

STATE OF MICHIGAN
COURT OF APPEALS

In re TN, JR., Minor.

UNPUBLISHED
August 20, 2020

No. 352438
Berrien Circuit Court
Family Division
LC No. 2017-000094-NA

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

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to her minor child, TN. We affirm.

The trial court took TN into protective custody within days of his birth due to allegations of mother’s issues of domestic violence in the home, lack of stable housing, lack of employment, lack of treatment for mental health issues, and struggles with resource availability and management. The initial stated goal was reunification but, when mother failed to make progress in several of the above areas despite the Department of Health and Human Services (DHHS) having provided mother with a plethora of services to aid in rectifying the conditions that brought the child into care, the DHHS filed a supplemental petition seeking termination of mother’s parental rights. More than two years after TN was removed from mother’s care, the trial court held a termination hearing. The court ultimately terminated mother’s parental rights to TN pursuant to MCL 712A.19b(3)(c)(i), and (j), and found that termination was in TN’s best interests.

On appeal, mother argues that the trial court erred when it found that the DHHS proved by clear and convincing evidence that a statutory basis existed for terminating mother’s parental rights. We disagree.

Termination of parental rights is appropriate where the petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews for clear error the lower court’s factual findings that grounds for termination were established. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505, 511 (2004). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.* at 296-297.

Grounds for termination under MCL 712A.19b(3)(c)(i) exist when “[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.” Termination is appropriate under MCL 712A.19b(3)(j) if “[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.”

In this case, the mother’s issues leading to adjudication consisted of domestic violence in the home, emotional and mental instability, questionable parenting skills, a lack of employment and resources to care for TN, and a lack of stable housing. Over the course of 704 days, mother was provided services to help her with each of her barriers including parenting and psychological assessments, Early On assessments, outreach therapy services, alternative therapy services, parenting classes, domestic violence therapy and counseling, and transportation assistance. Mother argues that she had found housing that remained stable and appropriate throughout the entire case, completed parenting classes, and had a stable income, resource management, and emotional stability. She further indicated that even if her alleged continued contact with TN’s putative father¹ (with whom she experienced domestic violence) was true, there was no showing that there was any present harm to TN.

It is true that mother addressed several of the issues that initially brought TN under the jurisdiction of the court. At the termination hearing, the trial court specifically found that mother had maintained full-time employment for approximately two years and that the concerns about her being able to support TN were thus lessened. However, the trial court also found that mother essentially “breaks even every month in terms of the money coming in and going out of her household,” and that she had still resorted to other methods of obtaining additional income on occasion, including panhandling. The trial court noted that mother continued to exhibit problems with being able to support TN. In fact, in the week preceding the termination hearing, mother did not have food for TN during a parenting-time visit because she had not yet received her paycheck, and the trial court thus observed that mother’s “resource availability, employment, and income management skills” were still a concern.

Similarly, the trial court found that mother, having obtained an apartment, ultimately had stable housing for a large part of the two-year timeframe of this matter. However, the trial court also found that mother was not “forthcoming and honest with regard to who was in her home.” Evidence presented during trial indicated that mother continued to allow TN’s father into the home and to have contact with TN despite incidences of domestic violence with him. The trial court additionally noted that, within the last year, mother had lost her apartment “because of an argument with the landlord” over father being in the home.

The trial court also found it concerning that mother had a history of mental health issues, and was still not taking her medication regularly as of the October 2019 termination hearing. The court noted that mother had not participated in counseling until August 2018, and that she had, at times, allowed her Medicaid to lapse, then occasionally also failed to timely reinstate that

¹ Hereafter referred to as “father.”

Medicaid, which frustrated her ability to receive the services that she needs. Her mental and emotional stability continued to be at issue throughout the proceedings.

A significant continuing concern of the trial court was mother's domestic violence in the home. The counselor who was seeing mother suspected that she was still seeing the partner whom she had been involved in a domestic violence relationship with (father) and noted that mother was "preoccupied with fears of being abandoned or rejected by others, and has a history of volatile and intense relationships." The court stated that mother was on probation for domestic violence for a situation dealing with father and yet father continued to be involved with mother throughout the pendency of the case. The trial court specifically noted domestic violence incidents that occurred in March 2017, while mother was pregnant and arrested, December 2017, when mother was arrested, January 2019, when mother ended up with a "split and swollen lip" because father had head-butted her, and February 2019, when mother admitted that father had thrown a rock through her window.

Mother testified that father was no longer physical, he just abused her emotionally, and when asked to look back and assess her and father's relationship, mother stated that her "relationship was probably negative." Mother had experience working with victims of trauma and she acknowledged that witnessing abuse in any form could cause trauma to her son. Mother also agreed that father could be dangerous and that the DHHS had a right to be concerned, but then separated "the fact that he may not hurt her from the fact that he may hurt the son, without really any acknowledgement or a full understanding, or an appreciation of the fact that by hurting her, [father] would, in fact, be hurting her son." The court stated that mother qualifying the relationship in that fashion was of concern, as was her dishonesty about her continued contact with father.

The trial court noted that mother "admitted that she attempted to circumvent the" DHHS, and this was a concern on many levels. "[F]irst that she would be willing to manipulate the [DHHS] rather than make a true attempt at receiving the help that she needs, which would then demonstrate a complete understanding of her issues." Further, it concerned the court "with regard to her caring for her son in an appropriate manner," and "with regard to the safety of her son and her allowing this person in."

The court acknowledged that mother had completed most of the services offered by the DHHS in this matter. However, its concern was not with completion, but rather the benefit that she ultimately received. The trial court found that mother's continued attempts to portray that it was someone else that was in her home, rather than father, indicated "clearly and convincingly, certainly, that she has not benefited from the services that she completed." Not only did mother continue to allow a partner with whom she had experienced many instances of domestic violence to continue participating in her and TN's life, at a recent parenting time she was heard spanking her child loud enough to be heard by people that were not right next to mother and TN. There was also testimony that mother's participation at the more recent parenting-time visits really wasn't focused on the child, but was more focused on her phone and other things. The DHHS further reported that mother consistently had difficulty during her parenting times in understanding age-appropriate behavior and being able to interact with her child in an age-appropriate manner.

Further, shortly prior to the beginning of the termination hearing, mother had discontinued her classes at the YMCA. She had started a different program and was discontinued by that program because of her choices involving father.

The trial court expressed concern, given mother's actions, as to whether mother was able to internalize the information obtained through the services and really understand what it meant with regard to caring for her son in the future. Mother stated that she would do anything for her son, yet she testified that "she won't ignore people she knows just because her son was home there, and she tries not to judge people." The trial court found that although those may be admirable qualities, "in this situation her first obligation is to her son and keeping him safe."

In concluding that mother failed to rectify her barriers to reunification, the trial court stated that, although there was evidence that mother made some progress, the totality of the evidence demonstrated that she failed to appreciate and internalize the information that she was given. We agree that there was clear and convincing evidence presented establishing that mother did not rectify her mental health, domestic violence, parenting skills, and resource barriers in the 704 days that this case was pending. The evidence further showed that mother will not be able to rectify these conditions within a reasonable time considering the amount of services that were offered, the barriers that still continue to exist, and the child's age. MCL 712A.19b(3)(c)(i); *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). In light of our conclusion that the trial court did not clearly err by finding one statutory ground for termination, we need not address the additional ground. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

Mother next argues that the trial court erred in finding that termination of parental rights was in the best interests of TN. We disagree.

Once a statutory ground has been established, petitioner must prove, "by a preponderance of the evidence that termination . . . [is] in the child[]'s best interests." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings regarding a child's best interests are reviewed for clear error. *In re Trejo*, 462 Mich at 356-357. A finding is clearly erroneous if, despite that there is evidence to support it, this Court is "left with a definite and firm conviction that a mistake has been made. [This Court] give[s] deference to the trial court's special opportunity to judge the credibility of the witnesses." See *In re HRC*, 286 Mich App at 459 (citations omitted).

The focus at the best-interest stage is on the child, not the parent. *In re Moss*, 301 Mich App at 87. In balancing all the evidence available to determine the child's best interests, the court may look to "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). The trial court may also consider the length of time the child was in foster care and the likelihood that "the child could be returned to her parents' home within the foreseeable future, if at all," *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012), as well as the parent's history of domestic violence, his or her compliance with the services offered, and the parent's visitation history with the child. *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

In this case, the trial court's best-interest analysis was straightforward and reasoned. It stated that

when considering the other factors the Court must consider the mother's ability to parent, this child's need for permanency, stability, and finality, given the fact that he is two years old and has really only known the home of placement, the history of domestic violence in the mother's life, the mother's compliance with the case services plan on some issues, but not with regard to what this Court considers to be the main issue here, and that is the domestic violence in the home.

The trial court noted that mother had a "good history of parenting time visits with the child;" however, the more recent visits were "poorly conducted." The court considered mother's progress over time, but found that they were now "back to where we started, essentially, at this point with regard to parenting skills, the domestic violence, and the emotional instability." The court also noted that there was a "great possibility for the adoption of this child." On the basis of these factors, including the length of time the child has been in foster care (since he was a few days old), the trial court found that it was in the best interests of TN to terminate the parental rights of mother.

After considering the testimony given, mother's failure to benefit from the services offered, and her continued relationship with father despite its negative effects on TN, the trial court found, and this Court agrees, that in light of the legislative mandate for permanency and by a preponderance of the evidence, it was in the best interests of TN to terminate mother's parental rights. Accordingly, the trial court did not clearly err by terminating mother's parental rights. See *In re Trejo*, 462 Mich at 356-357; see also *In re White*, 303 Mich App at 716.

Affirmed.

/s/ Douglas B. Shapiro

/s/ Deborah A. Servitto

/s/ Anica Letica