

STATE OF MICHIGAN
COURT OF APPEALS

In re SMITH/WILLIAMS, Minors.

UNPUBLISHED
May 21, 2020

No. 350897
Kent Circuit Court
Family Division
LC Nos. 18-050036-NA;
18-050037-NA; 18-050038-NA

Before: TUKEL, P.J., and MARKEY and GADOLA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the September 9, 2019 order terminating her parental rights to her three minor children, NW, JW, and JS, under MCL 712A.19b(3)(c)(i) (failure to rectify conditions that led to adjudication), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if returned to the parent). On appeal, respondent argues the trial court erred by finding that termination of her parental rights was in the best interests of her children. We affirm.

I. FACTS

This family has a lengthy history of court involvement dating back to 2014, when the children were removed from respondent’s care under an earlier petition, and ultimately returned to respondent’s care in 2017 with a safety plan in place. On January 5, 2018, the Department of Health and Human Service (DHHS) filed a new petition, alleging that on January 4, 2018, respondent tested positive for marijuana. Respondent had also reported on January 3, 2018, that her children had been stealing items from stores and claimed that the store employees knew and did not stop them. In addition, respondent reported that all three children slept in the same bed despite being informed that JS needed a separate sleeping area because of some sexual behavior exhibited by JW. JS indicated that she is often responsible for making food for herself and her brothers, that respondent sleeps a lot, and that when respondent is sleeping, JS was unable to wake her. JS also reported that she and her brothers get physically disciplined if they are naughty.

On January 5, 2018, a preliminary exam was held regarding the children’s removal from the home. Children’s Protective Services (CPS) worker Rebekah Burgess testified that there was a previous CPS case involving the children and respondent; the children “were taken into care in

November of 2014, and they were returned home in May of 2017.” Burgess stated that, in the current case, there were allegations of neglect and physical abuse, specifically that respondent used a belt to discipline the children. Additionally, there were concerns about respondent’s substance abuse, respondent encouraging or allowing the children to steal from stores, and respondent “not caring for the children properly in terms of being awake and attentive and tending to their needs.” Burgess noted that respondent does not have a medical marijuana card.

Additionally, Burgess noted that some of the allegations in the petition were the same allegations contained in the November 2014 petition. Burgess stated that respondent’s “parental rights were terminated to her oldest child in 2008 for issues related to substance abuse, homelessness, and physical neglect,” which are essentially the same issues that caused CPS to file the current petition. Burgess testified that respondent “had received extensive and intense services through foster care that just ended in May of 2017. And the—the risk to the children was believed to be imminent at—at the time of [the current] removal.” This was on the basis of the children “reporting having to tend to themselves, because of mom sleeping, and them not being able to wake her up.”

Burgess also testified that on January 3, 2018, she offered respondent a drug screen, which respondent refused. Respondent informed Burgess that she had not used any illegal substances. Burgess noted that respondent had “a history of heroin use, and she tested positive for marijuana throughout her—throughout the parent agency agreement and reunification process.” Burgess noted that respondent had reported that “she does not have a job, and she does not have a source of income outside of state assistance, such as food stamps, and Medicaid for the kids.” However, Burgess stated that there was “a moderate amount of food in the home” on January 3, 2018. Burgess also noted that there were no issues with cleanliness or the condition of the home.

In addition, Burgess testified that JW had “exhibited some concerning sexual behaviors.” JW had reportedly been looking up the skirts of little girls at school, and lifting the shirts of adult females and looking up their shirts. Burgess noted that JW had “not acted out sexually that anybody has reported thus far, but there are those concerning behaviors.” On the basis of these concerns, Burgess stated that, when the children were placed back in the home with respondent, JS was supposed to have a bed upstairs away from the bedroom of JW and NW. However, when Burgess was at respondent’s home on January 3, 2018, she received confirmation that “all three children were sleeping in one—in one bed.” Burgess also testified that JS had indicated to her that “she often will make the kids food, [and] that she’s unable to—to wake mom up.” Burgess noted that “it was reported, as late as yesterday, that the kids did not eat all day while in mom’s care.”

Regarding the allegations of physical abuse, Burgess stated that “since the kids returned home, they indicate that when they get in trouble, mom will whoop them with a belt.” Burgess noted that NW was “observed with a belt folded in half chasing him though the home yelling, I’m going to whoop your ass,” while chasing JW. Burgess testified that respondent’s previous parenting classes through her parent-agency agreement addressed discipline techniques. When Burgess asked respondent about the physical discipline, respondent denied it and stated that she used “time out as discipline.” Burgess also testified that when talking to JS about respondent calling her names, JS “got nervous and immediately started reaching for the side of her hair in the front and began twisting them.” Burgess noted that JS’s former foster mother informed her that

when JS went to get her hair done, the “beautician had a hard time getting the sides of her hair back, because she’s missing so much hair on the sides of her head.”

The trial court found that there was “definitively probable cause that one or more of the allegations” in the petition were true. The trial court noted that reasonable efforts had been made, which consisted of, in part, emergency services by DHHS, respondent’s ongoing Section 8 housing allowance, as well as the safety plan that was put into place but not followed. The trial court stated the safety plan did not stop because the children were returned to respondent. The trial court found that the custody of the children with respondent presented a substantial risk of harm for their life, physical health, and mental well-being, and that “no provision of service or other arrangement except removal is reasonably available to” safeguard the children adequately. The trial court authorized the petition and stated that respondent’s parenting time was at the discretion of DHHS.

On March 5, 2018, the trial court held an adjudication-disposition hearing where respondent admitted to the allegations in the petition. On the basis of respondent’s admissions, the trial court found “by a preponderance of the evidence that one or more of the statutory grounds alleged in the petition are true.”

Over the course of the next 18 months, the trial court held a series of review and/or disposition hearings, which resulted in the order terminating respondent’s parental rights at issue in this appeal. These hearings reveal a pattern of fitful progress and setbacks for respondent and the children. Respondent initially made progress in the case, taking strides in her issues with substance abuse and maintaining appropriate housing. But respondent was unable to maintain consistent employment and failed to show benefit from the myriad services she participated in over the lengthy tenure of the court’s involvement. Meanwhile, the children continued to suffer from a lack of permanence in their lives and exhibited a number of concerning behaviors, despite months of regular counseling and visitation with respondent.

At an adjudication-disposition hearing on March 5, 2018, the children’s lawyer-guardian ad litem (L-GAL) testified that it was “disappointing” to be back in court. Respondent “knows what she needs to do and she knows about services because she got herself involved in services after the petition but before we—we came back here for adjudication.” It is “the same ol’ thing. Again, we had the same issues that we had back in 2014 that she was able to work through but—but the drugs remain an issue, the physical discipline remain[s] an issue.”

At the same hearing, the trial court found that “reasonable efforts to prevent or eliminate removal of these children from the home were made,” and that “reasonable efforts shall be made to preserve and reunify the family and make it possible for the children to safely return home.” The trial court ordered that the children be placed in the temporary custody of the court, that they continue their placement with DHHS, and that respondent comply with and benefit from the case service plan. The trial court noted that, although it was “disappointed” to see respondent back, it was “encouraged” that she had taken the initiative to start seeking services herself. The trial court stated that it was a positive that respondent knew what she needed to do, but that she needed to do it “a little faster” because the children were not going to stay out of the home for another 2½ years. Another 18 months passed before the trial court entered the order terminating respondent’s parental rights, after respondent continued to show a frustrating lack of progress or benefit from the myriad services in which she participated.

On May 22, 2019, the trial court conducted a permanency planning review hearing. DHHS caseworker Kristen Hossink testified that the children remained in the same foster home and that the home continued to be appropriate for the children. Hossink stated that JS continued to have outbursts during counseling sessions with respondent. JS would scream at respondent telling her “get out of my stupid life, I hate you, you stupid jerk.” JS would not engage at all and would have full meltdowns. Hossink noted that JS indicated that she found counseling boring. JS’s counselor informed Hossink that it was not productive to have respondent present during JS’s counseling sessions. Furthermore, Hossink testified that JW continued to exhibit high anxiety during counseling sessions, as well as a decreased ability to talk about his feelings. Similarly, NW continued to exhibit his aggressive outbursts at school, wet the bed, show increased defiance, and was unable to verbalize his feelings as counseling progressed.

In addition, Hossink testified that the children had counseling, Enhanced Foster Care, and trauma assessments. Hossink stated that the children needed permanence, and none of them felt safe with respondent. Hossink noted that the children’s behaviors were not going to get better until they could address the children’s safety fears.

Hossink testified that respondent was referred to Trauma-Informed Parenting classes, but did not attend. Respondent indicated that she did not want to go to the parenting classes and that she would get the information from her therapist. Respondent said that she did not feel like she needed more classes. Furthermore, Hossink testified that although respondent began a new job, her employment and financial stability were a concern. Hossink indicated that she observed a Facebook photo of respondent at a casino with a drink in front of her. However, respondent continued to drug test clean. When Hossink discussed this with her, respondent informed her that it was water; however, the liquid in the drink was brown.

Hossink testified that returning the children to respondent would cause a substantial risk of harm to their life, physical health, or mental well-being and that it was in the children’s best interests to move toward termination. Hossink recommended that the children remain temporary court wards, that they remain in the licensed foster home, that respondent’s parenting time stay at the discretion of the DHHS, and that the goal be changed to adoption.

The L-GAL stated that the children had been in care for “so long” that she worried about their emotional stability. The L-GAL stated that the children were “suffering,” and that it was not fair to them. The L-GAL supported Hossink’s recommendations.

The trial court found that reasonable efforts were made and that returning the children to respondent would cause a substantial risk of harm to their life, physical health, or mental well-being. The trial court noted that it had “significant concerns” about the children’s mental well-being. The trial court said that it had given respondent “all kinds of time, probably more than I should have in terms of what’s best for the kids” when it ordered the DHHS to initiate the proceedings to terminate respondent’s parental rights. The trial court stated that continued placement was necessary and appropriate, that the permanency plan was no longer appropriate, and that it would be changed to “concurrent, adoption and reunification.” Additionally, the trial court ordered that respondent comply with and benefit from the case service plan.

At the dispositional review hearing on September 9, 2019, Hossink testified that she was concerned with respondent's inability to get her children to appointments. Respondent had called Hossink "mean" for asking her to go to appointments when she was working third shift because she should be sleeping; Hossink noted that these were important medical appointments for the children. Hossink was concerned that if there was not someone supervising respondent, she would not follow through with getting the children to appointments. Additionally, Hossink testified that respondent still did not fully understand the impact that the trauma had on her children. At times, respondent would blame the children for their insecure attachment rather than taking it upon herself and learning how to address it. Hossink stated that respondent told her that "she [was] ready to give up and move on with her life with or without her children."

Hossink testified about the attachment studies that were conducted per the parent-agency treatment plan. Hossink stated that the studies were completed on August 8, 2019 after transportation had to be arranged because respondent said that "she wasn't going to go if she had to walk at all." Hossink noted that respondent had a bus pass, but she did not want to walk from the bus stop to the location of the assessment. Hossink testified that the assessment that focused on JS showed that she had an avoidant, insecure attachment with respondent. JS appeared distant, apprehensive, resistant, and did not react to respondent entering or leaving the room. Respondent struggled to engage with JS and the parent-child interaction was more like peer interaction. The assessment indicated that the avoidant, insecure attachment affected JS's overall function and sense of well-being. Hossink stated that without a permanent home, JS would ultimately endure additional trauma, and that it was likely that respondent would not benefit from other modalities. Hossink testified that the assessment for JW and NW was very similar.

Hossink testified that the children needed permanence, stability, and finality, and that they would not be able to heal from their trauma until they were in a permanent home. While in foster care, Hossink stated that the children had their "ups and downs," but there was a continued advantage of the children being there; the children had a bond with their foster mother. Hossink noted that placement in a relative's home was explored, but when she tried to contact individuals, no one responded. Hossink testified that respondent's inability to parent supported termination of her parental rights.

Additionally, Hossink stated that respondent had received several services throughout many years. Hossink said that respondent understood the content of the services that she had completed, but she was unable to utilize what she learned, and continuing this case, without seeing any progress from respondent, was detrimental to the children's well-being. Hossink testified that it was in the children's best interests to have respondent's parental rights terminated because respondent would be unable to rectify the conditions that led to the adjudication in this case within a reasonable amount of time.

The L-GAL agreed with Hossink's recommendation and stated that termination was in the children's best interests. The L-GAL stated that this case had gone on for four years, and believed giving respondent additional time would not prove beneficial to the children. The L-GAL noted that respondent did love her children, but she was unable to parent them.

The trial court held that after listening to the testimony and arguments "as well as taking judicial notice of the prior case," it was in the best interests to terminate respondent's parental

rights. The trial court found that there were statutory grounds under MCL 712A.19b(3)(c)(i), (g), and (j), to terminate respondent's parental rights to the children. The trial court noted that respondent's initial barriers included substance abuse, resource availability, and parenting skills. The trial court further noted that while respondent had seemed to overcome the barrier of substance abuse, there was still concern regarding respondent's inability to maintain stable employment and demonstrate appropriate parenting skills.

Concerning the best-interest factors, the trial court discussed the children's bond with respondent. The trial court stated that JS, on the basis of expert opinion, had an insecure attachment with respondent, and that JW and NW had, "at best," an ambivalent attachment. After reviewing the parent-child bond, the trial court found that this factor weighed in favor of termination.

As for respondent's parenting ability, the trial court found that respondent cognitively understood what she needed to do but did not apply it in real life. Respondent was unable to see how the things that she learned from the services and classes applied to her children and specific situations that she encountered. The trial court found that respondent's inept parenting skills were a factor that weighed in favor of termination. Similarly, the trial court addressed respondent's compliance with the case service plan and discussed how, although respondent complied generally, there were some instances when she needed a court order to bring about compliance. The trial court explained that regardless of respondent's compliance with a substantial portion of the services, respondent failed to show that she had benefited from those services—except in regard to housing and substance abuse. The trial court found that respondent's compliance had not been effective or complete, and this was something that the children "desperately" needed. For those reasons, the trial court weighed this factor in favor of termination.

Next, the trial court found that all three children had a definite need for permanency, stability, and finality. The trial court discussed how the trauma assessments conducted on each child indicated that further trauma would occur the longer the children's instability lasted. The trial court noted that JW and NW had been living with uncertainty for the "entirety of their lives," and that JS had been doing so for a "significant portion" of her life. Additionally, the trial court stated that NW had not been able to fully attach to anyone because he had been in care all but nine months of his life. The trial court found that the children have been kept in "limbo" and weighed this factor in favor of termination.

While evaluating the length of time it would take respondent to rectify the conditions that led to the adjudication, the trial court relied on Hossink's testimony, which indicated that even if respondent stepped-up 100%, it would take her at least six months before reunification could occur; it would then take an additional three months after that for the case to be closed. The trial court stated that the children had "already been waiting, essentially, four years." And although the trial court recognized that it was two different cases, it stated that it was "still a significant time in these children's lives, [a]nd it's simply not fair to them to ask them to wait any longer." The trial court found that this factor weighed in favor of termination.

In addressing the advantages of the foster home, the trial court discussed how the evidence showed that the children's foster home ensured that they received medical care, good meals, structure, and necessary care. The trial court noted that all three children had a bond with the foster

mother, evidenced by their ability to express their feelings with her even after they had tantrums or meltdowns. Additionally, the trial court found that each of the children struggled with trauma and that they were receiving appropriate services to address their trauma while they were in care. Further, the children were taken to all medical appointments and any counseling sessions that were needed. The trial court stated that these were all things that respondent had shown she was unable to do. Therefore, the trial court found that the advantages of the foster home and the children's well-being while in the foster home weighed in factor in favor of termination. The trial court also found that the interest in keeping all three children together was a factor that weighed in favor of termination.

The trial court also found that the possibility of adoption was a neutral factor. The trial court stated that the children were adoptable and that, even if the children's current placement was not an adoptive resource, others were familiar with the children and were ready to "step-up" and provide permanent homes for them.

The trial court briefly discussed how the children's ages, their wishes, their relationship with extended relatives, and their significant behavioral trauma needs were all factors that weighed in favor of termination. The trial court noted that the children were very young, that JS and JW had both indicated that they did not want to be returned to respondent, and that no relatives had responded to any inquiries regarding possible placement. Additionally, the trial court noted that all the children had significant behavioral trauma needs, which respondent could not provide. The trial court stated that, although the children would be a challenge to parent even with "excellent" parenting skills, the combination of the difficulty of parenting with the fact that respondent was the cause of the trauma, was a factor weighing in favor of termination.

The trial court noted that Hossink, the children's therapist, and the L-GAL all supported termination, and this was also a factor that it considered. The trial court concluded, by a preponderance of the evidence, that it was in the children's best interests to terminate respondent's parental rights.

II. ANALYSIS

Respondent argues that the trial court erred when it found that termination of her parental rights was in the children's best interests. We disagree.

Once a statutory ground has been established,¹ petitioner must prove by a preponderance of the evidence that termination is in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings regarding a child's best interests are reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if this Court is "left with a definite and firm conviction that a mistake has been made.

¹ Although mother does not dispute the satisfaction of the statutory grounds for termination, we note that MCL 712A.19b(3)(c)(i) (failure to rectify conditions that lead to adjudication), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if returned to the parent) were satisfied by clear and convincing evidence in light of mother's failure to address her parenting skills and resource availability issues that caused the children to be placed in care.

[This Court] give[s] deference to the trial court's special opportunity to judge the credibility of the witnesses." See *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

"[T]he focus at the best-interest stage" is on the child, not the parent. *In re Moss*, 301 Mich App at 87. In balancing all the evidence available to determine the child's best interests, the court may look to "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 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider the length of time the child was in foster care, the likelihood that "the child could be returned to her parents' home within the foreseeable future, if at all," and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Because this case involved multiple children, each child must be considered individually to the extent that their needs significantly differ "when determining whether termination of parental rights is in that child's best interests." *In re Olive/Metts*, 297 Mich App at 42.

In this case, the trial court's best-interest analysis was straightforward and exceptionally thorough. After listening carefully to the testimony given, the arguments made, and the parental issues that had yet to be resolved, the trial court found that a preponderance of the evidence supported that it was in the best interests of JS, JW, and NW to terminate respondent's parental rights. Finding no clear error in that determination, but instead an abundance of evidence to support it, we affirm.

/s/ Jonathan Tukel
/s/ Jane E. Markey
/s/ Michael F. Gadola