

STATE OF MICHIGAN
COURT OF APPEALS

In re RAY/GRUBB, Minors.

UNPUBLISHED
July 30, 2020

No. 351107
Livingston Circuit Court
Family Division
LC No. 2015-015141-NA

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

PER CURIAM.

Respondent-mother appeals as of right an order terminating her parental rights to two children, ER and SG,¹ under MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication), (g) (failure to provide proper care or custody), and (j) (likelihood of harm to child). We affirm.

I. STATUTORY GROUNDS

Respondent-mother argues that the trial court erred by finding statutory grounds for termination. We disagree.

To terminate parental rights, the trial court must initially find, by clear and convincing evidence, a statutory ground for termination, MCL 712A.19b(3), and this Court reviews for clear error the trial court’s factual findings and its ultimate determination that a statutory ground has been established. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, even if some evidence supports the finding, the reviewing court is nevertheless left with the firm and definite conviction that the lower court made a mistake. *In re Mason*, 486 Mich at 152.

¹ Respondent-mother has two additional children, TR and DR. TR, who had reached the age of 18, was dismissed from the court’s jurisdiction in the midst of the proceedings below, and respondent-mother consented to a guardianship order for DR.

The trial court terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3), which states, in part:

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.^[2]

* * *

(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.

Petitioner, the Department of Health and Human Services (DHHS), presented ample evidence that respondent-mother failed to provide proper care for ER and SG and that ER and SG would be at risk of harm if returned to respondent-mother's home.

Evidence was presented that JG, the father of SG, posed a serious risk of harm to the children because of his severe and unresolved issues with substance abuse. Throughout the lengthy proceedings,³ and despite a safety plan precluding contact with JG, respondent-mother nevertheless maintained a romantic relationship with JG and lied about her contacts with JG. While respondent-mother testified on February 20, 2019 that she finally discontinued her relationship with JG, petitioner presented evidence that she was still engaged in a romantic relationship and seeing JG in March and April of 2019. In addition, there was testimony that respondent-mother instructed her children to lie about both telephone contacts and JG's presence in her home. Again, claiming to have ended her relationship with JG in testimony on July 17,

² Subparagraph (g) was amended by 2018 PA 58, effective June 12, 2018, to add the language about finances. Respondent-mother, in arguing about subparagraph (g) on appeal, does not dispute the trial court's finding that she had the financial ability to care for the children.

³ The case was initiated after SG consumed opiates in respondent-mother's home toward the end of 2015.

2019, respondent-mother testified that she had last seen JG “[a] couple weeks” prior to the hearing. The trial court, as the arbiter of credibility, see *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005), concluded that respondent-mother was lying about no longer being in a relationship with JG. Moreover, even though an evaluator concluded that respondent-mother “met the criteria for opioid dependence,” and even though respondent-mother admitted that her *own* substance-abuse issues “interfered with [her] . . . ability to properly supervise [her]children,” respondent-mother failed to adequately address such issues.

Given all the evidence, the trial court did not clearly err by finding that respondent-mother failed to provide proper care or custody for her children and that the children would be at risk of harm if placed in her home. MCL 712A.19b(3)(g) and (j).

In addition, the trial court did not clearly err by finding that there was no reasonable likelihood of respondent-mother’s pertinent issues being rectified in a reasonable time such that she could provide proper care and custody for ER and SG. MCL 712A.19b(3)(g). Respondent-mother had been offered a multitude of services for over three years and still could not demonstrate that she could parent adequately. Accordingly, and especially in light of how many times respondent-mother had lied to DHHS and to the court, the court had an adequate evidentiary basis upon which to conclude that respondent-mother was unlikely to provide a proper home for the children within a reasonable time. Respondent-mother claims on appeal that she “may have been able to benefit from services, after realizing that [JG] needed to be gone from her life.” However, the trial court’s contrary conclusion was supported by the evidence.

Therefore, the trial court did not clearly err by finding that the grounds for termination in MCL 712A.19b(3)(g) and (j) had been established. Because “[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights,” *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011), we decline to analyze the court’s findings with regard to subparagraph (c)(i).

II. BEST INTERESTS

Lastly, respondent-mother argues that the trial court erred by finding that termination of her parental rights was in ER and SG’s best interest. We disagree.

“If a trial court finds that a statutory basis for terminating parental rights exists by clear and convincing evidence, it is required to terminate parental rights if it finds from a preponderance of evidence on the whole record that termination is in the children’s best interests.” *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 637; 853 NW2d 459 (2014) (quotation marks and citation omitted); see also MCL 712A.19b(5).

The trial court should weigh all the evidence available to determine the children’s best interests. To determine whether termination of parental rights is in a child’s best interests, the court should consider a wide variety of factors that may include 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. The trial court may also consider a parent’s history of domestic violence, the parent’s compliance with his or her case 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 701, 713-714; 846 NW2d 61 (2014) (quotation marks and citations omitted.)]

We acknowledge that the children were bonded to their mother. However, the analysis cannot stop there. Both children had special needs and had been in and out of placement twice during the pendency of this case. Like the court-appointed special advocate (CASA) and the guardian ad litem (GAL), the court concluded that the children's need for stability and consistent nurture outweighed the parental bond. We note that the evidence regarding MCL 712A.19b(3)(g) and (j) as discussed above is also applicable to the best-interests issue. Despite SG ingesting dangerous drugs and suffering a significant burn, respondent failed to place the children's interests above her own. In arguing about best interests, respondent-mother states on appeal that she "should have been given more time." However, the *three years* that this case remained ongoing, was as much as the children could afford. Thus, the trial court did not clearly err by determining that termination of respondent-mother's parental rights was in ER and SG's best interest.

Affirmed.

/s/ Michael F. Gadola
/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens