

STATE OF MICHIGAN
COURT OF APPEALS

In re EASTEP, Minor.

UNPUBLISHED
December 26, 2019

Nos. 348526; 348527
Marquette Circuit Court
Family Division
LC No. 17-010232-NA

Before: METER, P.J., and O’BRIEN and TUKEL, JJ.

PER CURIAM.

In these consolidated appeals, respondents¹ appeal as of right the trial court’s order terminating their parental rights to their minor child, AE, pursuant to MCL 712A.19b(3)(c)(i) (adjudication conditions continue to exist) and (g) (failure to provide proper care and custody). We affirm.

I. BASIC FACTS

Child Protective Services (CPS) first became involved with respondents beginning in 2015. Despite CPS’s involvement, however, the Department of Health and Human Services (DHHS) first filed an initial petition for removal on May 16, 2017. DHHS alleged that it was contrary to AE’s welfare to remain within the custody and care of both respondents because respondents had issues of homelessness and substance abuse. AE was placed in the foster-care system with her maternal grandmother. Respondents struggled with substance abuse and to obtain employment and housing throughout the pendency of this case. Respondents additionally missed and failed many drug screens; they also missed some visitations with AE and appeared to be under the influence of drugs during some of the visits that they did attend. The trial court terminated respondents’ parental rights on March 25, 2019. This appeal followed.

¹ Respondent-mother and respondent-father (together “respondents”) are the respondents in Docket Nos. 348526 and 348527. Respondent mother is the appellant in Docket No. 348526 and respondent father is the appellant in Docket No. 348527.

II. ANALYSIS

A. STATUTORY GROUNDS

Respondents argue that the trial court erred by finding statutory grounds to terminate their parental rights under MCL 712A.19b(3)(c)(i) and (g). We disagree because the trial court properly found statutory grounds to terminate their parental rights under MCL 712A.19b(3)(c)(i); we thus need not address whether termination also was proper under MCL 712A.19b(3)(g).

This Court “reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). To be clearly erroneous, a trial court’s determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *Id.* In reviewing the trial court’s determination, this Court must give due regard to the unique “opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *Id.*, citing MCR 2.613(C).

“Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *In re Ellis*, 294 Mich App at 33. The trial court found two statutory grounds for terminating respondents’ parental rights by clear and convincing evidence, MCL 712A.19b(3)(c)(i) and (g). In relevant part, the current version of MCL 712A.19b(3) authorizes a trial court to terminate parental rights if it finds by clear and convincing evidence that any of the following exist:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

The statutory basis to terminate parental rights under MCL 712A.19b(3)(c)(i) exists “when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services” *In re White*, 303 Mich App at 710 (alteration in original; citation and quotation marks omitted).

1. RESPONDENT-MOTHER

Respondent-mother does not contest that 182 or more days elapsed since the issuance of an initial dispositional order. Further, at the time of the termination hearing, the trial court found that respondent-mother had not benefited from the services meant to rectify the conditions that led to adjudication in this case. Specifically, the trial court found that respondent-mother still struggled with substance abuse and improper long-term housing. The trial court additionally

found that there was no reasonable likelihood that respondent-mother would rectify these issues in a reasonable amount of time given AE's age.

The record supports the trial court's findings. Throughout the proceedings, respondent-mother missed numerous drug screens, and she relapsed in November 2018. Respondent-mother also missed visitation appointments, even though her attendance did improve at some point during proceedings. Near the end of the proceedings, respondent-mother did improve her willingness to avail herself of the services provided to her and achieved a sustained period of sobriety. However, the stability of her recent sobriety remained unpredictable given her recent relapse and long history of substance abuse. Furthermore, respondent-mother obtained housing, but that housing was obtained through and paid for by Lutheran Social Services. Respondent-mother remained unemployed at the final termination hearing, and it was unclear how respondent-mother could provide long-term housing for AE without a source of income. Thus, the trial court did not clearly err by terminating respondent-mother's parental rights under MCL 712A.19b(3)(c)(i).

2. RESPONDENT-FATHER

Respondent-father does not contest that 182 or more days elapsed since the issuance of an initial dispositional order. Furthermore, at the time of the termination hearing, the trial court found that respondent-father had not benefited from the services meant to rectify the conditions that led to adjudication in this case. Specifically, the trial court found that respondent-father still struggled with substance abuse and improper long-term housing issues. The trial court additionally found that there was no reasonable likelihood that respondent-father would rectify these issues in a reasonable amount of time given AE's age.

The record supports the trial court's findings. Respondent-father frequently missed visitations with AE. Some of the missed visits were caused by incarceration, but many were not caused by incarceration. Respondent-father also struggled heavily with substance abuse and experienced a recent relapse in November 2018. Respondent-father previously failed to fully avail himself of any of the services offered to rectify his barriers; however, toward the end of the proceedings, respondent-father engaged with his peer recovery coach and made efforts to continue his sobriety. Respondent-father achieved a sustained period of sobriety shortly before the termination of his parental rights. But given respondent-father's long history of substance abuse, these attempts to achieve and maintain sobriety remained fragile and unpredictable. Furthermore, respondent-father was unemployed and maintained that he wished to seek only part-time employment. Both respondents resided in the same house, which presented the issue of how respondent-father could provide a long-term home to AE within a reasonable time absent steady employment. Thus, the trial court did not clearly err by terminating respondent-father's parental rights under MCL 712A.19b(3)(c)(i).

B. BEST INTERESTS

Respondents argue that termination of their parental rights was not in AE's best interests. We disagree.

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). “[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 76, 90; 836 NW2d 182 (2013). The trial court’s ruling regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *In re Ellis*, 294 Mich App at 33. Furthermore, “[t]his Court gives effect to the Legislature’s intent as expressed in the statute’s terms, giving the words of the statute their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written.” *In re LE*, 278 Mich App 1, 22-23; 747 NW2d 883 (2008) (citations and quotation marks omitted).

“The trial court should weigh all the evidence available to determine the children’s best interests.” *In re White*, 303 Mich App at 713. In considering the child’s best interests, the trial court’s focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. “In deciding whether termination is in the child’s best interests, the court may consider the 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 at 41-42 (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 at 714. When the trial court makes its best interests-determination, it may rely upon evidence in the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83. Furthermore, “[a] child’s placement with relatives is a factor that the trial court is required to consider” when making its best-interests determination, *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), and “a child’s placement with relatives weighs against termination.” *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). “Relative” is defined by MCL 712A.13a(1)(j) as

an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce.

Thus, a child’s biological parent is not that child’s “relative” for purposes of the statute, but a child’s grandparent or first cousin is his or her relative. See MCL 712A.13a(1)(j); *In re Schadler*, 315 Mich App at 413.

1. RESPONDENT-MOTHER

When making its best-interests determination, the trial court considered that AE had been in the care of her maternal grandmother for over a year and previously stayed with her during respondent-mother's periods of homelessness. The trial court also noted that a child needs permanency and stability. Additionally, the trial court considered respondent-mother's bond with AE, but also determined that respondent-mother did not have AE's best interests in mind. Respondent-mother had recently relapsed on methamphetamine and had previously come for visitations under the influence of drugs. Moreover, only recently had respondent-mother made serious efforts to maintain her sobriety.

Although relative placement weighs against termination, the trial court found that termination was nevertheless in the best interests of AE. AE's maternal grandmother testified that she did not prefer a guardianship because she desired a permanent, substance-free environment for AE. She also explained that AE would "bounce" from place to place with respondents and it was unclear what type of environment AE was being exposed to while in their care. The trial court found that removal of AE from the maternal grandmother's home would be detrimental to AE's well-being.

The record supports the trial court's findings. As discussed earlier, respondent-mother struggled with her sobriety and failed to establish proper long-term housing. While respondent-mother was sober at the time of termination, her past struggles with sobriety led to doubts that she could maintain this sobriety in the future. Additionally, respondent-mother's housing was paid for by Lutheran Social Services and she did not have a stable source of income to make rent payments without aid in the future. Furthermore, while AE's placement with respondent-mother's mother (AE's maternal grandmother) weighed against termination, respondent-mother's mother testified that she did not want a guardianship because she wanted permanency for AE. Finally, respondent-mother had a bond with AE, but this was insufficient to outweigh her problems with substance abuse and her failure to obtain long-term housing or employment. Thus, the trial court did not clearly err by finding that termination of respondent-mother's parental rights was in AE's best interests.

2. RESPONDENT-FATHER

For similar reasons, we conclude that terminating respondent-father's parental rights was in the best interests of AE. The trial court found that respondent-father had continuing issues with homelessness and substance abuse. Because of his history with unemployment and incarceration, he was unable to provide a stable home environment for AE. Although he had secured housing, the housing was not viable on a long-term basis in the absence of employment. Moreover, respondent-father recently relapsed and the duration of his sobriety was undeterminable. Furthermore, the trial court additionally found that AE had a bond with respondent-father and that termination of his parental rights was in AE's best interests despite this bond and her placement with her maternal grandmother.

The record supports the trial court's findings. As discussed earlier, respondent-father struggled with sobriety, struggled to obtain employment, and struggled to obtain suitable long-term housing. Respondent-father also frequently missed visits and appeared to be under the

influence of drugs on many of the visits that he did attend. Respondent-father did, however, have a bond with AE. Furthermore, AE's maternal grandmother testified that she did not want a guardianship because she wanted permanency for AE. While AE's maternal grandmother may have changed her opinion on this issue after testifying in court, the preference of AE's maternal grandmother alone is not sufficient to determine AE's best interests. Because of respondent-father's continued substance abuse issues and failure to obtain long-term housing or employment, termination of his parental rights was in AE's best interests. Thus, the trial court did not clearly err by finding that termination of respondent-father's parental rights was in AE's best interests.

III. CONCLUSION

Affirmed.

/s/ Patrick M. Meter
/s/ Colleen A. O'Brien
/s/ Jonathan Tukel