STATE OF MICHIGAN

COURT OF APPEALS

In re THOMAS, Minor.

UNPUBLISHED
June 11, 2020

No. 351641
Dickinson Circuit Court
Family Division
LC No. 19-000507-NA

Before: CAMERON, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Respondent-mother[1] appeals as of right the trial court's order terminating her parental rights to her minor child under MCL 712A.19b(3)(g) (failure to provide proper care and custody), (i) (parental rights to sibling terminated due to serious and chronic neglect or abuse), and (j) (reasonable likelihood of harm). We affirm.

I. BACKGROUND

In July 2019, petitioner, the Department of Health and Human Services (DHHS), filed a petition requesting the removal of the infant because respondent had allegedly overdosed on heroin. It also requested the termination of respondent's parental rights. Specifically, petitioner alleged that respondent was found unresponsive on a bed in a hotel room along with the sleeping infant. Petitioner also alleged that drugs and drug paraphernalia were found in the hotel room. The infant was removed.

After a termination hearing, the trial court concluded that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(g), (i), and (j). The trial court also found that it was in the child's best interests to terminate respondent's parental rights.

[1] The child's putative father is deceased, allegedly from a drug overdose.

II. STATUTORY GROUNDS

Respondent first argues that the trial court erred when it found statutory grounds to terminate her parental rights. We disagree.

A. STANDARD OF REVIEW

"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; 846 NW2d 61 (2014). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016) (quotation marks omitted). Only one statutory ground is required to terminate a respondent's parental rights. *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

B. ANALYSIS

1. MCL 712A.19b(3)(i)

The trial court found that clear and convincing evidence existed to terminate respondent's parental rights under MCL 712A.19b(3)(i). Termination under MCL 712A.19b(3)(i) is proper when "[p]arental 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."

In 2017, respondent's parental rights to another child were terminated due to her lack of housing, incarcerations, and failure to address her substance abuse. Respondent appealed the prior termination order and we affirmed. *In re E Emery*, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2018 (Docket Nos. 339191; 339278), p 6. The trial court in that case mentioned that housing was the primary reason for the prior termination order; however, it also acknowledged that respondent's substance abuse and incarceration played a role as well. We discussed respondent's substance abuse at length in our earlier opinion. *Id.*, at 1-5. Law enforcement had found respondent under the influence of drugs. *Id.* at 1. Respondent thereafter failed to heed the court's warning that she had to choose between her child and her drug use. *Id.* Respondent failed to follow the case service plan, tested positive for controlled substances and failed to successfully complete substance abuse treatment. *Id.*

Similarly, in this case, we find no clear error in the trial court's conclusion that respondent continued to choose drugs over her child. This alone was sufficient to terminate respondent's parental rights under MCL 712A.19b(3)(i). Respondent testified that she did not take any drugs the night of the incident and that the drug paraphernalia, including numerous uncapped needles, found in the hotel room was not hers. Respondent told police officers that two other individuals were with her in the room before she fell asleep. However, these individuals were not in the room when the officers arrived. The officers, who responded to a 911 call of a heroin overdose, had to kick the door open to enter the room. Once inside, they discovered respondent unconscious with an empty bottle of Narcan near her and a tourniquet on her left arm. Respondent was drenched in water and lying on top of towels as if someone had doused her with cold water in an attempt to revive her.

The officers also found suspected methamphetamine in respondent's backpack and, although respondent denied that the methamphetamine was hers, she admitted to using methamphetamine within the last four days. The two officers who found respondent testified that when she regained consciousness, her behavior was consistent with someone who was under the influence of narcotics. Their testimony provided clear and convincing evidence of respondent's continued drug use. And, despite respondent's testimony that she was seeking substance abuse treatment, there was no evidence that respondent had actually addressed her substance abuse issues.

Respondent also contends that the trial court "for the most part [relied] on second[-]hand information and assumptions about" her circumstances, and, therefore, had no evidence upon which to base its conclusion that prior attempts to rehabilitate respondent had been unsuccessful.[2] Because respondent fails to further identify the "second-hand information" or the "assumptions," her claim is abandoned. *In the Matter of Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992) ("A party may not merely announce his position and leave it to us to discover and rationalize the basis for h[er] claim.").

Nevertheless, review of respondent's brief suggests that the "second-hand information" may be the DHHS worker's testimony about the prior termination proceeding based on his review of the entries in Michigan's Statewide Automated Child Welfare Information System. Respondent failed to object to the admission of this testimony below; therefore, "[o]ur review is . . . limited to plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id.* at 9. "The trial court may order termination at an initial dispositional hearing under certain circumstances." *Id.* at 16. The court rules require that the court's decision be supported by "legally admissible evidence[.]" *Id.* at 17, quoting MCR 3.977(E)(3). Even assuming that the DHHS worker's testimony was inadmissible, the trial court here personally reviewed the transcript from the prior termination hearing, revealing the same facts as testified to by the DHHS worker. Because the trial court could properly take judicial notice of the facts contained in the transcript, MRE 201, and the transcript of the prior termination hearing was provided as an exhibit, respondent's argument fails. *In re Utrera*, 281 Mich App at 26; MCL 600.2107 ("Copies of all papers, records, entries and documents, required or permitted by law to be filed by any public officer in his office, or to be entered or recorded therein and duly filed, entered or recorded according to law, certified by such officer to be a true transcript compared by him with the original in his office, shall be evidence in all courts and proceedings, in like manner as the original would be if produced."). This evidence demonstrated respondent had failed to rectify the conditions that led to the 2017 termination of her parental rights. Given the current evidence of respondent's continuing drug use, incarceration, and lack of housing, the trial court

[2] We note that a prior version of MCL 712A.19b(3)(i) permitted termination of parental rights when "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." The current statute replaced the language that respondent relies upon with "and the parent has failed to rectify the conditions that led to the prior termination of parental rights."

did not clearly err in terminating respondent's parental rights to this child under MCL 712A.19b(3)(i).

Because only one statutory ground is required to terminate a respondent's parental rights, we will not address the additional statutory grounds.[3] *In re Frey*, 297 Mich App at 244.

III. BEST INTERESTS

Respondent also argues that the trial court clearly erred when it concluded that terminating respondent's parental rights was in the child's best interests. We disagree.

A. STANDARD OF REVIEW

We review the trial court's determination that termination is in the children's best interests for clear error. *In re Schadler*, 315 Mich App at 408. "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id.* (quotation marks omitted).

B. ANALYSIS

When determining whether termination is in the best interests of the child, the trial court should place its "focus on the child rather than the parent." *Id.* at 411. "[T]he 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 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Further, the trial court may consider a respondent's history of substance abuse. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

Here, the child was removed from respondent's care when he was approximately three months old, which was around the same time that the trial court suspended respondent's parenting time. The child was approximately six months old at the time of the termination hearing. Contrary to respondent's assertion on appeal, the trial court did acknowledge that the child may have had a bond with respondent before he was removed from her care. However, the trial court further

[3] Respondent also argues that she could have shown that she could properly care for the child if petitioner had offered her services. Respondent does not present this issue in the statement of questions presented; thus, it is not properly presented for appellate review. *In re BKD*, 246 Mich App 212, 218; 631 NW2d 353 (2001); MCR 7.212(C)(5). In any event, we have reviewed the record and determine that respondent's argument is without merit. Because this case involved aggravated circumstances, DHHS was not required to offer reunification services. *In re Rippy*, ___ Mich App ___, ___; ___ NW2d ___ (2019) (Docket No. 347809); slip op at 2 ("Reasonable efforts to reunify the child and family must be made in all cases except those involving aggravated circumstances under MCL 712A.19a(2).").

recognized that respondent had been absent for a significant portion of the infant's life because of her incarceration, and thus, any bond was likely eroded.

Moreover, the child's bond to the parent is only one factor the trial court may consider when determining whether termination of parental rights is in the child's best interests, and other factors here support the trial court's best-interests findings. *In re Olive/Metts*, 297 Mich App at 41-42. The trial court also properly emphasized that respondent could not care for the child because she was continually incarcerated[4] and she was unable to take care of herself. The trial court concluded that respondent was "just unavailable to be a mother." Further, the trial court found that the child deserved to be in a "stable, loving, [and] nurturing home" where his life would not be in danger, an environment respondent was unable to provide for him. The trial court indicated that if respondent wanted to be a mother in the future, she would need to address her substance abuse issues. Based on the record evidence, we discern no clear error from these findings or the trial court's determination that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Thomas C. Cameron
/s/ Mark T. Boonstra
/s/ Anica Letica

[4] Respondent suggests that the court was mistaken that she was facing criminal charges, but later, recognizes that she was facing charges in three counties in another state. The trial court's assertion that it could not predict if or when respondent would be released and able to participate in services was factually correct based on the record before it. And, contrary to respondent's contention, this recognition neither "overstate[d]" her criminal history nor the likelihood that she was facing "significant incarceration."