

STATE OF MICHIGAN
COURT OF APPEALS

In re SHAFFER/CODY, Minors.

UNPUBLISHED
April 15, 2021

No. 354844
Branch Circuit Court
Family Division
LC No. 19-005914-NA

Before: SHAPIRO, P.J., and CAVANAGH and REDFORD, JJ.

PER CURIAM.

Respondent-mother appeals as of right an order terminating her parental rights to her minor children. On appeal, respondent argues that the trial court erred when evaluating the children's best interests because it did not consider that the children were being placed with a relative. We affirm.

In August 2019, the Department of Health and Human Services (DHHS) filed a petition seeking the removal of respondent's two children, BS and CC, from her care. BS and CC have different fathers. About one year later, after the circumstances alleged in the petition did not improve, the DHHS filed a petition to terminate the parental rights of respondent, as well as CC's father. Notably, at the same time, BS's father had significantly improved his situation and had grown close to both children. BS's father requested that both children be placed with him and the court held that motion under advisement pending the upcoming termination hearing. At the termination/best-interest hearing, the trial court terminated respondent's and CC's father's parental rights. Then, the court granted the outstanding motion and placed both children with BS's father.

Respondent does not challenge that statutory grounds existed for termination.¹ Instead, she argues only that the trial court erred because, when it determined that termination was in the

¹ Respondent does not challenge the trial court's determination that statutory grounds for termination were properly established; thus, we need not consider this matter. See *In re JS and SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds by *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). Nevertheless, we have reviewed the

children's best interests, it did not consider that the children were being placed with a relative. We are satisfied that the trial court properly found that termination of respondent's parental rights was in the children's best interests. See MCL 712A.19b(5).

The trial court was required to find by a preponderance of the evidence that termination of respondent's parental rights was in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "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). The trial 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). The court may also consider psychological evaluations, the child's age, involvement in domestic violence, and a parent's history. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). A child's placement with relatives at the time the case proceeds to termination is also a factor to be considered in determining whether termination is in the child's best interests because such placement weighs against termination. See *In re Olive/Metts*, 297 Mich App at 43, citing *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), citing MCL 712A.19a(6)(a) (which remains substantially the same as the version in 2010, but has been renumbered and is now MCL 712A.19a(8)(a)).

Here, respondent does not appear to actually contest whether termination was in the children's best interests. Indeed, it would be a hard argument to make. An expert witness in trauma assessment and adolescent psychology testified that the need for permanency, stability, and finality was affecting the children's well-being and their behaviors. The record reflects that the children were terrified that respondent would not or could not protect them; the children's bond to respondent was weak and getting weaker; and respondent seemingly had little interest in being a parent. A preponderance of the evidence existed to find that termination was in the children's best interest. See *In re Moss*, 301 Mich App at 90. But respondent cites to the case of *In re Mason*, and contends that the trial court did not consider the children's "anticipated placement with a relative."

MCL 712A.19a(8)(a) provides in relevant part:

(8) If the court determines at a permanency planning hearing that a child should not be returned to his or her parent, the court may order the agency to initiate proceedings to terminate parental rights. Except as otherwise provided in this subsection, if the child has been in foster care under the responsibility of the state for 15 of the most recent 22 months, the court shall order the agency to initiate proceedings to terminate parental rights. The court is not required to order the agency to initiate proceedings to terminate parental rights if 1 or more of the following apply:

(a) The child is being cared for by relatives.

record, and find no clear error regarding the statutory grounds for termination. See *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

In this case, the children were not being “cared for by relatives” at the time termination proceedings were initiated; rather, the children were in foster care. Contrary to respondent’s apparent argument, the case of *In re Mason*, 486 Mich at 163-164, does not address the children’s *anticipated* placement with a relative. In that case, the children were already in the care of relatives when termination proceedings were initiated. In this case, respondent did not attempt to provide proper care and custody for the children by granting legal custody to relatives or by successfully placing her children with relatives before termination proceedings were initiated; rather, the children were in foster care. Thus, respondent’s reliance on *In re Mason* is misplaced. Accordingly, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests. See *In re Olive/Metts*, 297 Mich App at 40-41.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Mark J. Cavanagh
/s/ James Robert Redford