STATE OF MICHIGAN

COURT OF APPEALS

In re K. C. STINSON, Minor.

UNPUBLISHED
July 30, 2020

No. 351943
Wayne Circuit Court
Family Division
LC No. 19-000511-NA

Before: MARKEY, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating his parental rights to his minor child, KS, under MCL 712.19b(3)(b)(*i*) (parent caused physical injury to the child or sibling), (g) (failure to provide proper care and custody), (i) (failure to rectify the conditions the led to a prior termination of parental rights), (j) (reasonable likelihood of harmed if returned to parent), (k)(*iii*) (battering, torture, or other severe physical abuse of child or sibling), and (k)(*iv*) (loss or serious impairment of an organ or limb of child or sibling). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent is the father of three minor children. In August 2019, petitioner, the Department of Health and Human Services (DHHS), filed a petition to terminate respondent's parental rights to KS after respondent's parental rights to KS's siblings, BS and DS, were terminated.[1] The petition alleged that respondent's parental rights to BS and DS had been terminated after DS sustained second- and third-degree burns on his feet while in respondent's care, and that respondent's explanation of the incident as being accidental was inconsistent with the type of burns that DS had sustained. The petition further alleged there was a reasonable

[1] This Court affirmed the termination of respondent's parental rights to BS and DS on April 30, 2020. *In re Stinson*, unpublished per curiam opinion of the Court of Appeals, issued April 30, 2020 (Docket No. 350435).

likelihood that KS would be harmed if returned to respondent's care. The petition sought termination of parental rights at the initial dispositional hearing.

At the adjudication and termination hearing, the court took judicial notice of the circumstances surrounding the termination of respondent's parental rights to BS and DS. In March 2019,[2] respondent and DS's mother brought DS to the emergency room of Children's Hospital of Michigan, where he was diagnosed with second and third-degree burns on his feet. The burns required skin grafts. Doctor Justin Klein, the pediatric surgeon who performed one of DS's skin grafting surgeries, and Doctor Rajan Arora, a pediatric physician who treated DS when he arrived at the hospital, testified in the prior proceeding that the burns appeared to be nonaccidental, forcible immersion burns, based on of DS's age, the "stocking pattern" of the burns, and the clear lines of demarcation.

Karoline Nowak, an employee of DHHS, testified that respondent's parental rights to BS and DS were terminated because, while in respondent's care, DS had suffered second- and third-degree burns that required multiple skin grafting surgeries. Moreover, the evidence presented during the evidentiary and termination hearings regarding respondent's parental rights to BS and DS established that DS's injuries were not accidental. Nowak further testified that respondent had failed to take accountability for why BS and DS had been removed from his care, had failed to rectify the conditions that led to their removal, had failed to maintain communication with DHHS, did not visit with the children, and did not provide support for the children. Nowak testified that it would be contrary to KS's welfare to be in respondent's care. The trial court terminated respondent's parental rights to KS, concluding that respondent had inflicted severe physical injury and abuse on DS, failed to provide proper care and custody of BS and DS, and maintained an unfit home. The trial court also found that the termination of respondent's parental rights was in the best interests of the KS. This appeal followed.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred by finding that the statutory grounds to terminate his parental rights had been proven by clear and convincing evidence. We disagree.

We review for clear error a trial court's finding that one or more statutory grounds for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A finding is clearly erroneous if this Court is "left with a definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citations omitted). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

A petitioner for the termination of parental rights bears the burden of proving by clear and convincing evidence at least one statutory ground for termination. MCR 3.977(A)(3); MCR 3.977(E)(3); MCR 3.977(F)(1)(b); MCR 3.977(H)(3)(a); *In re S R Richardson, Minor*, 329 Mich App 232, __; __ NW2d __ (2019) (Docket Nos. 346903 and 346904); slip op at 9. The

[2] KS was not yet born.

petitioner need only establish one statutory ground by clear and convincing evidence to terminate a respondent's parental rights. *Ellis*, 294 Mich App at 32.

Termination of parental rights is appropriate under MCL 712A.19b(3)(i) if "[p]arental rights to 1 or more siblings of the child have been terminated because of 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." "[T]he clear language of this statute requires the court to determine the success of prior rehabilitative efforts as of the date of the termination hearing." *In re Gach*, 315 Mich App 83, 94; 889 NW2d 707 (2016).

As stated, the trial court took judicial notice of the prior termination proceedings. MRE 201 (c) and (e); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009) (holding that "a court may take judicial notice of its own files and records.") The trial court concluded that clear and convincing evidence existed to terminate respondent's parental rights to KS under MCL 712A.19b(3)(i) because respondent's parental rights to BS and DS were previously terminated after DS suffered severe, nonaccidental burns while in respondent's care. Additionally, as noted by the trial court, respondent failed to rectify the conditions that led to the termination of his parental rights to BS and DS by, for example, participating in parenting classes or therapy. Accordingly, respondent failed to demonstrate that he could or would behave differently with KS.

Respondent argues that the trial court erred by terminating his parental rights under MCL 712A.19b(3)(i) because he was not provided with a case service plan or services after KS's removal. Generally, when a child is removed from a parent's custody, the agency must make reasonable efforts to reunify the child with the parent unless certain aggravated circumstances exist. MCL 712A.19a(2). However, reasonable efforts to reunify the child and the family need not be made if "the parent has had rights to the child's siblings involuntarily terminated and the parent has failed to rectify the conditions that led to that termination of parental rights." MCL 712A.19a(2)(c); *In re Smith*, 291 Mich App 621, 623; 805 NW2d 234 (2011) (noting that "the prior involuntary termination of parental rights to a child's sibling is a circumstance under which reasonable efforts to reunite the child and family need not be made.") Further, during the prior termination proceeding and the current proceeding, respondent made no effort to rectify the conditions that led to his children's removal, but instead insisted that DS had been accidentally burned. Therefore, because respondent's rights to BS and DS were previously terminated, respondent had made no effort to rectify the conditions that led to that termination, and petitioner did not have an obligation to provide respondent with services, the trial court did not clearly err by terminating respondent's parental rights to KS under MCL 712A.19b(3)(i).

Further, clear and convincing evidence was also presented to terminate respondent's parental rights under MCL 712A.19b(3)(b)(*i*) and (k)(*iii*). Termination of parental rights is appropriate under MCL 712A.19b(3)(b)(*i*) and (k)(*iii*) when

> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
>
> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

> (k) The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:
>
> * * *
>
> (*iii*) Battering, torture, or other severe physical abuse.

The trial court concluded that clear and convincing evidence was presented to terminate respondent's parental rights to KS under MCL 712A.19b(3)(b)(*i*) because respondent physically abused DS. The trial court further noted that there was no evidence that respondent did "anything to rehabilitate himself in any way, shape or form whether it be parenting classes or therapy . . . to demonstrate that it could be different with [KS]." The record supports the trial court's findings.

Respondent argues that the trial court erred by concluding that DS's burns were not accidental. But the evidence presented in the prior proceeding supports the trial court's conclusion that DS was physically abused. Dr. Arora testified that the burns were "classic for forcible immersion burns" because burns of the type suffered by DS occur when an individual is forcibly held in water so that they are unable to move. Dr. Arora further explained that when burns are the result of accidental exposure to hot water, the burns are indistinct, irregular, and generally have splash marks from the individual attempting to get out of the water. DS's burns were identical, well defined, and lacked any splash-mark burns. Dr. Klein similarly testified that the burns were suspicious for being an inflicted injury because of the lack of splash marks, DS's age, the clear lines of demarcation, and "stocking pattern" of the burns. These burns required multiple skin-graft surgeries to treat. Therefore, it was not clear error for the trial court to conclude that respondent inflicted physical injury on KS's sibling in the form of severe child abuse.

Further, the trial court did not clearly err by determining that there was a reasonable likelihood that KS would be injured, abused, or harmed if returned to respondent's care. "Evidence of how a parent treats one child is evidence of how he or she may treat another child." *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011). The trial court concluded that respondent inflicted severe burns on DS, a sibling of KS. Respondent maintained that DS's burns were accidental, claimed that he was running a bath for BS when, unbeknownst to him, DS climbed into the bathtub and accidentally turned the hot water tap all the way on. Respondent asserted that he did not realize that DS had climbed into the bathtub until DS began crying.

Respondent's version of events was contradicted by the physical evidence of the patterns of DS's burns, as testified to by two pediatric physicians. But even if the trial court believed respondent's account of the incident, the trial court did not err by finding that there was a reasonable likelihood that KS would suffer harm or injury respondent's care. Even under respondent's version of events, DS suffered severe physical injury while in his care because of respondent's failure to provide proper supervision of DS. At the time of termination, KS was five months old and therefore required attentive supervision and support that respondent demonstrated he was unable to provide. There was no evidence presented that respondent took any steps to become a more attentive father or to demonstrate that he would be able to provide proper care and

custody of KS within a reasonable time. Therefore, on the basis of the evidence that led to the termination of respondent's parental rights to BS and DS, the trial court did not err by finding that statutory grounds existed to terminate respondent's parental rights to KS under MCL 712A.19b(3)(b)(*i*), and (k)(*iii*).

Because we hold that the trial court did not clearly err by finding that these statutory grounds for termination had been proven, we need not address its findings concerning the other grounds for termination. *Ellis*, 294 Mich App at 32.

III. BEST-INTEREST DETERMINATION

Respondent argues that the trial court erred by finding by a preponderance of the evidence that the termination of his parental rights was in the best interests of KS. We disagree.

We review for clear error a trial court's decision that termination is in a child's best interests. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App 76, 83 (2013). "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 HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

If the court determines by clear and convincing evidence that one or more statutory ground exists under MCL 712A.19b(3), and that termination of parental rights is in the child's best interests, the court must order termination of parental rights. MCL 712A.19b(5); *In re Ferranti*, 504 Mich 1, 16; 934 NW2d 610 (2019). The petitioner bears the burden of establishing by a preponderance of the evidence that termination is in the best interests of the child. *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), citing MCL 712A.19b(5) and *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the 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).

Respondent argues that the trial court erred by concluding that termination was in the best interests of KS, because respondent was remorseful for what occurred with DS, was bonded to the children, and the record did not indicate that the children would be at a risk of harm in his care. We disagree. Even if a bond existed between respondent and KS, a child's bond with a parent is only one factor in the best-interest analysis. *In re White*, 303 Mich App at 714. The trial court's best-interest analysis focused on respondent's ability to provide KS with safety, stability, and permanence. The trial court concluded that the termination of respondent's parental rights was in the best interests of KS because KS had a right to be raised in a safe and stable environment free from unreasonable risk of harm, which respondent was unable to provide. While in respondent's care and custody, DS suffered severe physical injury. Drs. Arora and Klein opined that respondent intentionally inflicted those injuries upon DS. And despite respondent's argument that he showed remorse for what had happened, the record shows that respondent failed to take responsibility for DS's injuries and continually insisted that DS's severe burns were accidental. In any event, KS is a young child who relies on his parents for support, supervision, and care. Regardless of whether

the cause of DS's injuries was deliberate abuse or negligence on respondent's part, the record supports the conclusion that KS would be at substantial risk of physical injury if returned to respondent's care. We conclude that the trial court did not clearly err by concluding that the termination of respondent's parental rights was in the best interests of KS. *Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Mark T. Boonstra