

STATE OF MICHIGAN
COURT OF APPEALS

In re E. A. BAUMGARTNER, Minor.

UNPUBLISHED
August 20, 2020

No. 352514
Wayne Circuit Court
Family Division
LC No. 17-001040-NA

Before: MARKEY, P.J., and K. F. KELLY and TUKEL, JJ.

PER CURIAM.

Respondent-mother appeals by right the termination of her parental rights to the minor child, a boy, EB, pursuant to MCL 712A.19b(3)(b)(i) and (j). We affirm.

Respondent has five children. Her ex-husband is the father of the three oldest children. Respondent's second youngest child, a girl, HB, has a different father. HB's father was treated as the putative father of EB, but paternity was never established. In May 2017, HB was born with amphetamines, methamphetamines, and opiates in her system as a result of respondent's use of drugs. This led to child protective proceedings regarding all of respondent's children, except for EB, who was not born until September 2019. Respondent's former husband was granted full custody of the three oldest children. After nearly two years of receiving assistance and services under a treatment plan developed by the Department of Health and Human Services (DHHS), respondent's parental rights to HB were terminated. In relationship to the proceedings concerning HB, although respondent completed a parenting class, she rarely submitted to required random drug testing; she did not complete a substance abuse treatment program; she failed to consistently visit HB, who had been placed with a foster family, and she could not demonstrate employment.

A few months after respondent's parental rights to HB were terminated, respondent gave birth to EB. He, like his sister, was born with amphetamines and opiates in his system. DHHS filed a petition seeking to terminate respondent's parental rights to EB, and the child was removed from respondent's care. EB received several weeks of medical treatment and care for drug withdrawal symptoms before being released from the hospital. EB was placed in the care of the same foster family that was in the process of adopting HB. Following a combined adjudication trial and termination hearing, which respondent failed to attend, respondent's parental rights to EB were terminated. Respondent now appeals.

On appeal, respondent argues that the trial court clearly erred by finding that the statutory grounds for termination were proven by clear and convincing evidence. In connection with this argument, respondent also contends that the DHHS failed to provide reasonable efforts at reunification. Respondent additionally maintains that the trial court clearly erred by finding that the DHHS proved by a preponderance of the evidence that termination of her parental rights was in EB's best interests.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); MCR 3.977(H)(3); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding . . . is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]" *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). When applying the clear error standard in parental termination cases "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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); see also MCR 2.613(C).

MCL 712A.19b(3)(b)(i) authorizes the termination of parental rights when a "child or a sibling of the child has suffered physical injury," "[t]he parent's act caused the physical injury," and "there is a reasonable likelihood that the child will suffer from injury . . . in the foreseeable future if placed in the parent's home." MCL 712A.19b(3)(j) allows for the termination of parental rights 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."

We hold that the trial court did not clearly err by finding clear and convincing evidence in support of termination of respondent's parental rights under MCL 712A.19b(3)(b)(i) and (j). HB was born with illegal drugs in her system and respondent's parental rights to HB were terminated two years later. According to Kelsey Chaudoin, a DHHS caseworker during the two years of protective proceedings regarding HB, respondent had been required to submit to drug screening, to participate in substance abuse treatment, to obtain stable housing and employment, and to visit HB. Chaudoin testified that respondent failed to complete these requirements under the treatment plan. The case file from the HB proceedings confirmed Chaudoin's testimony.¹ We note that "[a]

¹ Respondent was referred to substance abuse counseling multiple times but did not complete the program. She was also referred for weekly random drug testing on August 16, 2017. Respondent failed to take or submit to 10 drug tests between August 16, 2017, and November 1, 2017, and she tested positive for drugs the two times that she did submit to testing. Respondent did not participate in a single drug test between January 6, 2018, and January 7, 2019. Further, she did not provide proof of employment and failed to consistently visit HB. Respondent did complete a parenting class, although she missed two sessions.

parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014). EB was born with amphetamines and opioids in his system a few months after respondent's parental rights to HB were terminated. Chaudoin testified that she prepared another treatment plan for respondent after EB was born, which included information about substance abuse resources, but respondent did not utilize those resources. Respondent also refused to submit to drug testing, verify income, or permit the completion of a home assessment. The trial court concluded that the statutory grounds were satisfied because substance abuse continued to be an unrectified problem which prevented respondent from properly caring for EB, and because respondent was in no better position to plan or care for EB than she was when the court terminated her parental rights to HB.

Respondent's drug use caused HB and EB to be born with drugs in their systems and to have withdrawal symptoms, establishing "physical injury" to the children. MCL 712A.19b(3)(b)(i). And her ongoing use of illegal drugs and failure to seek and obtain substance abuse treatment after nearly two and a half years of virtually continuous child protective proceedings established a reasonable likelihood that EB would suffer an injury in the foreseeable future if placed in respondent's home. *Id.* For the same reasons, there was no clear error by the court in concluding that there existed a reasonable likelihood that EB would be harmed if returned to respondent's home. MCL 712A.19b(3)(j).

Respondent argues that the DHHS did not make reasonable efforts to reunify her with EB. Reasonable efforts at reunification, however, are not required if "[t]he 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). The record clearly establishes that respondent's parental rights to HB were involuntarily terminated on the basis of respondent's abuse of drugs and that respondent had failed to rectify her problem with drugs, as evidenced by EB's birth with drugs in his system. Accordingly, MCL 712A.19a(2)(c) was implicated and reasonable efforts at reunification were unnecessary. Moreover, Chaudoin's testimony revealed that some services were in fact offered to respondent, but she essentially rejected those efforts.

With respect to EB's best interests, respondent argues that the trial court was not provided with sufficient evidence to make a proper determination. Specifically, respondent contends that there was no evidence about the bond between EB and respondent, except for Chaudoin's "mere[] guess[]" regarding the bond. Respondent also maintains that the trial court did not give her the opportunity to demonstrate the efforts that she was making to be in a position to care for EB.

With respect to a child's best interests, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. In assessing a child's best interests, a trial court may consider such factors as a "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 Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations 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 respondent's parental rights to HB were terminated, the trial court found that respondent would not have been able to properly care for the child for "at least another two years." Chaudoin testified that respondent continued to have a substance abuse problem, as reflected by EB's being born with drugs in his system and respondent's refusal to submit to drug testing. Still, she did not utilize the treatment resources Chaudoin offered her after EB's birth. Respondent also refused to permit a home assessment or provide proof of employment. According to Chaudoin, respondent infrequently visited EB during the three weeks he was hospitalized and undergoing treatment for withdrawal symptoms. Chaudoin did not know how often respondent visited EB once he was placed with the foster family. The foster family was willing to adopt both HB and EB. Respondent's ongoing substance abuse, her past treatment plan failures, her rejecting help to overcome her addictions, her poor visitation history, her housing and employment deficiencies, and the permanency, stability, and finality that EB would enjoy with the foster family upon adoption all support the conclusion that the trial court did not clearly err by finding that termination of respondent's parental rights was in the best interests of EB.

Respondent's arguments that the trial court failed to consider her bond with EB and give her the opportunity to demonstrate the efforts she was making to improve herself are unpersuasive. The lack of consistent visitations while EB was hospitalized undermines respondent's claim of a close bond between her and EB. Indeed, respondent did not even appear for the trial where she could have testified about the alleged bond and about efforts to improve her life. As far as respondent's alleged recent efforts to put herself in a position to care for EB, we deem them too little too late: they cannot overcome all of the strong reasons that support termination. We conclude that the court did not clearly err with respect to its finding that termination of respondent's parental rights was in EB's best interests.

We affirm.

/s/ Jane E. Markey
/s/ Kirsten Frank Kelly
/s/ Jonathan Tukel