

STATE OF MICHIGAN
COURT OF APPEALS

In re LITTLE, Minors.

UNPUBLISHED
September 16, 2021

No. 356317
Clinton Circuit Court
Family Division
LC No. 19-028983-NA

Before: CAMERON, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-mother’s parental rights to her two children based on her continued substance abuse and lack of sufficient progress in various services to address other areas of concern. Respondent challenges the statutory grounds cited by the court in favor of termination and contends that termination was not in her children’s best interests. We affirm.

I. BACKGROUND

Respondent-mother has a long history with Child Protective Services (CPS). In 2008, respondent lost custody of two children based on concerns of substance abuse and physical neglect. Despite services being provided, respondent did not regain custody of her children. Respondent-mother then became involved with Roy Little, who had assaulted two prior girlfriends, one in front of a child. Respondent-mother and Little have two children together—RL and SL—who are the subject of the current child protective proceedings. In 2014, when RL was less than a year old and respondent was pregnant with SL, respondent and Little became intoxicated, fought, and respondent stabbed Little in the stomach. While still intoxicated, respondent then drove Little and RL to the hospital. In 2015 and again intoxicated, respondent and Little engaged in a physical altercation while respondent was holding eight-month-old SL. After the parents ended their relationship, Little was arrested for domestic violence with a fourth partner while her infant daughter was present. And CPS again intervened in respondent’s home in 2018, when respondent admitted to using marijuana in front of the children and tested positive for methamphetamine.

These proceedings commenced in August 2019, when CPS removed RL and SL from respondent’s care on an emergency basis and the Department of Health and Human Services (DHHS) filed a petition for jurisdiction over the children after respondent left the children in the care of a known meth user while she went to the another friend’s home to use meth herself. RL

reported to the investigator that respondent used and sold marijuana. Law enforcement reported “a lot of traffic in and out of” respondent’s home. “[M]ost” of those visitors were known meth users. Respondent also allowed a registered sex offender into her home. The home was infested with bed bugs; SL was covered in infected bites for which respondent had not sought medical treatment. Respondent reported that her electrical service would soon be shut off for nonpayment. The children had no contact with Little because of his history of domestic violence. Despite lack of contact with him, RL feared that Little would come to the house and kill his mother.

The court ordered supervised parenting time for respondent-mother and those visits went well. However, early reports revealed disturbing behavior on the children’s parts. They exhibited “an obsession with dead bodies and blood and killing[,]” and “[w]hen they [were] playing with barbies[,] they tend[ed] to reenact killing, dead people. . . .” Respondent initially cooperated with recommended services; she quickly completed a psychological evaluation, attended a parenting skills class intake session, and submitted to drug screens, but only tested clean once. She otherwise tested positive for meth, cocaine, and hydrocodone.

Initially, respondent showed progress in substance abuse treatment and visits went well. Respondent secured legal employment, but was terminated based on her inability to concentrate. Respondent lacked suitable housing; she had moved between her mother’s and a friend’s house, a trailer on her brother’s property, and a homeless shelter. But five months into the proceedings, RL was exhibiting violent behavior and SL was prone to uncontrollable outbursts. Respondent had returned to using marijuana and methamphetamine. She reported feeling overwhelmed and stopped using Community Mental Health Services. Her emotional state fluctuated, and she continued to warn RL and SL to be afraid of their father, causing them anxiety.

Respondent achieved sobriety and secured employment for a brief period, but moved back into her mother’s home after being evicted from a homeless shelter. Almost a year into the proceedings, she returned to using marijuana and meth, and once tested positive for fentanyl. The caseworker noted that respondent had become emotionally unstable. Respondent also withheld information from the caseworker and was driving without a valid license.

When respondent had not sufficiently progressed by the fall of 2020, the court ordered the DHHS to file an amended petition seeking termination of respondent’s parental rights. At the termination hearing, a psychologist testified that respondent had avoidant personality disorder with borderline and melancholic features. She exhibited signs of major depression, anxiety, and post-traumatic stress disorder. Respondent was unwilling to take responsibility for her behavior, limiting her ability to progress. Moreover, respondent did not consistently attend counseling, and had never started group therapies that had been ordered by the DHHS. Respondent continued to test positive for narcotics as late as November 2020. She also encouraged the children to lie to the caseworkers and falsely told the children that they would remain with their foster parents forever, despite knowing that the family did not intend to adopt RL and SL.

Ultimately, the court terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The court also determined that termination was in the children’s best interests. Respondent now appeals

II. STATUTORY GROUNDS

Pursuant to MCL 712A.19b(3), a circuit court “may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence” that at least one statutory ground has been proven by the DHHS. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). The court’s termination decision followed the filing of an amended petition. When termination is sought in a supplemental petition based on new grounds, the DHHS must present legally admissible evidence in support. *In re DMK*, 289 Mich App 246, 258; 796 NW2d 129 (2010). We review for clear error a circuit court’s factual finding that a statutory termination ground has been established. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). “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.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (cleaned up). “Clear error signifies a decision that strikes us as more than just maybe or probably wrong.” *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The circuit court terminated respondent’s rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

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:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The 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.

* * *

(g) The parent, although, in the court’s discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

* * *

(j) There 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.

Termination was supported under factor (c)(i). By the time of termination, RL and SL had been in care for 17 months. Despite 17 months of mental health and substance abuse services (in addition to services provided to respondent in the past), respondent had made little progress.

Despite brief periods of sobriety, respondent continued to test positive for various illegal substances as late as November 2020. Respondent still could not recognize her role in the emotional trauma suffered by her children and had yet to manage her own mental health needs. Moreover, respondent continued to have trouble maintaining employment and had not secured suitable housing for herself and her children. Given the slow progress respondent made through services, it was unlikely that respondent could rectify these conditions within a reasonable time.

Termination was also supported under factor (g). Respondent initially lost custody of her children because she exposed them to drug use and unsafe persons, and neglected the children's medical and emotional needs. Respondent only partially complied with her parent-agency plan. "[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Given respondent's continuing struggle with substance abuse, fluctuating emotional stability, and inability to understand the children's needs, there is no likelihood that respondent would be able to provide proper care and custody within a reasonable time.

Moreover, termination was supported under factor (j). Respondent had placed her children in danger time and time again. Respondent used and sold marijuana out of the home she shared with her children. Respondent abused methamphetamine and other controlled substances. Her intoxication left her unable to safely care for her children on several occasions. She had exposed her children to sex offenders and drug addicts and continued to exhibit emotional instability and to use various substances 17 months into the proceedings. She had not secured a safe and stable home to share with her children. Given this evidence, there is a high probability that SL and RL would again be placed in danger of physical and emotional harm if returned to respondent's care. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Accordingly, the circuit court did not err in finding grounds to terminate respondent's parental rights.

III. BEST INTERESTS

Respondent next contends that termination of her parental rights was not in the children'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), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. We review the court's factual findings in this regard for clear error. *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 637; 853 NW2d 459 (2014).

Factors relevant to the best-interest determination include "the child's bond to the parent, the parent's parenting ability, [and] the child's need for permanency, stability, and finality," as well as the advantages of the foster home over the child's home with the parent. *Olive/Metts*, 297 Mich App at 41-42 (cleaned up). "The trial court may also consider a parent's history of domestic violence, . . . the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). Ultimately, "the focus at the best-interest stage [is] on the child, not the parent." *Moss*, 301 Mich App at 87.

A preponderance of the evidence supported that termination of respondent's parental rights was in the best interests of SL and RL. The children grew up in a home full of domestic violence and drug use. This left them emotionally scarred and traumatized. Upon their removal, the children exhibited concerning behaviors and indications of trauma. Respondent never truly acknowledged her role in harming her children and never gained a full understanding of their needs. She continued to feed into their fears of their father and caused them anxiety.

Moreover, respondent remained unable to provide permanence for her children in a safe and stable household. Respondent herself remained emotionally unstable after 17 months of treatment and had yet to achieve sobriety. She had difficulty maintaining employment and had not secured housing. The trial court did not clearly err in finding that it was in the children's best interests to terminate respondent's parental rights.

We affirm.

/s/ Thomas C. Cameron
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher