

STATE OF MICHIGAN
COURT OF APPEALS

In re T. R. CRUMBLE, Minor.

UNPUBLISHED
June 10, 2021

No. 355970
Wayne Circuit Court
Family Division
LC No. 2020-000885-NA

Before: K. F. KELLY, P.J., and SHAPIRO and SWARTZLE, JJ.

PER CURIAM.

Respondent appeals as of right the trial-court order terminating her parental rights to her son, TRC, under MCL 712A.19b(3)(f)(i) and (ii) (failure to support, and failure to visit, contact, and communicate with a child who has a guardian). On appeal, respondent argues that the trial court clearly erred in finding that MCL 712A.19b(3)(f)(i) and (ii) were established by clear and convincing evidence. Moreover, respondent argues that the evidence did not show that termination of respondent’s parental rights was clearly in the child’s best interests, and that the trial court failed to articulate sufficient findings to support the conclusion that termination was in the child’s best interests. We affirm.

I. BACKGROUND

TRC was born in October 2010. On November 15, 2016, when he was six years old, the probate court granted a guardianship over TRC to Betty Ann Whitmore, the child’s great-grandmother and the petitioner in this action. Respondent was at the guardianship hearing in probate court when the guardianship was established, and she agreed with the guardianship. Since the guardianship hearing, petitioner has been filing an annual report on the condition of TRC as a ward.

On September 18, 2020, after serving as TRC’s guardian for four years, petitioner filed a petition in the family division of the circuit court requesting termination of respondent’s parental rights to TRC under MCL 712.19b(3)(f)(i) and (ii). The petition alleged that respondent, having the ability to support or assist in supporting TRC, had failed or neglected, without good cause, to provide regular and substantial support for TRC for a period of two years or more before the filing of the petition. The petition further alleged that respondent, having the ability to visit, contact, or

communicate with TRC, had regularly and substantially failed or neglected, without good cause, to do so for a period of two years or more before the filing of the petition.

A trial on the petition occurred before a referee over two days. The first day of trial occurred on November 19, 2020. The referee stated that the probate court had authorized the filing of the petition to terminate respondent's parental rights on or about September 18, 2020, and that the two-year time period concerning respondent's alleged failure to support, visit, and otherwise communicate with TRC would be between September 18, 2018 and September 18, 2020.¹

Petitioner testified that, for a period of two years before the filing of the petition, respondent had only given petitioner money to care for TRC twice. Petitioner further testified that respondent never provided food for the child. In 2020, respondent bought TRC three pairs of shoes and an outfit. According to petitioner, respondent did not provide TRC with emotional support when he had experienced problems in his life. Respondent did not visit TRC regularly or consistently, and she never lived with petitioner and TRC. Although respondent had directly asked petitioner to see TRC, she did not do so very often, and for the most part, petitioner and TRC were the ones initiating contact with respondent. Petitioner admitted that TRC had recently been in touch with respondent by phone, but she stated that in the past, months would pass by without any contact between TRC and respondent. Petitioner testified that TRC had never indicated a desire to live with respondent, but had indicated his desire to continue living with petitioner, who wanted to adopt him. Finally, petitioner indicated that respondent had never sought to terminate the guardianship.

The second day of trial occurred on December 7, 2020. Petitioner testified that, although she felt that it was important for TRC to maintain a relationship with respondent, she did not think that it was in TRC's best interests to be with respondent because incidents had occurred when petitioner went to pick up the child from a home where respondent was staying, and she observed the child "out in the street playing and [respondent] was nowhere around." Petitioner further testified that, on another occasion, the child's "finger had gotten smashed really bad and [respondent] didn't have any idea how it happened. But [respondent's] girlfriend bragged about [how] she had done it."

For her part, respondent testified that she had last seen TRC a month before the termination hearing, and that she had seen the child on his birthday in October 2020. Respondent testified that she had not been visiting TRC on a regular basis because, three years before the termination hearing, she got into a verbal altercation with petitioner. Respondent testified that, at the time of the termination hearing, she had been employed at a restaurant for two months and at a Family Dollar store for five months. Prior to working, respondent had been taking college courses. Respondent testified that she used to give petitioner money every month or two to buy clothes for TRC, but she admitted that she had stopped doing that because petitioner purportedly "wasn't letting [respondent] see him, no holidays, nothing." Respondent testified that she was staying at a

¹ The trial court's December 7, 2020 order terminating respondent's parental rights to TRC indicates that an adjudication was held and that TRC was found to come within the court's jurisdiction. Respondent does not challenge the court's jurisdiction.

hotel pending approval of an application for housing; she stated that the hotel room was big enough for herself and the child.

After closing arguments, the referee found that petitioner had established by clear and convincing evidence that there was a statutory ground for termination of respondent's parental rights to TRC under MCL 712A.19b(3)(f)(i) because respondent has failed or neglected, without good cause, to provide regular and substantial support for TRC for a period of two years or more before the filing of the petition. The referee further concluded that respondent had the ability to support TRC. The referee found that respondent had failed to provide TRC with financial support that was substantial, consistent, and regular. As the referee noted, "Dropping off some shoes on occasion, or a birthday gift, or a Christmas gift does not make you a parent that substantially and consistently supports."

Moreover, the referee found that petitioner had established by clear and convincing evidence that there was a statutory ground for termination of respondent's parental rights to TRC under MCL 712.19b(3)(f)(ii) because respondent had regularly and substantially failed or neglected, without good cause, to visit, contact, or communicate with TRC for a period of two years or more before the filing of the petition. Similar to financial support, the referee concluded that respondent had the ability to communicate and visit with TRC. The referee noted the conflict in testimony regarding the statute's second prong, but nonetheless found that respondent's testimony was "cavalier, unbelievable, unreliable." Specifically, the referee indicated that petitioner has "said very clearly that [respondent] has not regularly and consistently communicated with [or] visited [TRC]," there was no testimony that respondent had regularly and consistently communicated with or visited the child, and respondent had not done anything to terminate petitioner's guardianship or request visitation with the child. The referee observed, "There's more to being a mother than birthing a baby. Being a mother has to do with raising the child, attending to the child's need. Not waiting to determine if, you know, your motel or your hotel—is big enough for [TRC]. [TRC] deserves better than what either parent can provide him." The referee did not make explicit factual findings on the record regarding TRC's best interests.

The trial court entered a subsequent order adopting the referee's findings and holding that petitioner had established, by clear and convincing evidence, that a statutory ground for termination of respondent's parental rights to TRC existed under MCL 712A.19b(3)(f)(i) and (ii) because: (1) petitioner testified that respondent had not paid substantial or regular financial support for TRC; (2) petitioner testified that respondent, having the ability to visit, did not regularly visit TRC, and that it was TRC who was initiating contact with respondent with the cell phone that petitioner bought for him; (3) respondent has a cavalier attitude toward TRC and, although petitioner has been raising TRC, respondent refers to petitioner as a "babysitter"; (4) respondent's testimony was unbelievable, unreliable, and self-serving; (5) TRC deserved consistency in his life and care; (6) TRC knew petitioner as his own mother, and petitioner intended to adopt him; and (7) for a period of two years or more before the filing of the petition, respondent had not made any effort to terminate petitioner's guardianship, support TRC financially, or visit him. Moreover, the trial court found that termination of respondent's parental rights was in TRC's best interests. The trial court stated in its written findings and conclusions of law that TRC "deserves [consistency] in his life and care. He has known [petitioner] as his Mother, she intends to adopt [him]. Neither

parent has made any effort to terminate the guardianship, financially support [TRC] nor visit.” Therefore, the trial court entered an order terminating respondent’s parental rights to TRC.²

This appeal followed.

II. ANALYSIS

A. STATUTORY GROUNDS

On appeal, respondent first argues that the trial court clearly erred in terminating respondent’s parental rights to TRC because the statutory grounds for termination under MCL 712A.19b(3)(f)(i) and (ii) were not established by clear and convincing evidence.

Petitioner had the burden to establish by clear and convincing evidence at least one ground for terminating respondent’s parental rights to TRC. MCR 3.977(A)(3); *In re Gonzales/Martinez*, 310 Mich App 426, 431; 871 NW2d 868 (2015). This Court reviews for clear error the trial court’s factual findings and the trial court’s decision that a ground for termination has been proven by clear and convincing evidence in a termination hearing. MCR 3.977(K); *In re Gonzales/Martinez*, 310 Mich App at 430. “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

The trial court terminated respondent’s parental rights under MCL 712A.19b(3)(f)(i) and (ii). The statute provides:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and both of the following have occurred:

² The trial court also found that “[r]easonable efforts were made to preserve and unify the family to make it possible for the child(ren) to safely return to the child(ren)’s home. These efforts were unsuccessful.” As noted by the referee, however, this was not an abuse and neglect action initiated by the Department of Health and Human Services involving foster care. When it appointed petitioner guardian in 2016, the probate court did not order respondent to engage in services, maintain employment, or otherwise follow a plan for reunification. Respondent does not raise this as a ground for reversal on appeal, and although the child’s appointed lawyer on appeal mentions the lack of a plan, it is not argued that this lack of a plan warrants reversal. Accordingly, we consider the issue abandoned. *Prince v McDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

(i) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

(ii) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

Thus, termination under MCL 712A.19b(3)(f)(i) and (ii) is warranted if clear and convincing evidence shows that the child has a guardian and the parent, having the ability to do so, fails, without good cause, to both (i) “provide regular and substantial support for the minor” and (ii) regularly “visit, contact, or communicate with the minor” for a period of two or more years before the filing of the petition.

Here, the evidence clearly established that there was a guardianship in place for TRC under MCL 700.5205, and that respondent, by her own testimony, failed to provide regular and substantial support for TRC and failed to visit, contact, or communicate with him regularly over a period of two or more years before the filing of the termination petition. Respondent had only given petitioner money to care for TRC approximately twice during the two years preceding the filing of the petition. Respondent only bought TRC three pairs of shoes and an outfit before the termination proceedings. She admitted that she used to give petitioner money every month or two to buy clothes for TRC, but, without good cause, she ultimately stopped doing that. Respondent also testified that she had obtained and maintained two jobs, but she did not have good cause for why she failed to support TRC—in other words, respondent chose not to send petitioner money without a justification. Further, nothing in the record indicates that, during the four years TRC was in petitioner’s care, respondent was unable to provide some assistance to TRC. Although respondent was once responsible for TRC’s cell phone expenses, petitioner testified that she is the one carrying those expenses now. Respondent further testified that she was not ordered to pay child support, but she apparently did not challenge that or try to get a child-support order in place. Respondent also indicated that, although she wanted to terminate petitioner’s guardianship, she had not made any effort to terminate it. The record contains clear and convincing evidence that respondent failed or neglected, without good cause, to provide regular and substantial support for TRC for a period of two years before the filing of the petition. MCL 712A.19b(3)(f)(i).

There was also clear and convincing evidence that respondent failed, without good cause, to contact, visit, or communicate regularly with TRC during the two years preceding the filing of the petition. Petitioner testified that respondent did not visit TRC regularly or consistently, and that she never lived with petitioner and TRC. Although respondent had directly asked petitioner to see TRC, it was not often. Moreover, petitioner testified that she and TRC were the ones initiating contact with respondent. TRC had recently been in touch with respondent by phone, but in the past, months would pass by without any contact between TRC and respondent. Conversely, respondent testified that she initiated contact with TRC all the time, and that petitioner did not let her see TRC on several occasions. The trial court resolved this conflict in petitioner’s favor, and this Court must give special deference to the trial court’s findings when they are based on its assessment of the witnesses’ credibility. *In re Medina*, 317 Mich App 219, 227; 894 NW2d 653

(2016). Respondent also admitted that she had last seen TRC a month before the termination hearing on December 7, 2020, and before then, respondent last saw TRC on his birthday in October 2020—a gap in visitation that, while more recent, is more than a month long. Therefore, the trial court properly found that respondent failed, without good cause, to communicate regularly with TRC. Given such evidence, the trial court did not clearly err in finding that petitioner met her burden of proof with respect to MCL 712A.19b(3)(f)(ii). Thus, there was clear and convincing evidence that statutory grounds for termination of respondent’s parental rights existed under MCL 712A.19b(3)(f)(i) and (ii).

B. BEST INTERESTS

Respondent next argues that termination of respondent’s parental rights is not in TRC’s best interests, and that the trial court failed to make explicit factual findings on the record and in its order concerning TRC’s best interests.

“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 Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). In assessing whether termination is in a child’s best interests, the trial court should weigh all the evidence available to it and may consider factors including “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.” *Id.* at 41-42 (citations omitted). Other considerations include the length of time the child was in care, the likelihood that the child could be returned to the parent in the foreseeable future, the parent’s visitation history, the child’s well-being while in care, and the possibility of adoption. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

“[W]hether termination of parental rights is in the best interest of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews the trial court’s ruling that termination is in the child’s best interests for clear error. *In re Hudson*, 294 Mich App at 268. “A finding 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.” *In re Moss*, 301 Mich App at 80 (cleaned up).

Respondent argues that the trial court did not articulate on the record or in writing its findings of fact and conclusions of law concerning the best interests of TRC. MCL 712A.19b(1) requires the trial court to state its findings and conclusions regarding the best interests of the child on the record or in writing. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). The trial court’s findings need not be extensive, however, and “[b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient.” MCR 3.977(I)(1). In this case, although the referee did not explicitly use the words “best interests,” her findings of fact and conclusions of law nonetheless encompassed some of the best-interest considerations and factors. The referee observed, “There’s more to being a mother than birthing a baby. Being a mother has to do with raising the child, attending to the child’s need. Not waiting to determine if, you know, your motel or your hotel—is big enough for [TRC]. [TRC] deserves better than what either parent can provide him.”

Moreover, in its order terminating respondent's parental rights, the trial court checked the box indicating that "[t]ermination of parental rights is in the best interests of the child(ren)." Although the trial court did not explicitly use the words "best interests," the trial court stated in its written findings and conclusions of law that TRC "deserves [consistency] in his life and care. He has known [petitioner] as his Mother, she intends to adopt [him]. Neither parent has made any effort to terminate the guardianship, financially support [TRC] nor visit." Accordingly, the trial court's findings, supported in the record, were brief, definite, and pertinent findings and conclusions that sufficiently conveyed the trial court's determination.

At the time of the termination hearing, TRC had been under the care of petitioner for approximately four years, and needed permanency, stability, and finality. During those four years, respondent had done very little to provide support or establish a stable home for, or communicate with, TRC. Moreover, at the time of the termination hearing, respondent testified that she was staying at a hotel with no certainty regarding when she would be able to obtain suitable housing. Petitioner also testified that TRC had indicated his desire to continue living with petitioner, but had never indicated a desire to live with respondent. Additionally, for a period of two years or more before the filing of the petition, respondent has not made any effort to terminate petitioner's guardianship, support the child financially, or regularly visit him. Finally, petitioner expressed her intention to adopt TRC. Under these circumstances, the trial court did not clearly err in finding that termination was in TRC's best interests.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro
/s/ Brock A. Swartzle