

STATE OF MICHIGAN
COURT OF APPEALS

In re J. M. L. BUNGART, Minor.

UNPUBLISHED
March 12, 2020

No. 350251
St. Joseph Circuit Court
Family Division
LC No. 18-000210-NA

Before: MURRAY, C.J., and METER and K. F. KELLY, JJ.

PER CURIAM.

In this termination of parental rights case, respondent-mother appeals as of right the trial court’s order terminating her rights to the minor child, JMLB, under MCL 712A.19b(3)(g) (failure to provide care and custody) and (j) (reasonable likelihood that child will be harmed if returned to parent). Finding no error, we affirm.

Respondent argues that the trial court erred in finding statutory grounds to terminate under MCL 712A.19b(3)(g) and (j). We conclude that the trial court did not clearly err in finding statutory grounds for termination.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted).

The trial court first terminated respondent’s parental rights under MCL 712A.19b(3)(g), which provides:

(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:

* * *

(g) The parent, although, in the court's discretion, financially able to do so, 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.

The trial court found that respondent failed to provide proper care or custody for JMLB. The trial court noted that respondent failed to protect JMLB from being sexually molested in her home by respondent's boyfriend, whom the child "considered her father," and that respondent admitted that she failed to protect JMLB from sexual abuse. JMLB also exhibited sexualized behaviors that pointed to abuse, as the trauma assessment noted that a four-year-old child would not know about such acts unless they had experienced that kind of behavior themselves.

The trial court also found that the sexual abuse had caused extreme and long-lasting trauma for the child. The court found that JMLB had a lack of trust of respondent throughout the visits, including by refusing to eat in front of respondent, even when bribed with candy. The court indicated that in 41 years of handling these cases, it could not think of any more extreme behaviors than JMLB's when trying to avoid visitation, which included biting herself until she bled, throwing herself down stairs, and pretending to be sick. The trial court noted JMLB's diagnosis of post-traumatic stress disorder, and her avoidant attachment with respondent, as indicated in the trauma assessment. The court acknowledged that respondent had worked through services, and was trying to get JMLB to "do things," but that JMLB continued to not want to follow through with respondent's requests because of her distrust in respondent. JMLB continued to have "extreme, extreme problems at school, just extreme, extreme behaviors" after visits with respondent.

With respect to respondent's argument that services were not provided immediately after removal, the court noted that there was a "huge back-up in being able to get these evaluations done quickly," but that reasonable efforts were made by the Michigan Department of Health and Human Services (DHHS) to correct the problems by putting in services, while noting that the case was "much, much, much more complicated than that." Furthermore, the court found that the DHHS caseworker "tried to do things as quickly as she possibly could" to provide services to respondent and JMLB. The caseworker tried to involve Community Mental Health and a therapist, who was not able to help JMLB because JMLB was "not verbal enough." The caseworker also tried to involve infant mental health specialist in June 2019, but was unable to because of the specialist's full caseload. The trial court was satisfied that reasonable efforts were made, but that the damage to JMLB was already so bad, and JMLB was already so "broken," that her relationship with respondent was unable to be repaired. Finally, respondent testified that services were adequate.

Given the facts in the record, clear and convincing evidence supported the trial court's finding that MCL 712A.19b(3)(g) applied to respondent. The trial court considered that respondent wanted to, but was clearly unable to, provide proper care or custody for JMLB, and that there was no reasonable expectation that she would be able to in a reasonable time considering JMLB's age. JMLB was suffering, and was further traumatized when she saw, or even thought, about having to see respondent. The trial court took into consideration all of the testimony presented by respondent, the caseworker, and the experts. As a result, we hold that the trial court did not clearly err by determining that respondent failed to provide proper care or custody for the child, and that there was no reasonable expectation that the respondent would be able to provide

proper care and custody within a reasonable time considering the child's age. See MCL 712A.19b(3)(g); *In re VanDalen*, 293 Mich App at 139.

Because we conclude that the trial court did not clearly err by determining that one statutory ground for termination existed, we need not address the additional ground for termination. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

We also conclude that the trial court did not clearly err in determining, by a preponderance of the evidence, that termination of respondent's parental rights was in the best interests of the child.

A trial court must find by a preponderance of the evidence that termination is in the child's best interests before it can terminate parental rights. *In re Moss*, 301 Mich App at 90. " '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.' " *Id.* at 83, quoting MCL 712A.19b(5). The trial court's termination determinations are reviewed for clear error. MCR 3.977(K); *In re VanDalen*, 293 Mich App at 139. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App at 80 (quotation marks and citation omitted).

"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; 823 NW2d 144 (2012). "The trial court should weigh all the evidence available to determine the child[s] best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). 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. 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 . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, the child[s] well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. At this stage, the interest of the child in a stable home is superior to any interest of the parent. *In re Medina*, 317 Mich App 219, 237; 894 NW2d 653 (2016).

In determining the best interests of JMLB, the trial court considered that JMLB had an avoidant bond to respondent, as evidenced by the fact that JMLB did not want to make eye contact with respondent, wanted to leave respondent, and did not want to take food from respondent. The court also considered JMLB's age and need for stability and permanency, which it found JMLB "absolutely needs," and "cries out for it." The trial court found that the relative caregivers were providing that, and respondent could not. The court noted that the expert opinions, including "psychologists, therapists, [lawyer-guardians ad litem], and caseworkers," all believed that it was in JMLB's best interests to terminate respondent's parental rights. The trial court also noted that JMLB's relatives, with whom she had been placed for the entirety of the proceedings, wanted to adopt JMLB.

The trial court found that it was not in the child's best interests to continue to try to return her to respondent's care, and that there was not "any question" that termination was in JMLB's best interests. JMLB was improving in the care of her foster parents, who helped her to learn how to trust and feel safe, and who would provide stability and permanence. In light of the foregoing, we hold that there was no clear error in the trial court's conclusion that termination of respondent's parental rights was in the child's best interests. See *In re VanDalen*, 293 Mich App at 139.

Affirmed.

/s/ Christopher M. Murray
/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly