

STATE OF MICHIGAN
COURT OF APPEALS

In re G. WHITNEY, Minor.

UNPUBLISHED
September 15, 2022

Nos. 359973; 359974
Genesee Circuit Court
Family Division
LC No. 2013-006688-NA

Before: M.J. KELLY, P.J., and CAMERON and HOOD, JJ.

PER CURIAM.

In these consolidated appeals,¹ respondents appeal by right the trial court’s order terminating their parental rights to their minor child, GW, under MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(c)(ii), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

Respondent-mother is the biological mother of GW, and respondent-father is GW’s legal father. On March 5, 2020, petitioner filed a petition against respondents alleging that, when GW was born, he tested positive for cocaine, methadone, and various opiates. GW received treatment for withdrawal symptoms. Petitioner further alleged that respondent-mother had tested positive for similar substances at the hospital and that, on two occasions soon after GW’s birth, both respondents tested positive for multiple substances, including “cocaine, benzoylecgonine, fentanyl, and norfentanyl.” Respondents had prior and pending criminal histories involving drug use, and respondent-mother was on probation. Petitioner contended that, in light of the substance abuse and criminal history, it was contrary to GW’s welfare to remain in respondents’ care without court-ordered services. Initially, petitioner merely requested that the trial court take jurisdiction over GW and order that he remain in the paternal grandmother’s home under in-home jurisdiction.

¹ *In re Whitney*, unpublished order of the Court of Appeals, entered January 25, 2022 (Docket No. 359973); *In re Whitney*, unpublished order of the Court of Appeals, entered January 25, 2022 (Docket No. 359974).

Respondents were—at that time—living with GW’s paternal grandmother. The referee authorized the petition.

Less than a week later, in an amended petition, petitioner requested that GW be removed from respondents’ care and placed under the court’s jurisdiction. Petitioner alleged that respondents were no longer able to live with GW’s paternal grandmother, did not have adequate housing, had refused and left several referred services including substance abuse treatment, and had outstanding arrest warrants. Petitioner argued that it was contrary to GW’s welfare to remain in respondents’ care. The referee authorized the petition and placed GW with his paternal aunt and uncle.

Respondents entered pleas to jurisdiction. The foster care worker recommended that respondents pursue and show benefit from substance abuse treatment, receive random drug screens, obtain housing, obtain a source of income, and attend and show benefit from parenting classes. The referee adopted the recommendations and an order for disposition was entered.

Respondent-mother attended drug court from August 2020 to December 2020, at which point she was terminated from the program for noncompliance. She had missed numerous drug tests and had tested positive for numerous substances. Respondent-mother attended and completed a residential treatment program at Sacred Heart in September 2020, but she immediately relapsed and failed to obtain or complete further requested treatment services. Moreover, she failed to address her outstanding warrants.

At a December 8, 2020 pretrial hearing, the foster care worker stated that respondent-father had failed to make progress with his parenting classes or substance abuse treatment; however, he had obtained employment. The foster care worker explained that respondent-father had also tested positive for numerous controlled substances. On March 18, 2021, a permanency planning and statutory review hearing was held. Both respondents had a “zero percent call in compliance with drug screens,” and, when they did test, they tested positive for substances including “amphetamines, methamphetamines, THC, cannabinoids, cocaine, benzo’s, fentanyl, fentanyl OF, and norfentanyl.” The foster care worker recommended that the goal for GW be changed to adoption and termination based on the lack of progress, and the referee agreed; however, the referee ordered continued reasonable efforts at reunification until the permanency process was completed.

At a June 10, 2021 permanency planning and statutory review hearing, the foster care worker gave a similar update as before: respondents had a zero percent call-in compliance with drug screens, and, when they did test, they tested positive for numerous substances. That same day, petitioner filed its petition to terminate respondents’ parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). In support, petitioner noted respondents’ failure to abide by the court-ordered treatment plan, which included random drug tests, substance abuse treatment, parenting classes, and obtaining income and housing. Petitioner further alleged that respondents had missed random drug tests and parenting-time sessions, had tested positive on numerous occasions, and had failed to obtain substance abuse treatment. At a September 2, 2021 review hearing, the foster care worker stated that respondents had “made some progress” by completing parenting classes and enrolling in services with “Bio-Med.” Additionally, respondent-mother had obtained employment. However, the foster care worker stated that she did not have any drug tests

from respondents during this period. After holding a termination hearing, the trial court found that there was clear and convincing evidence that the statutory grounds had been met and that termination was in GW's best interests.

II. TERMINATION OF PARENTAL RIGHTS

A. STANDARD OF REVIEW

Respondents argue that the trial court erred by finding statutory grounds to terminate their parental rights and by finding that termination of their parental rights was in GW's best interests. This Court reviews for clear error the trial court's decisions that there were statutory grounds for termination and that termination was in the children's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). Clear error occurs when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks and citation omitted). The trial court's decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). The reviewing court must not "substitut[e] its judgment for that of the trial court," see *In re Hall*, 483 Mich 1031, 1031; 765 NW2d 613 (2009), and should consider the trial court's special opportunity to evaluate the credibility of witnesses, MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. STATUTORY GROUNDS

The trial court terminated respondents' parental rights under MCL 712A.19b(3)(c)(i)(c)(ii), (g), and (j). Termination is proper under MCL 712A.19b(3)(c) if the court finds by clear and convincing evidence that:

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The conditions that led to removal and adjudication were primarily respondents' substance abuse issues. GW had been born with addictions to several drugs, and each respondent had drug issues, past and pending legal issues involving drug possession, and outstanding arrest warrants. Respondents were required to participate in and show benefit from substance abuse treatment and were required to submit to random drug screens.

However, at the termination hearing, which was approximately 20 months after GW was removed, the evidence showed that substance abuse was still a pervasive issue. Respondent-mother was terminated from drug court, and respondent-father failed to enter drug court despite the opportunity to do so. Both respondents failed to complete *any* random drug tests, which were supposed to occur approximately once per week. Their missed tests were considered positive tests. When respondents did submit to drug tests, they tested positive for the same drugs that were identified as a problem at the initial adjudication. GW's paternal aunt testified that, during visitations, respondents had often come to her house "drunk or high." Moreover, although respondent-mother completed Sacred Heart in September 2020, she immediately relapsed. Similarly, although at the time of the termination hearing both respondents were attending Bio-Med, they had continued to test positive for drugs, and the foster care worker had been unable to obtain documentation from Bio-Med despite sending numerous requests. Finally, respondent-father failed to appear for the termination hearing, and respondent-mother testified that, if she were tested on that day, she was unsure if she would test positive for drugs because she had used drugs approximately one week prior.

Therefore, despite numerous hearings and an ample opportunity to do so, respondents failed to address and rectify their substance abuse issues. These issues remained throughout the case proceedings, and, for the services that were completed, respondents showed no benefit. Instead, they continued to test positive and miss drug screens. GW had spent essentially his entire life waiting for respondents to rectify their substance abuse issues, and there was no reasonable likelihood that, given his age, these issues would be rectified. The trial court did not improperly focus on past conduct, as respondents contend; it carefully evaluated the entire record and evidence produced at the hearing. On this record, the trial court did not clearly err by finding grounds to terminate respondents' parental rights under MCL 712A.19b(3)(c).²

C. BEST INTERESTS

Once the trial court determines by clear and convincing evidence that one or more statutory grounds provided in MCL 712A.19b(3) have been proven, "the trial court must find that termination is in the child's best interests before it can terminate parental rights." *Olive/Metts*, 297 Mich App at 40. Whether termination is in a child's best interests must be proven by a

² Given that termination was supported by at least one statutory ground, we need not address the additional grounds. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). However, although not grounds for reversal (because termination was proper under MCL 712A.19b(3)(c)), we would be remiss if we did not point out that the trial court failed to make findings under the current version of MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) was amended effective June 12, 2018. See 2018 PA 58. The amended version of the statute was in effect at the time these termination proceedings were initiated, but the trial court did not use it and instead applied the former version of MCL 712A.19b(3)(g). We are concerned that, despite the statute being amended years earlier, the trial court neglected to evaluate whether termination was warranted under the current version of the statute. Although not dispositive in this case, the trial court should take care in future proceedings to ensure that it is using the current version of the statute before making findings related to the termination of a parent's parental rights.

preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). When deciding whether termination is in the children’s best interests, 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.” *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). It is also proper to consider evidence that the children are not safe with the parent, that they are thriving in foster care, and that the foster care home can provide stability and permanency. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011).

The trial court found that GW had spent the majority of his life in his relative placement; that he had been doing “very, very good”; that respondents had “been given opportunities” but failed to take advantage of them; and that there was a bond between GW and his foster parents. Respondents contend that the trial court erred by failing to consider certain factors, but, as they themselves point out, there is no *requirement* that the trial court consider these specific factors; rather, caselaw makes clear that the court *may* consider various factors. See *Olive/Metts*, 297 Mich App at 41-42. The record shows that the trial court considered multiple factors, including GW’s age, placement with relatives, how well he had done in his placement, his bond with his foster parents, and respondents’ inability to take advantage of the numerous opportunities given to them. No error was committed.

Instead, the evidence supported the court’s findings. The foster care worker testified that GW had remained in his placement since March 2020 and that he was flourishing and bonded with them. GW had spent essentially his entire life with them. In contrast, the foster care worker testified that GW did not look to respondents for support or comfort; however, she did see a bond between respondents and GW. She testified that GW’s foster parents could provide permanency and stability. Similarly, GW’s paternal aunt testified that she and her husband would provide permanency and stability for GW if respondents’ parental rights were terminated. Also, GW’s paternal aunt and her husband had been financially supporting GW and had been taking him to all necessary medical appointments, and they were aware of and ready to deal with the potential future complications for GW arising from the fact that he was born with withdrawal symptoms. In contrast, respondents had not provided for GW financially and do not appear to have been involved with any medical appointments. The foster care worker believed termination was in GW’s best interests. Furthermore, as previously discussed, respondents had extensive and pervasive drug issues that went unaddressed throughout this case’s proceedings and which remained an issue at the time of the termination hearing. GW’s safety was a concern if returned to respondents’ care. Respondents have failed to show clear error.

Affirmed.

/s/ Michael J. Kelly
/s/ Thomas C. Cameron
/s/ Noah P. Hood