidence available” before arriving at a best-interests determination. *In re White*, 303 Mich App at 713.

There was no clear error in the trial court's determination that a preponderance of the evidence established that termination of respondent's parental rights was in JK's best interests. The court acknowledged that respondent was bonded with JK. However, among “a variety of factors,” the strength of the bond between the child and the parent is only one factor for the court to consider. See *White*, 303 Mich App at 714. The trial court also recognized that at the time of the termination hearing, JK had been living with his father for quite some time—nearly exclusively since November 2016—and JK's bond with his father was strong.

Furthermore, the trial court noted that respondent's inconsistent parenting time weakened her relationship with JK. A parent's visitation history is another factor for the court to consider. See *id.* In this case, respondent was inconsistent with attending parenting time in July, August, and September 2017. At times, respondent was unprepared with required supplies, including diaper-changing supplies and snacks for JK. On at least one occasion, respondent attended parenting time while under the influence, and the visit was ended early. Respondent's parenting time was suspended in October 2017 due to her ongoing substance-abuse issue, and at the time of the termination hearing, she had not yet been able to have two negative drug screens in a row—the requirement for reinstatement of her parenting time. Indeed, respondent acknowledged that she was actively abusing substances up until the week before the termination hearing. Furthermore, throughout the pendency of these proceedings, respondent was not able to advance to unsupervised parenting time at her home.

The trial court also considered JK's relationship with extended relatives, particularly with his maternal grandmother and brother, BM. Indeed, the trial court indicated that it was concerned about whether there would continue to be an ongoing relationship if respondent's

parental rights were terminated. However, during the termination hearing, JK's father confirmed that he supported having JK's maternal grandmother and BM be a part of JK's life. The maternal grandmother described her relationship with the father as "cordial" and indicated that they were always able to work out visits. Even after some concern was raised by the L-GAL that the father was thwarting the maternal grandmother's attempts to see JK, the father stated that the maternal grandmother was a positive influence and that he wanted JK to see her and BM. The father also indicated that he was willing to stipulate to an order providing the maternal grandmother a set day and time to see JK on a monthly basis. Based on this testimony, the trial court reasonably concluded that there would continue to be a relationship and that JK's best interests would continue to be served with regard to his extended family relationships.

Respondent also argues that the trial court erred by weighing the possibility of JK's adoption by his father's girlfriend, because a stepparent adoption was "merely" possible. However, a court may properly consider the possibility of adoption. *In re White*, 303 Mich App at 714. In this case, the testimony reflected that JK's father was engaged to his long-time girlfriend, who had expressed to him that she wanted to adopt JK. The trial court recognized that the father's girlfriend was part of JK's life, at a minimum, since November 2016. Accordingly, the trial court did not err by considering the possibility of a stepparent adoption.

Respondent further argues that no evidence was presented on how long it would take her to "get the child back." While this is true, it was respondent's responsibility to establish that she could comply with her case service plan and benefit from the services provided to her. Based on respondent's ongoing substance-abuse issues and failure to complete the parent-agency treatment agreement, the trial court indicated that it was unsure whether respondent would have ever been able to regain parental care of JK. The trial court may consider a parent's compliance with his or her service plan. *In re White*, 303 Mich App at 714. The trial court may also consider a parent's substance-abuse problems. *In re AH*, 245 Mich App at 89. The evidence before the court supported the trial court's findings that even after 22 months, respondent failed to benefit from services and that she continued to struggle with substance abuse. Respondent had stopped seeing her court-ordered counselor on June 8, 2017, and the counselor had indicated that respondent continued to struggle and that little progress was to be expected. Respondent attended only 28 of 105 AA and NA meetings that she was court-ordered to attend. Respondent either missed drug screens or tested positive for controlled substances during screens 74 out of 95 times. Furthermore, respondent admitted that she had prior substantiated CPS cases involving improper supervision of BM related to respondent's substance-abuse issues. Nonetheless, despite her prior involvement with CPS, respondent continued to abuse controlled substances during her pregnancy and continued to test positive for substances during the pendency of this case. Indeed, even after her parenting time was suspended in October 2017, respondent was unable to test negative for substances twice in a row, as was necessary to once again exercise visitation. Given respondent's repeated failures to comply with the treatment plan and court orders, it was highly unlikely that JK could be returned to respondent's care "within the foreseeable future, if at all." *Frey*, 297 Mich App at 249.

The trial court's detailed analysis supports a conclusion that the trial court considered the record as a whole in making a determination about JK's best interests. While respondent shared a bond with JK, this bond did not outweigh JK's need for permanency. Considering respondent's inability to provide proper care and custody, the trial court did not clearly err by

finding that a preponderance of the evidence established that termination of respondent's parental rights was in the best interests of the child.

Finally, respondent contends that the trial court clearly erred by finding that termination was in JK's best interests because she had repeatedly offered to provide JK's father with sole legal and physical custody of JK, with respondent having no parenting time until further order. Respondent indicates that this would have allowed JK the stability and permanency needed because JK would remain with his father. Respondent's argument is unpersuasive. A trial court is not forbidden to terminate the rights of a parent merely because the children are safely living with the other parent. See, e.g., *In Re Medina*, 317 Mich App 219, 233-235; 894 NW2d 653 (2016). In this case, JK was already in his father's care and custody. However, JK's father opposed resolving the termination case by simply awarding him custody. His concern was that if something happened to him, respondent would obtain custody of JK. The trial court considered father's concerns, and it recognized that while placement with his father minimized the risk of future harm, it did not detract from the danger respondent posed to JK if he were ever to be returned to her care. The risk that respondent would fail to provide proper care and custody was well established by her own admission of the existence of substantiated cases involving improper supervision, her failure to benefit from services, and her continued substance abuse. Accordingly, the trial court did not clearly err by finding that termination of respondent's parental rights was in JK's best interests.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering