

STATE OF MICHIGAN
COURT OF APPEALS

In re START/SNELL, Minors.

UNPUBLISHED

April 23, 2020

No. 350542
Kent Circuit Court
Family Division
LC No. 18-051576-NA;
18-051577-NA;
18-051578-NA

Before: GADOLA, P.J., and STEPHENS and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children, KS, ALS, and ABS, pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(i) (rights to siblings terminated due to neglect or abuse and parent failed to rectify).¹ We affirm.

I. FACTS

This case arose when respondent’s youngest child, ABS, tested positive at birth for hydrocodone² in late 2017. Respondent initially told Child Protective Services workers that she had been prescribed hydrocodone by her dentist, but her dentist reported that they had not seen her since 2014. In June 2018, petitioner, the Department of Health and Human Services (DHHS), petitioned the trial court for removal of the children from respondent’s care, alleging that

¹ The parental rights of the children’s father were also terminated by the trial court; he is not a party to this appeal.

² Hydrocodone is classified as an opiate narcotic analgesic, and works by altering the response of the brain and nervous system to pain. It is used to relieve severe pain in patients who need around-the-clock pain relief and who cannot be treated effectively with other medications. MedlinePlus, US National Library of Medicine, available at medlineplus.gov/druginfo/meds/a614045.html (accessed March 30, 2020).

respondent had failed to provide the children proper support, education, and medical care, and had subjected the children to substantial risk of harm by unstable housing, ongoing domestic violence, respondent's untreated mental health issues, lack of medical and dental care, and physical abuse.

At the adjudication hearing, respondent admitted that her parental rights to four other children previously had been terminated after she failed to complete her parent/agency treatment plan. She admitted that, as part of that treatment plan, she was offered housing assistance, crisis intervention/support, domestic violence victim's services, parenting classes, community mental health services, counseling, psychological evaluation, and a home-based parent education program, but had not complied with those services. Respondent also admitted that the oldest child in this case, KS, previously had been removed from her care at birth, but that case was closed when he was placed in the care of his father.

In this case, the DHHS identified as barriers to reunification respondent's domestic violence with the children's father, substance abuse, housing instability, lack of income, and emotional instability. From June 2018 until the termination hearing in August 2019, respondent was offered numerous services to overcome the barriers to reunification, including psychological evaluation, mental health services, domestic violence counseling, parenting classes, parenting time with the children, housing assistance, and employment assistance.

Respondent, however, failed to participate in most of the services, sometimes lied about her participation in the services, and failed to demonstrate that she had benefitted from any of the services. Specifically, although respondent participated in a psychological evaluation, she missed several counseling appointments and explained to the foster care worker that the counseling was unnecessary and that she already knew the information. Respondent also told the foster care worker that she was participating in parenting classes when she was not. Respondent then continued to have contact with the children's father despite the couple's history of domestic violence.

Respondent obtained rent-assisted housing through a community housing commission, but thereafter failed to comply with the terms for keeping the housing. At the time of termination she was in danger of losing the housing. Respondent failed to participate in employment services and did not accept a job that was offered, explaining to the foster care worker that she intended to live on child support. Although respondent tested positive for hydrocodone only twice during this period, during one parenting time a bag of pills fell out of her purse and respondent explained that she was going to take the pills later because she did not want them to show up on her drug test.

She also failed to attend the children's medical appointments and did not demonstrate an understanding of her role in the children's removal and their trauma behaviors. Although respondent generally was appropriate during parenting time and the children appeared to be bonded to her, she continually brought her boyfriend to parenting times and lied to the case aide, stating that he was approved to attend parenting time when he was not approved. In addition, respondent was aggressive and hostile to the foster care worker, and threatened the children's foster mother. The foster care worker testified that respondent became angry very easily and told the foster care worker that she did not feel the need to be respectful when she is upset.

During this time, the children were placed in a relative caregiver's home. The foster care worker testified that the children were doing very well in their placement, and the relative caregivers wanted to adopt them.

At the conclusion of the termination hearing, the trial court entered an order terminating respondent's parental rights. The trial court found that the DHHS had made reasonable efforts to reunify the family but that the efforts were unsuccessful. The trial court further found that the statutory bases for termination pursuant to MCL 712A.19b(3)(c)(i), (g), and (i) had been proven by clear and convincing evidence, and that termination was in the best interests of the children. Respondent now appeals.

II. DISCUSSION

A. STATUTORY BASIS

Respondent first contends that the trial court erred in finding that a statutory basis to terminate her parental rights was demonstrated by clear and convincing evidence, arguing that she demonstrated that she was making progress rectifying the conditions that were barriers to reunification. We disagree.

To terminate parental rights, the trial court must find that at least one statutory basis for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re Keillor*, 325 Mich App 80, 85; 923 NW2d 617 (2018). We review for clear error the trial court's factual findings as well as its determination that a statutory basis for termination of parental rights has been proven by clear and convincing evidence. *Id.* A factual finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made, giving due regard to the trial court's special opportunity to observe the witnesses. *Id.* We will not find that a trial court's finding is clearly erroneous unless it is more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

In this case, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (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, 1 or more of the following:

* * *

(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.

* * *

(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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent has failed to rectify the conditions that led to the prior termination of parental rights.

We conclude that in this case, the trial court did not clearly err by determining that there was clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(c)(i). Termination of parental rights is proper under subsection (c)(i) when "the totality of the evidence amply supports" that the parent has not accomplished "any meaningful change in the conditions" that led to the trial court assuming jurisdiction of the child, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), and when there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i).

Here, in the more than 14 months after the children's removal, respondent failed to accomplish any meaningful change in the conditions that led to the trial court assuming jurisdiction of the minor children. See *Williams*, 286 Mich App at 272. The conditions that led to the adjudication were respondent's substance abuse, lack of housing, lack of stable income, lack of parenting skills, mental health instability, and domestic violence with the children's father. The trial court noted that respondent continued to communicate with the children's father and lied to the foster care worker about those communications, suggesting that she had not benefitted from domestic violence counseling. The trial court also observed that respondent included her boyfriend in her parenting time with the children, going so far as to lie and say he was approved to attend the visits when he was not. The trial court also noted respondent's inconsistent attendance with counseling and services to address her anger, stress, domestic violence, and the effects of her behavior on the children. The trial court observed that respondent had threatened the children's foster mother and was aggressive and hostile to the foster care worker. Respondent continued to exhibit poor parenting skills, missing the children's medical visits and making excuses such as needing to walk her dog or pay her bills. Respondent also was not receptive to the children's trauma, blaming it on the DHHS. The trial court observed that respondent had not met with her housing program caseworker and was at risk of losing her housing, and had not obtained employment.

In sum, more than 182 days had elapsed since the issuance of the initial disposition order and the conditions that led to the trial court assuming jurisdiction of the children persisted. Therefore, we hold that the trial court did not clearly err in finding that termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(i). Because we conclude that the trial court did not clearly err by determining that one statutory basis for termination existed, we need not address the additional bases for termination. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

B. BEST INTERESTS

Respondent also contends that the trial court clearly erred in finding that a preponderance of the evidence demonstrates that termination of her parental rights was in the best interests of the children. Again, we disagree.

Once a statutory ground for termination has been demonstrated, the trial court must find by a preponderance of the evidence that termination is in the best interests of the child before terminating parental rights. MCL 712A.19b(5); *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). If the trial court finds that a preponderance of the evidence establishes that termination is in the best interests of the child, the trial court is required to terminate the parent's parental rights. MCL 712A.19b(5). This Court reviews for clear error the trial court's decision regarding a child's best interests. *In re Medina*, 317 Mich App 219, 226; 894 NW2d 653 (2016).

When determining whether the termination of parental rights is in a child's best interests, the trial court should weigh all the available evidence. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court typically should consider a variety of factors, including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, the advantages of a foster home over the parent's home, the parent's compliance with the case service plan, the parent's visitation history with the child, the child's well-being in the foster home, and the possibility of adoption. *Id.* A child's placement with a relative is a factor to be considered in determining whether termination is in the children's best interests. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). However, the trial court may still terminate parental rights in lieu of guardianship placement with relatives if it finds that termination is in the children's best interests. *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). In considering the child's best interests, the trial court should focus on the child and not the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). 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 this case, we conclude that the trial court did not clearly err in finding that a preponderance of the evidence demonstrated that termination of respondent's parental rights was in the children's best interests. Here, the trial court considered the evidence that there was a bond between the children and respondent, but also considered that respondent lacked parenting ability, and that the children were in desperate need of permanence, stability, and finality. The trial court also considered that the foster home provided for the children's needs, while respondent was unable or unwilling to provide a stable home. The trial court also noted the foster mother's testimony that she and her husband wanted to adopt the children, and that in the foster home the children lived with two of their half siblings born to respondent, whom the foster parents had already adopted.

We are satisfied that the trial court properly considered the best interests of the children in deciding to terminate parental rights rather than placing the children in a guardianship with the relative caregivers. Despite respondent's contention to the contrary, the trial court explicitly addressed the relative placement in determining whether termination was in the children's best interests. See *In re Mason*, 486 Mich at 164. The trial court observed that, although relative

placement weighed against termination, guardianship was contrary to the children's best interests in this case. The trial court noted that respondent was likely to continue to be disruptive to the children. Furthermore, the trial court found that a guardianship would not provide the stability and permanence that the children needed; the guardianship would "feel like a permanent limbo to these children."

The trial court thoroughly considered the difficult balance of preserving respondent's rights and the children's best interests and found that the children would not be provided the security and permanence that they needed with respondent. See *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). In light of the record, we conclude that the trial court did not clearly err in concluding that a preponderance of the evidence demonstrates that termination of respondent's parental rights is in the children's best interests.

Affirmed.

/s/ Michael F. Gadola
/s/ Cynthia Diane Stephens
/s/ Douglas B. Shapiro