

STATE OF MICHIGAN
COURT OF APPEALS

In re Taylor, Minors.

UNPUBLISHED
April 23, 2020

No. 350047
Wayne Circuit Court
Family Division
LC No. 17-001304-NA

Before: SAWYER, P.J., and LETICA and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating respondent's parental rights to the minor children MT, NT, KT, and TT (collectively, the children), under MCL 712A.19b(3)(a)(ii) (desertion of a child for 91 or more days), (c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (other conditions exist that cause the child to come within the court's jurisdiction), (g) (failure to provide proper care and custody), (j) (reasonable likelihood that child will be harmed if returned to parent), and (k)(i) (abuse involving abandonment). We affirm.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

The facts of this appeal arise out of an incident that occurred on June 12, 2017. After putting the children to bed in their own room, respondent returned to her own bedroom. Several hours later, MT woke respondent and told respondent that KT had defecated on herself and was in the bathtub. Respondent immediately got out of bed and went to the bathroom. Respondent found KT standing in the bathtub near the faucet, leaning over the side and attempting to climb out. According to respondent, the hot water was running at the time and there appeared to be skin floating in the bathtub. Respondent immediately removed KT from the bathtub and drove the child to the Children's Hospital of Michigan, where KT received treatment for second-degree and third-degree burns to her hands, forearms, buttocks, lower extremities, and feet. While at the hospital, respondent told hospital staff that MT had placed KT into the bathtub and turned on the hot water. Respondent later admitted that, because of an issue with the water heater, the water came out of the faucet hotter than it should. KT's medical team determined that the nature and extent of the injuries sustained by KT were not consistent with respondent's story. Petitioner, the Department

of Health and Human Services (the Department), was informed and filed a petition seeking permanent custody of the children and termination of respondent's parental rights.

After an adjudication trial and dispositional hearing, the trial court found that, while there were statutory grounds for the termination of respondent's parental rights, termination of respondent's parental rights was not in the best interests of the children. The trial court entered an order outlining a treatment plan for respondent and ordered the Department to refer respondent for services aimed toward the goal of reunification. Over the next year, respondent was minimally compliant with the terms of the treatment plan. Respondent's noncompliance reached its peak when, for a period of almost seven months, she did not visit the children or maintain any contact with the foster care specialist assigned to her case. The Department filed a supplemental petition, seeking permanent placement of the children and termination of respondent's parental rights.

The trial court held a termination hearing, during which it heard evidence of respondent's failure to comply with the terms of her treatment plan and her failure to rectify the conditions that brought the children into the Department's care. Respondent's foster care specialist informed the trial court of belligerent and threatening behavior by respondent, directed toward him and the relatives with whom the children had been placed. On the hearing's first day, respondent took the stand to testify on her own behalf; however, because of scheduling issues, the trial court had to adjourn the trial shortly after respondent began her testimony. The hearing resumed several days later but respondent was not present. Respondent's counsel sought an adjournment, which was refused by the trial court. The trial proceeded to closing arguments. After closing arguments, the trial court found statutory grounds existed for the termination of respondent's parental rights and that termination of respondent's parental rights was in the best interests of the children. The trial court also entered a written order further explaining its determinations. This appeal ensued.

II. STATUTORY GROUNDS

On appeal, respondent argues that the trial court clearly erred in finding that the statutory grounds for termination of respondent's parental rights were proven by clear and convincing evidence. We disagree.

This Court "reviews for clear error the trial court's factual findings and ultimate determination 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 some evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

"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). Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), (j), and (k)(i) which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, [one] or more of the following:

(a) The child has been deserted under either of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(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.

* * *

(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, the abuse included [one] or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

(i) Abandonment of a young child.

Having reviewed the record, we determine that each of the statutory grounds for termination was proven by clear and convincing evidence.

A. MCL 712A.19b(3)(a)(ii) and (k)(i)

There was clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(a)(ii) and (k)(i). A respondent's failure to support or contact her children is sufficient for a trial court to find statutory grounds to terminate respondent's parental rights under MCL 712.19b(3)(a)(ii). *In re Laster*, 303 Mich App 485, 492; 845 NW2d 540 (2013). Additionally, a parent's limited contact with a child is not sufficient to rebut a finding of abandonment. *Id.*

The undisputed testimony demonstrated that respondent had not visited or contacted any of her children after attending supervised visitation on November 30, 2018, through the hearing date on June 25, 2019, a period of almost seven months, and well in excess of the statutorily mandated 91 days. There is also no evidence that respondent had been providing for the care or support of her children during that period, nor did respondent maintain contact with her foster care worker. Respondent failed to attend any of the dispositional review hearings from December 4, 2018 through May 3, 2019, and, during closing arguments at the termination hearing, respondent's counsel conceded that a statutory ground for termination existed on the basis of respondent's failure to visit the children. Thus, clear and convincing evidence showed that respondent abandoned the children for a period longer than that required by the statute. Additionally, the children were all five years of age or under when respondent abandoned them. There was clear and convincing evidence placed on the record that respondent abandoned her young children for a period in excess of 91 days. As a result, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(a)(ii) and (k)(i).

B. MCL 712A.19b(3)(c)(i) and (c)(ii)

There was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i) and (c)(ii). 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; quotation marks and footnote omitted). Termination is appropriate when "the totality of the evidence amply supports that [respondent] had not accomplished any meaningful change in the conditions" that brought the children under the court's jurisdiction "still exist at the time of adjudication." *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Similarly, termination of respondent's parental rights under MCL 712A.19b(3)(c)(ii), is appropriate when "[o]ther conditions exist that cause the child to come within the court's jurisdiction" and the parent has failed rectify those conditions within a reasonable time.

The trial court entered the initial disposition order on March 21, 2018, more than a year before it entered the order terminating respondent's parental rights on July 12, 2019. In its initial disposition order, the trial court ordered respondent to obtain suitable housing for the children, which included repairing the water heater at respondent's home to ensure that the hot water was no longer a danger to the children. Despite the Department's efforts throughout the dispositional review phase of these proceedings, including scheduling home assessments and referring respondent to the city of Detroit's Water and Sewage Department for assistance, at the time of the termination hearing there was no evidence that respondent had repaired the water heater. Instead,

the only evidence offered to the trial court was of respondent's failure to "uphold her commensurate responsibility to engage in and benefit from those services" offered to assist her in rectifying the conditions. *In re Smith*, 324 Mich App 28, 45; 919 NW2d 427 (2018) (citation omitted). The evidence presented at the termination hearing showed not only that respondent had failed to rectify the conditions that brought the children into care but also, through her failure to participate in or benefit from services, that there was no reasonable likelihood that respondent would rectify the conditions in a reasonable time. Thus, the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i).

The initial disposition order also placed several other obligations on respondent, requiring respondent to submit to drug screens, complete individual therapy and parenting classes, maintain communication with her foster care worker, visit the children and attend KT's medical appointments, and provide proof of suitable housing and income. Throughout the dispositional review period, respondent failed to comply with these terms despite the Department's referral of respondent for services and the trial court's admonitions that respondent needed to comply with the terms of the treatment plan. Yet, respondent was terminated from individual therapy and parenting classes, did not submit to drug screens, failed to provide proof of suitable housing and income, and stopped visiting the children and communicating with her foster care worker. Respondent was given adequate time to rectify these conditions during the dispositional review phase, but chose, instead, not to participate. The evidence before the trial court demonstrated other conditions that could lead the children to come under the court's jurisdiction and a failure on the part of respondent to rectify these issues. As a result, the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(ii).

C. MCL 712A.19b(3)(g) and (j)

Respondent's failure to comply with the terms of her treatment plan also provides clear and convincing evidence to support termination of her parental rights under MCL 712.19b(3)(g) and (j). "A parent's failure to participate in and benefit from a service plan is evidence that a parent will not be able to provide a child proper care and custody. Similarly, [this failure] is evidence that the child will be harmed if returned to the parent's home." *In re Smith*, 324 Mich App at 49, quoting *In re White*, 303 Mich App at 710-711 (quotation marks omitted). At the conclusion of the termination hearing, respondent's trial counsel conceded that respondent had not complied with her treatment plan, and the record in the trial court shows respondent was only minimally compliant with the terms of the treatment plan. Throughout the dispositional review phase of the proceedings, the Department made reasonable efforts to assist respondent and the trial court warned respondent that she needed to comply with the terms of the treatment plan or face the termination of her parental rights. Despite these warnings, respondent failed to engage in the majority of the services mandated in her treatment plan. As a result, the trial court could reasonably find that respondent was unable to provide proper care and custody for the children, there was a reasonable expectation of future harm to the children if returned to respondent's care, and there was no reasonable expectation that respondent would be able to provide proper care in the future. Thus, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(g) and (j).

There was clear and convincing evidence to support the trial court's finding that statutory grounds existed for the termination of respondent's parental rights under MCL 712A.19b(3)(a)(ii),

(c)(i), (c)(ii), (g), (j), and (k)(i). Because only one statutory ground needs to exist to justify termination, *In re VanDalen*, 293 Mich App at 139, we affirm the trial court’s findings.

III. BEST INTERESTS DETERMINATION

Respondent next asserts that the trial court clearly erred in finding the termination of respondent’s parental rights was in the best interests of the children. We disagree.

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the [children’s] best interests before it can terminate parental rights.” *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). “[W]hether termination of parental rights is in the best interests of the [children] 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 is 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.

“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 children’s best interests, the trial court’s focus must be on the children 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*, 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 care 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 on the entire record, including the evidence establishing statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized by *In re Moss*, 301 Mich App at 83. In cases concerned with multiple children, the trial court must determine each child’s interests individually. *In re Olive/Metts*, 297 Mich App at 715-716. However, a trial court is not required to make individual and redundant best-interest findings for each child when the best interests of the children do not significantly differ. *In re White*, 303 Mich App at 715-716.

Before addressing respondent’s specific assignments of error on this issue, we note that clear and convincing evidence was placed on the record to support the trial court’s finding that termination of respondent’s parental rights was in the best interests of the children. At the termination hearing, the Department presented evidence that respondent had not (a) complied with the vast majority of the terms of her treatment plan, (b) participated in or benefited from the services offered by the Department, (c) visited the children in almost seven months, (d) attended KT’s medical appointments, (e) maintained communication with her foster care specialist, and (f) rectified the conditions that brought the children into care, including the danger posed by the unregulated water tank. Respondent also engaged in untrustworthy conduct by claiming MT and TT as dependents on her tax returns, despite those children being placed with their respective fathers. Respondent’s aunt, with whom NT and KT had been placed, was willing to adopt. And

several interested parties, including respondent's foster care specialist and the fathers of MT and TT, all believed termination of respondent's parental rights was in the children's best interests. While respondent shared a bond with the children and acted appropriately during visitations, which would weigh against termination of respondent's parental rights, there was sufficient evidence placed on the record in favor of termination to support the trial court's finding that termination of respondent's parental rights was in the best interests of the children.

Respondent raises three concerns with the trial court's best-interests determinations. Respondent first asserts that the placement of the children with relatives at the time of the termination hearing outweighed the factors supporting termination of respondent's parental rights. Under MCL 712A.19a(8)(a), the placement of a child with relatives weighs against termination of a parent's parental rights. Because MT and TT were placed with their fathers, who are not relatives as defined by MCL 712A.13a(1)(j), the trial court was not required to consider relative placement for those children. See *In re Schadler*, 315 Mich App at 413 (holding that, because biological mother is not defined as a relative by the statute, a trial court need not consider the children's placement with the biological mother). However, NT and KT had been placed with respondent's aunt, an individual that qualified as a relative, as defined by MCL 712A.13a(1)(j). Thus, this fact weighed against termination of respondent's parental rights to NT and KT, and was "a factor to be considered in determining whether termination was in the [children's] best interests." *In re Olive/Metts*, 297 Mich App at 43 (quotation marks and citation omitted). However, while a trial court must consider this factor, a child's placement with relatives is not dispositive to the best-interests analysis, and termination of parental rights is appropriate if it is in the child's best interests. *Id.* Both on the record at the conclusion of the termination hearing, and in its written order terminating respondent's parental rights, the trial court expressly noted that NT and KT were placed with a relative and that the placement weighed against termination. However, the trial court's analysis continued that the "children's safety, stability, security[,] and permanence are paramount in this case and outweigh the relative placement consideration." While discussing it in the context of a possible guardianship, the trial court's written order went on to note respondent's noncompliant, erratic, and unstable behavior, and its finding NT and KT would be neglected or abused in the long term if returned to respondent's care. Just as these considerations weighed against the creation of a guardianship as a permanency plan for NT and KT, they also demonstrate that the trial court considered the children's relative placement and determined that termination was in the best interests of NT and KT.

This analysis also addresses respondent's second assertion, that the trial court erred in not considering permanency alternatives that were less severe than the termination of respondent's parental rights. "[T]he appointment of a guardian is only appropriate after the court has made a finding that the child cannot be safely returned to the home, yet initiating termination of parental rights is clearly not in the child's best interests." *In re TK*, 306 Mich App 698, 707; 859 NW2d 208 (2014), citing MCL 712A.19a(7). But, a trial court may only appoint a guardian if "it is in the child's best interests to appoint a guardian." *Id.* (citations omitted). A guardianship may be appropriate when "an ongoing relationship with [the respondent]—rather than termination—is in the children's best interests." *In re Mason*, 486 Mich 142, 169; 782 NW2d 747 (2010). During the termination hearing, the trial court heard evidence that respondent had not complied with the provisions of her treatment plan, failed to rectify the conditions that brought the children into care, had been belligerent toward her foster care specialist, and engaged in dishonest conduct by

claiming the children as dependents on her tax returns. Moreover, respondent failed to participate in the review process or the termination hearing. Considering these factors, and the needs of NT and KT for safety, stability, and permanence, the trial court determined guardianship was not the best permanency plan for those children. Far from failing to consider alternatives to placement, as respondent alleges, the trial court expressly considered the possibility of guardianship and determined it was not in the children's best interests. The evidence presented supported this finding, and there is nothing on the record to indicate that the trial court erred in making this finding.

Finally, respondent asserts that the trial court erred by failing to make individual findings concerning the best interests of each child. But this assertion is not supported by the record. While the trial court's analysis on the record concerning the individual best interests of each child was brief, the trial court's written order terminating respondent's parental rights sufficiently satisfied this obligation. In its written order, the trial court grouped NT with KT, and MT with TT, because of the similarities in the circumstances shared by those children. The trial court addressed why the best interests of each group of similarly situated children were best served by termination. It is axiomatic that "a court speaks through its written orders and judgments, not through its oral pronouncements." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009). And such is the case here. Although respondent's rights to several children were at issue in this proceeding, the trial court provided an appropriate analysis while choosing not to make redundant findings when the children were similarly situated, and determined that, in each instance, termination of respondent's rights was in the children's best interests. As a result, respondent's assertion on this point is without merit and the trial court did not clearly err in finding termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ David H. Sawyer

/s/ Anica Letica

/s/ James Robert Redford