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STATE OF MICHIGAN

COURT OF APPEALS

In re ADAMS, Minors.

UNPUBLISHED
August 13, 2020

Nos. 351692; 352297
Van Buren Circuit Court
Family Division
LC No. 17-018797-NA

Before: SHAPIRO, P.J., and SERVITTO and LETICA, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father (Docket No. 352297) and respondent-mother (Docket No. 351692) appeal as of right the trial court's order terminating their respective parental rights to two minor children. We affirm.

I. RESPONDENT-FATHER

In Docket No. 352297, father argues that: (1) the DHHS did not prove the statutory ground for termination of parental rights under MCL 712A.19b(3)(c)(*i*) (failure or inability to rectify conditions of adjudication) or MCL 712A.19b(3)(j) (risk of physical or emotional harm) by clear and convincing evidence; and (2) termination of his parental rights was not in the best interests of the minor children. We disagree.

A. STANDARD OF REVIEW

We review for clear error the trial court's determinations that clear and convincing evidence supported a ground for termination and that termination was in the children's best interests by a preponderance of the evidence. See *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). There is clear error when a review of the entire record leaves us with the definite and firm conviction that the lower court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). In reviewing the circuit court's decision, we also must give "due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court must find at least one of the statutory grounds for termination has been established by clear and convincing evidence in order to terminate parental rights. *In re Gonzalez/Martinez*, 310 Mich App 426, 431; 871 NW2d 868 (2015). If we conclude that the trial

court did not clearly err as to the existence of one ground for termination, we need not address any additional termination grounds. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). "Even if the trial court finds that the [DHHS] has established a ground for termination by clear and convincing evidence, it cannot terminate the parent's parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children." *In re Gonzalez/Martinez*, 310 Mich App at 434.

B. STATUTORY GROUNDS

The trial court did not clearly err by finding that the DHHS proved one or more statutory grounds for termination of parental rights by clear and convincing evidence.

Termination of parental rights under MCL 712A.19b(3)(c)(*i*) is proper when, after a period of 182 or more days has elapsed, the trial court finds by clear and convincing evidence that "[t]he 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." This statutory subsection requires more than "the mere possibility of a radical change" in the parent's life, and instead considers whether, under the totality of the circumstances, there was "any meaningful change" in the ability of the parent to overcome the circumstances that originally caused adjudication. *In re Williams*, 286 Mich App at 272-273.

In this case, the trial court provided father considerably more than the 182-day statutory period to rectify the conditions that originally led to adjudication. More than two years had elapsed. Despite this extended opportunity, father admitted at the termination hearing that he continued to abuse alcohol and other drugs and that, under the circumstances, he would need to "just start all over again, start digging [his] way out of the hole." Given the circumstances, we agree that change appeared unlikely to occur within a reasonable time. In the months preceding the termination hearing, father tested positive for methamphetamine, attempted suicide while extremely intoxicated, and was arrested for his third domestic violence offense. Although the evidence demonstrated father loved his children, the record also reveals that his compliance with his case services plan was "poor" and "inconsistent" and his caseworker did not believe that additional time was likely to alleviate these apparent risk factors and barriers to reunification. Overall, the same issues that brought the children into care—substance abuse, lack of stable housing or employment, domestic violence, and mental health concerns—continued basically unabated. We conclude that the trial court did not clearly err by finding that the conditions that led to the adjudication still existed at the time of the termination hearing and that there was no reasonable likelihood that father would rectify these conditions within a reasonable time frame. See *In re Williams*, 286 Mich App at 272-273.

Because the trial court properly terminated father's parental rights under at least one statutory ground, we need not examine whether termination was proper under MCL 712A.19b(3)(j). *In re HRC*, 286 Mich App at 461.

C. BEST INTERESTS

We also conclude that termination of father's parental rights was in the minor children's best interests.

The trial court was required to find by a preponderance of the evidence that termination of parental rights was in the minor child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "In making its best-interest determination, the trial court may consider the whole record, including evidence introduced by any party." *In re Medina*, 317 Mich App 219, 237; 894 NW2d 653 (2016) (quotation marks and citation omitted). "[T]he 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," are all factors for the trial court to consider when deciding whether termination is in the best interests of the child. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). A child's placement with relatives is also a factor that the trial court is required to consider. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Generally, "a child's placement with relatives weighs against termination[.]" *In re Olive/Metts Minors*, 297 Mich App at 43 (quotation marks omitted). "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 at 714. When considering the best interests of multiple children, "if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children's best interests." *Id*. at 715.

In this case, the record supported the trial court's determination that father had a continuing history of domestic violence, did not adequately comply with his case service plan, lacked stable housing or employment, and continued to suffer from mental health and substance abuse issues. Although the children were placed with their grandparents, those family members did not seek to be a permanent home for the children. There was also evidence that adoption of both children, together, into a more stable and permanent home was likely. Although the children were bonded with father, the trial court did not clearly err in concluding that the children's need for permanency, stability, and finality ultimately weighed in favor of termination.

Accordingly, we conclude that the trial court did not clearly err in terminating father's parental rights.

II. RESPONDENT-MOTHER

In Docket No. 351692 mother's sole argument is that the trial court violated her constitutional rights under the Establishment Clause of the United States Constitution by ordering her participation in Narcotics Anonymous (NA). We disagree.

A. STANDARD OF REVIEW

Because mother did not raise this argument before the trial court, it is unpreserved. We review unpreserved claims of error arising out of child protecting proceedings for plain error. See *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019). "The respondents must establish that (1) error occurred; (2) the error was plain, i.e., clear or obvious; and (3) the plain error affected their substantial rights." *Id*. (quotation marks omitted). "And the error must have seriously affected the fairness, integrity or public reputation of judicial proceedings." *Id*. (quotation marks, ellipsis, and alternations omitted).

B. ESTABLISHMENT CLAUSE

The First Amendment of the United States Constitution provides in pertinent part that "Congress shall make no law respecting an establishment of religion[.]" US Const, Am I. "The Establishment Clause guarantees governmental neutrality with respect to religion and guards against excessive governmental entanglement with religion." *Weishuhn v Catholic Diocese of Lansing*, 279 Mich App 150, 156; 756 NW2d 483 (2008). However, "pinning down the meaning of a 'law respecting an establishment of religion' has proven to be a vexing problem." *American Legion v American Humanist Ass'n*, ___ US ___, ___; 139 S Ct 2067, 2080; 204 L Ed 2d 452 (2019) (discussing flaws in existing Establishment Clause precedent and partially abrogating the application of the "*Lemon* test" set forth in *Lemon v Kurtzman*, 403 US 602; 91 S Ct 2105; 29 L Ed 2d 745 (1971)). Although the Supreme Court's recent decision *American Legion* challenged the continuing supremacy of the *Lemon* test, it did not expressly overrule that analysis. The primary inquiry remains "whether a reasonable observer would conclude that the action constituted an endorsement of religion." *American Legion*, 139 S Ct at 2080 (quotation marks omitted); see also *Scalise v Boy Scouts of America*, 265 Mich App 1, 11-12; 692 NW2d 858 (2005).

Applying the *Lemon* test, we must discern whether the challenged government action (1) has a secular purpose; (2) has a principal or primary effect " 'that neither advances nor inhibits religion' "; and (3) does not foster " 'an excessive government entanglement with religion.' " *Scalise*, 265 Mich App at 11-12, quoting *Lemon*, 403 US at 612-613. "If state action violates any prong of *Lemon*, that action contravenes the clause." *Id.* at 12. Notably, "[t]he *Lemon* test does not require, nor did the framers of the Constitution intend, to impose a constitutional straightjacket preventing any sentiment of religious belief," and the Establishment Clause does not amount to a "blanket prohibition" of any governmental association with social-welfare organizations that happen to espouse faith-based philosophies. *Id.* at 14.

The termination of mother's parental rights did not implicate her constitutional rights under the Establishment Clause. To the extent that the DHHS encouraged or recommended, or the trial court ordered, that mother participate *exclusively* in NA[1] (rather than some other program) for treatment of her substance abuse problem, there was no suggestion that mother's parental rights were conditioned on participation in NA, the DHHS or the trial court had a non-secular purpose in recommending such participation, the primary effect of participation in NA was the advancement

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[1] Because there was no objection at the trial court level, the record is devoid of any information concerning the availability of alternative treatment programs. For purposes of this discussion, we assume without deciding that the drug-treatment programming offered by NA espouses a faith-based philosophy that amounts to religious proselytization. See, e.g., *Turner v Hickman*, 342 F Supp 2d 887, 896 (ED Cal, 2004) (concluding that NA program was "fundamentally religious, based as it is on the concept of a higher power to which participants must submit"); *Kerr v Farrey*, 95 F3d 472, 480 (CA 7, 1996) ("A straightforward reading of the twelve steps shows clearly that the steps are based on the monotheistic idea of a single God or Supreme Being.").

of religion rather than the overcoming of mother's substance abuse, or the recommendation was akin to an endorsement of religion. In any event, mother cannot demonstrate the prejudice necessary to prevail under the plain-error standard of review because she admits that "[i]t is speculative if another program would have helped her sufficiently overcome substance abuse." In light of this admission, mother cannot establish that the results of the child protective proceedings would have differed as required to obtain relief under the plain-error standard.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Deborah A. Servitto
/s/ Anica Letica