

STATE OF MICHIGAN
COURT OF APPEALS

In re JONES/THOMPSON, Minors.

UNPUBLISHED

July 30, 2020

No. 351612

Muskegon Circuit Court

Family Division

LC No. 11-041112-NA

Before: BORRELLO, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Respondent appeals by right the trial court’s order terminating her parental rights to her five children under MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

The trial court initially took jurisdiction over the children in this case after respondent pleaded to allegations in the petition that the youngest child, MT, was born positive for amphetamines even though respondent did not have a prescription for amphetamines. Respondent was provided with a number of services throughout the pendency of this case, including parenting partners, Infant Mental Health (IMH) services, treatment at the Cherry Health methadone clinic, and treatment with various counselors and therapists. However, her last positive drug screen was conducted about five months before the termination hearing began. According to the testimony of DHHS workers, respondent’s participation in services resulted in a “roller coaster” of effectiveness; improvement when intensive services were in place, and reversion to poor parenting when services were pulled back to allow respondent to demonstrate her ability to be an appropriate parent. As she was weaned off certain services, respondent’s anxiety levels increased, she became what DHHS workers described as “overwhelmed,” and at times, resorted to illicit drug usage.

While this case was ongoing, JJ and LJ were placed with their paternal grandmother. JT, AT and MT went into foster care. JT and AT were placed in the same foster care home, while MT was placed in a separate foster home.

Respondent’s visits with the minor children were switched from supervised to unsupervised then back to supervised. Overall, respondent, at times, demonstrated some

improvement with how she managed and interacted with some of her children, and at times demonstrated some improvement with her other issues interfering with her providing proper parenting for her children. Though her parenting skills showed, at times, improvement, testimony from DHHS workers and health care professionals revealed that respondent was unable to achieve a level consistency with her parenting skills necessary to ensure the continual health and safety of her children.

Following twenty hearing dates over two years, the trial court ordered termination of respondent's parental rights, finding clear and convincing evidence demonstrated that at least one statutory ground for termination was proven. Regarding MCL 712A.19b(3)(c)(i), the trial court found that, after an exhaustive list of services over a period of time extending all the way back to 2011, respondent never effectively rectified the conditions that led to adjudication. It found that respondent struggled to be consistent and failed to attend or complete several services. Regarding MCL 712A.19b(3)(g), the trial court found that "based on testimony," respondent failed to provide proper care and custody for the children. Regarding MCL 712A.19b(3)(j), the trial court found that respondent failed to show stability for a consistent amount of time. The trial court stated that respondent did well when service providers were there to help her, but she could not maintain her progress when services were discontinued. The trial court stated that a pattern had been ongoing since 2011. The trial court found that there was a great risk that the children would be removed again in the future, and concluded that the children had already been subjected to a lengthy period of uncertainty and now deserved permanency.

Regarding MT's best-interests, the trial court stated that she needed permanency and found her psychological parent in her foster mother. The trial court found that there was no bond between respondent and MT. The trial court further found that MT had special needs, and that respondent did not understand those needs, accordingly, a preponderance of the evidence demonstrated that it was in MT's best interests to terminate respondent's parental rights.

Regarding JT and AT, the trial court stated that both of them needed permanency; that "any more time is too much time for these girls." Thus, the trial court found that it was in their best interests to terminate respondent's parental rights.

Regarding JJ and LJ, the trial court stated that JJ had taken on a motherly role for most of her life to help care for the other children. It stated that the paternal grandmother was willing to adopt JJ and LJ and continue to foster a relationship between the children and respondent. The trial court recognized that the children were placed with a relative, but concluded that despite that placement, it was still in their best interests to terminate parental rights because with that relative the children had stability, rules, and a nurturing, permanent home.

This appeal followed.

II. ANALYSIS

On appeal, respondent first argues that the trial court clearly erred in finding that a statutory ground for termination was proven by clear and convincing evidence.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. MCL

712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's determinations for clear error. *Id.* at 139; *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "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 Moss*, 301 Mich App 76, 80, 836 NW2d 182 (2013). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

The trial court terminated respondent's parental rights under multiple subsections of MCL 712A.19b(3), including MCL 712A.19b(3)(j), which indicates that termination is proper when "[t]here 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." "Harm" includes physical as well as emotional harm. See, *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011); ("Respondent focuses only on the potential of *physical* harm or abuse and ignores the fact that the children had been, and continued to be, at risk of *emotional* harm.").

The evidence in this case indicated that respondent had a history with Child Protective Services dating back to 2011, and as earlier discussed, throughout the pendency of this case petitioner provided respondent with myriad services but the evidence consistently indicated that respondent could only maintain adequate parenting skills while the services were in place. Whenever services were scaled back to give respondent the opportunity to demonstrate adequate parenting skills, she became overwhelmed and reverted back to an inability to adequately parent the children. At the time of the termination hearing, respondent still had not demonstrated that she could care for all five of the children together.

Moreover, IMH clinicians testified that MT had "severe sensory issues" and "moderate-to-severe behavior needs," and that she needed a caregiver who had an "extraordinary level of personal insight and strength" in order to care for her behavioral and developmental issues. One clinician stated that, based on her time with respondent, respondent lacked the insight required to adequately help MT. An IMH clinician also testified that respondent could not catch up to the point that the benefit of returning MT to respondent would outweigh the detriment of removing her from her foster family.

JJ expressed to her therapist that she did not feel like she was appropriately cared for in respondent's home, and that there were a lot of times where she had to parent her siblings, including the necessity to supervise the other children when respondent was not "present mentally." Respondent's therapist also testified that respondent had issues with depression, lack of motivation, and self-care, and that she had not met her goals or completed working on those issues in therapy. JT and AT's therapist testified that the children would be negatively impacted if they had to remain in foster care for another year while respondent continued to work toward reunification.

Given this evidence, we are not "left with a definite and firm conviction that a mistake has been made," *In re HRC*, 286 Mich App at 459, in the trial court's finding that MCL 712A.19b(3)(j) was proven by clear and convincing evidence. The testimony established that respondent's inability or unwillingness to change her behavior had already deprived her five children of several years of having a normal home life. See, *In re Hudson*, 294 Mich App at 268. Based on

respondent's ongoing behavior since 2011, the trial court did not err by concluding that there existed a strong likelihood that all five children would be harmed if returned to respondent's care. And because only one statutory ground for termination of parental rights need be proven, *In re Laster*, 303 Mich App 485, 495; 845 NW2d 540 (2013), we decline to address the remaining statutory grounds under which the trial court terminated respondent's parental rights.

Respondent next argues that the trial court clearly erred in finding that termination of respondent's parental rights was in the children's best interests.

The trial court must find by a preponderance of the evidence that termination is in the children's best interests. *In re Moss*, 301 Mich App at 90. The trial court's findings of fact are reviewed for clear error. *In re HRC*, 286 Mich App at 459.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In determining the children's best interests, the trial court may consider the children's bond to their parent; the parent's parenting ability; the parent's history of mental health issues; the child's need for permanency, stability, and finality; and the suitability of alternative homes. *In re Olive/Metts* 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "[A] child's placement with relatives weighs against termination . . ." *Id.* at 43 (quotation marks and citation omitted). "[T]he fact that the [child was] in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination was in the [child's] best interests." *Id.* (quotation marks and citation omitted).

First, the trial court considered respondent's parenting skills generally, noting that respondent had "failed to show stability for a consistent amount of time." It noted that the case had been ongoing since 2011 and that the children had been "subjected to a lengthy period uncertain of temporary wardship and deserve permanency." In making its decision, the trial court also considered the child-parent bond, the children's age, the children's need for stability and permanency, the opinions of experts, the children's wishes, the likelihood of adoption, and the children's bond with each other.

The trial court also observed that JJ and LJ were placed with a relative—their paternal grandmother. Both had done well in that home and the grandmother provided structure, including chores and rules, and followed through on discipline. The trial court found that even though the placement was with a relative, termination was in the children's best interests because it would provide stability, rules, and a nurturing, permanent home. The trial court also noted that the grandmother was willing to adopt the girls. The evidence supported this finding; hence we discern no clear error in the determination that termination of respondent's parental rights was in JJ's and LJ's best interests.

The trial court's findings regarding JT and AT were not as detailed as with the other children, however, our review of the record evidence reveals that the testimony justified and supported the trial court's decision. The girls' therapist noted that they had been diagnosed with adjustment disorder, which was brought on by their removal. She stated that the girls were vocal about expressing their desires, but neither had expressed a desire to return to respondent's care.

She opined that the lack of stability and the inability to predict on a daily basis what their lives would look like negatively impacted them. Also, the therapist observed a bond between the two girls and their foster family. And the foster-care caseworker testified that the two girls were placed in a foster home that was willing to adopt them. Given this evidence, we find no clear error in the trial court's determination that the need for stability and permanency indicated that termination of respondent's parental rights was in the girls' best interests.

Regarding MT, the trial court found that there was a lack of bond between the child and respondent, and that MT was more bonded with her foster family. The evidence supported that finding, including that MT looked to the foster parents for care and comfort. The trial court also considered that MT had special needs and that respondent lacked insight into those needs. We conclude that the trial court considered the appropriate factors and we are not "left with a definite and firm conviction that a mistake has been made," *In re HRC*, 286 Mich App at 459, in the trial court's finding that termination of respondent's parental rights was in her best interests. Accordingly, respondent is not entitled to relief.

Affirmed.

/s/ Stephen L. Borrello

/s/ David H. Sawyer

/s/ Deborah A. Servitto