

STATE OF MICHIGAN
COURT OF APPEALS

In re SWIFT, Minors.

UNPUBLISHED
February 18, 2021

No. 354380
Oakland Circuit Court
Family Division
LC No. 14-822361-NA

Before: GLEICHER, P.J., and K. F. KELLY and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court’s order terminating her parental rights to the minor children, AS-1 and AS-2, pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody) and MCL 712A.19b(3)(j) (reasonable likelihood of harm if child is returned to parent’s home).¹ We affirm.

I. FACTS & PROCEDURAL HISTORY

Petitioner filed a petition to terminate respondent-mother’s parental rights to AS-1 (17 years old at the time of termination) and AS-2 (14 years old at the time of termination) and alleged that respondent had six substantiated cases of abuse or neglect or both against her. AS-1 was previously removed from respondent-mother’s care for several years, and respondent-mother struggled with drug addiction but did not regularly participate in treatment. Respondent-mother pleaded no contest to jurisdiction and statutory grounds.

¹ Respondent-mother has four children: ASM, AS-1, AS-2, and JMG. ASM reached the age of majority before the instant petition was filed and was not included in the termination proceedings. Respondent-mother’s parental rights to JMG (two years old at the time of termination) were terminated by the trial court during this same proceeding. However, JMG is not listed on respondent-mother’s claim of appeal. Although respondent-mother’s brief is vague as to the basis of her appeal, she does not specifically argue that the trial court erred by terminating her parental rights to JMG. Accordingly, this appeal is limited to AS-1 and AS-2. The trial court also terminated the parental rights of AS-1 and AS-2’s father and he has not appealed.

The trial court held a best-interest hearing, at which it heard testimony from a foster-care worker, a court psychologist, the paternal aunt who was caring for the children at the time of the hearing, and respondent-mother's clinician at the Project Recovery Intensive Services for Mothers (PRISM) program. The trial court determined that termination of respondent-mother's parental rights to AS-1 and AS-2 was in the children's best interests. Respondent-mother now appeals.

II. BEST INTERESTS

Respondent-mother argues that the trial court clearly erred by finding that termination of her parental rights was in AS-1's and AS-2's best interests. We disagree.

"We review for clear error the trial court's determination regarding the children's best interests." *In re Rippey*, 330 Mich App 350, 360; 948 NW2d 131 (2019) (quotation marks and citation omitted). "Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake." *In re Baham*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349595); slip op at 7 (quotation marks and citation omitted). "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 Mota*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 351830); slip op at 11 (quotation marks and citations omitted).

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Rippey*, 330 Mich App at 360 (quotation marks and citation omitted). "[T]he focus at the best-interest stage has always been on the child, not the parent." *In re Keillor*, 325 Mich App 80, 93; 923 NW2d 617 (2018) (quotation marks and citations omitted; alteration in original). "Best interests are determined on the basis of the preponderance of the evidence." *Id.* (quotation marks and citation omitted).

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. 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. The trial court may also consider how long the child was in foster care or placed with relatives, along with the likelihood that the child could be returned to [the] parents' home within the foreseeable future, if at all. [*In re Mota*, ___ Mich App at ___; slip op at 11 (quotation marks and citations omitted; alteration in original).]

"[A] trial court must explicitly address whether termination is appropriate in light of the children's placement with relatives." *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016) (quotation marks and citation omitted). "[A] child's placement with relatives weighs against termination." *In re Mota*, ___ Mich App at ___; slip op at 11 (quotation marks and citation

omitted). An aunt who is over the age of 18 and related to the children by blood is considered a relative. *Id.*

A. AS-1

The trial court did not clearly err by determining that terminating respondent-mother's parental rights was in AS-1's best interests.

Petitioner presented evidence that AS-1 did not have a bond with respondent-mother. Respondent-mother and AS-1 both acknowledged that they had a strained relationship, and the court psychologist believed it would take over six months for respondent-mother and AS-1 to potentially strengthen their bond. The foster-care worker testified that AS-1 did not want to speak to respondent-mother, did not "really want anything to do with" respondent-mother, and was unwilling to form a bond with respondent-mother. The foster-care worker further testified that she was unsure respondent-mother was willing to engage with AS-1.

Petitioner also presented evidence that respondent-mother had not provided AS-1 with stability or permanency. AS-1 indicated that she felt "more stable and secure" living with her aunt than living with respondent-mother. The court psychologist testified that AS-1 did not experience stability with respondent-mother because AS-1 had not lived with respondent-mother "for a significant amount of time for many years[.]" AS-1 had previously been in petitioner's care and returned to respondent-mother's home at the end of 2018. Within a month of the previous case ending, AS-1 had moved in with her aunt instead of respondent-mother. The foster-care worker testified that AS-1 had been involved with the courts and CPS for an extended period of time and needed permanency.

Petitioner also presented evidence that respondent failed to comply with her service plan. Respondent-mother's parent-agency agreement required her to maintain suitable housing and employment, participate in substance abuse and mental health treatment, demonstrate sobriety through clean drug screens, and remain in contact with the foster-care worker. The foster-care worker testified that respondent-mother was squatting in a trailer that had no bathroom, running water, heat, or electricity, and that it would be an inappropriate place for children to live. Respondent-mother told the foster-care worker she had a Section 8 housing voucher but did not tell the foster-care worker the value of the voucher. Respondent-mother claimed to be employed cleaning houses, but she failed to provide any proof of employment. Respondent-mother claimed to receive counseling from her church, but she failed to present proof of such counseling. Respondent-mother failed to appear for multiple scheduled drug tests and did not consistently provide negative drug screens. As a result of her failure to provide three consecutive negative drug screens, respondent-mother had not had any parenting time since August 2019. The court psychologist testified that respondent-mother admitted to having positive drug screenings as recently as November 2019. Respondent-mother participated in the PRISM program on two separate occasions in 2019, but failed to complete the program both times because of poor attendance and positive drug screens.

Furthermore, petitioner presented evidence that AS-1 was doing well in her aunt's care and had been in her aunt's care for an extended period of time. At the time of the hearing, AS-1 had been living with her aunt for about 18 months. AS-1 expressed a preference to continue living

with her aunt and indicated that she felt “more stable and secure” in her aunt’s home. The court psychologist testified that she believed the aunt would be a good long-term “care person” for AS-1, and that the aunt was “a person of safety, stability and protection” for AS-1. The foster-care worker testified that AS-1 was doing “very well” in school and was developing appropriately. The foster-care worker further testified that the aunt’s home was appropriate, AS-1 was happy living with the aunt, the aunt ensured AS-1 attended all of her appointments, and AS-1 was well cared for in the aunt’s care. The foster-care worker believed AS-1 would potentially regress behaviorally if returned to respondent-mother’s care. The foster-care worker testified that guardianship, as opposed to termination, would not provide AS-1 with an adequate sense of permanency. The aunt expressed an interest in caring for AS-1 permanently.

Finally, the trial court considered the fact that AS-1 was placed with a relative and the possibility of a guardianship rather than termination. However, the trial court ultimately determined that termination of respondent-mother’s parental rights was in AS-1’s best interests because of AS-1’s need for permanency and stability and respondent-mother’s inability to provide permanence and stability.

Reviewing the record, we are not left with a “definite and firm conviction that the lower court made a mistake.” *In re Baham*, ___ Mich App at ___; slip op at 7 (quotation marks and citation omitted).

B. AS-2

The trial court did not clearly err by determining that terminating respondent-mother’s parental rights was in AS-2’s best interests.

Petitioner presented evidence that respondent-mother had not provided AS-2 permanency or stability. The aunt testified that AS-2 had lived with her consistently since September 2019. The foster-care worker testified that respondent-mother had frequently kept AS-2 home from school so that AS-2 could care for her younger sibling while respondent-mother slept. AS-2 had to repeat sixth grade as a result of her excessive absences. The foster-care worker further testified that respondent-mother did not follow through with the therapy that AS-2 needed. According to the foster-care worker, although AS-2 stated that she would prefer to live with respondent-mother, AS-2 recognized the “flaws” in the way respondent-mother lived and did not want to live with respondent-mother “in the condition she was living with [respondent-mother] previous to the case.” The foster-care worker believed returning AS-2 to respondent-mother’s care would upset AS-2 mentally because she would be moving from a stable environment back into an unstable environment. The foster-care worker testified that AS-2 had been “involved with courts and CPS for so long” and needed permanency.

Petitioner also presented evidence that the aunt’s home had advantages over respondent-mother’s home. The foster-care worker testified that AS-2 needed mental health services and that, unlike respondent-mother, the aunt made sure AS-2 attended all of her appointments. The foster-care worker further testified that AS-2 was doing “pretty good” in school since living with her aunt and was happy living with her aunt. The aunt provided stability and permanency for AS-2 and was willing to permanently care for her. AS-2 indicated that she felt stable in her placement with

her aunt. The foster-care worker testified that guardianship, as opposed to termination, would not provide AS-2 with a sense of permanency.

As previously described, petitioner presented evidence that respondent-mother did not comply with her service plan. Additionally, the trial court considered the fact that AS-2 was placed with a relative and the possibility of guardianship as opposed to termination. Reviewing the record, we are not left with a “definite and firm conviction that the lower court made a mistake” in determining that termination of respondent-mother’s parental rights was in AS-2’s best interests. *Id.* (quotation marks and citation omitted).

III. REASONABLE EFFORTS FOR REUNIFICATION

Respondent-mother next argues that petitioner did not make reasonable efforts to reunify respondent-mother and her children. Although respondent-mother cited legal authority for this proposition, she did not make any substantive arguments or provide factual support for her claim. “An appellant may not merely announce his [or her] position and leave it to this Court to discover and rationalize the basis for his [or her] claims” *In re Warshefski*, 331 Mich App 83, 87; 951 NW2d 90 (2020) (Docket No. 346965); slip op at 2 (quotation marks and citation omitted). “An appellant’s failure to properly address the merits of his [or her] assertion of error constitutes abandonment of the issue.” *Id.* (quotation marks and citation omitted). Respondent-mother has abandoned her claim that petitioner failed to make reasonable efforts to reunify respondent-mother and her children. Therefore, we decline to address this issue.

IV. CONCLUSION

The trial court did not commit error requiring reversal when it concluded that termination of respondent-mother’s parental rights to AS-1 and AS-2 was in the children’s best interests. Additionally, respondent-mother abandoned her claim that petitioner failed to make reasonable efforts at reunification. Accordingly, we affirm.

/s/ Elizabeth L. Gleicher

/s/ Kirsten Frank Kelly

/s/ Michael J. Riordan