STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 2, 2012

In re GOLDIE, Minors.

Nos. 307218; 307219
Eaton Circuit Court
Family Division
LC No. 07-016413-NA

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

In this consolidated appeal, respondents appeal by right from the order of the family division of the circuit court terminating their parental rights to their minor children. The trial court determined that statutory grounds supported termination of respondent mother's parental rights under MCL 712A.19b(3)(b)(*i*) (physical injury), and (j) (risk of harm if returned to the parents), and supported termination of respondent father's parental rights under MCL 712A.19b(3)(g) (failure to provide proper care and custody), and (j) (risk of harm if returned to the parents). The court then determined that termination was in the minor children's best interests, MCL 712A.19b(5). We affirm the trial court's determination that statutory grounds supported termination of respondent parents' parental rights, but vacate its best-interest determination and remand for further consideration of that issue.

This Court reviews the trial court's determinations that clear and convincing evidence has established a ground for termination and that termination is in the best interests of the children for clear error. See *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id*. MCL 712A.19b(3) only requires that one ground for termination be established. See *In re Trejo*, 462 Mich at 364-365.

Respondent parents of the minor children D.P.G, A.T.G., and K.J.G. have been involved with child protective services regularly since 2005, primarily because of respondent-mother's struggle with alcoholism. In 2006, respondent-mother was diagnosed with alcohol dependence. Extensive testimony at trial related to respondents' previous history of abuse, neglect, and domestic violence. Testimony also established that respondent-mother was a very loving parent while sober, and that respondent-father was extensively involved in his children's care.

In November 2010, Child Protective Services (CPS) investigators made an unannounced visit to the home in response to a call in which allegations were made hat respondent parents had been drinking and fighting. Three days before the investigation, emergency medical services were called to the home to treat respondent father for a head injury. No one answered the door when the CPS investigators knocked, but two small children were observed through a large picture window. When the investigator asked where the children's parents were, D.P.G. pulled back the curtain and indicated the couch, where respondent-mother was slouched over and appeared unresponsive. K.J.G., an infant, was also observed on the couch surrounded by pillows. The Grand Ledge Police Department was contacted for a "well-child check," and the officers woke respondent-mother and administered a preliminary breath test, which showed an alcohol level of 0.267. When respondent-father arrived at the residence, he admitted that he had known for approximately three weeks that respondent-mother had been drinking again.

Beginning in January, 2011, a Smart Start machine was installed in respondents' home. Respondent-mother relapsed in February, and again at the end of March or beginning of April. She went into an inpatient program at Pine Rest for 30 days. Respondent mother relapsed again in late April, ten days after leaving Pine Rest. The trial court ordered the Department of Human Services (DHS) to file a petition for termination because of the lack of progress in the case

Both respondents argue that termination of their parental rights was not supported by clear and convincing, admissible evidence. We disagree. We will begin with respondent-mother, who argues that much of the testimony the trial court relied on was hearsay. She challenges the trial court's admission of a doctor's report and a psychological report.

The challenge to the admission of the reports has been waived. The doctor's report was admitted by stipulation, *Grant v AAA Michigan/Wisconsin, Inc (On Remand)*, 272 Mich App 142, 148; 724 NW2d 498, (2006), and the psychological report was admitted after the court asked for objections and respondent mother's counsel responded "no objections," *People v Kowalski*, 489 Mich 488, 505 n 28; 803 NW2d 200 (2011).

As for respondent-mother's assertion that the trial court impermissibly considered hearsay evidence, she has failed to sufficiently present it to the Court for review. She has not provided specific factual citations to the record to support her assertion of error. Rather, she simply draws our attention to her recitation of the facts and transcripts. Our court rules are clear—a party must explain the factual basis that sustains its position with specific references to the record. MCR 7.212(C)(7); *Begin v Mich Bell Tel Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009). An appellant cannot leave it to the Court to search for, and thus speculate on, the factual underpinnings of its arguments. To do so constitutes abandonment of the issue. *Id*. In any event, respondent-mother's assertion is without merit. Her only hearsay objection at trial was to testimony from Investigator Brownwell that did not constitute hearsay. See MRE 801(d)(2). That testimony concerned statements made by respondent-mother to Investigator Brownwell, who interviewed her after D.P.G. was taken to the hospital with serious injury.

The trial court's determination that petitioner had proven statutory grounds to terminate respondent-mother's parental rights was supported by clear and convincing evidence. Respondent-mother's parental rights were terminated under MCL 712A.19b(3)(b)(*i*) and (j), which read as follows:

> 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:
>
> * * *
>
> (b) The child or a sibling of the child has suffered physical injury . . . under 1 or more of the following circumstances:
>
> (*i*) The parent's act caused the physical injury . . . and the court finds that there is a reasonable likelihood that the child will suffer from the injury or abuse in the foreseeable future if placed in the parent's home.
>
> * * *
>
> (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.

The trial court's determination that petitioner established MCL 712A.19b(3)(b)(*i*) by clear and convincing evidence was not clearly erroneous. D.P.G. was badly beaten and taken to the hospital on a day that respondent-mother was the only person with him. Respondent-mother assumed that she had injured D.P.G. Photographic evidence and trial testimony documented the extent of D.P.G.'s injuries. The trial court's determination that respondent-mother seriously injured her child was supported by clear and convincing evidence.

The court's determination that it was reasonably likely the children would suffer physical injury in the future was also supported by clear and convincing evidence. There was extensive testimony addressing respondent-mother's history of alcoholism. Her extensive relapse history supported the trial court's finding that there was a likelihood that respondent-mother would relapse in the future. Even respondent-mother stated that she could not affirm she would remain sober for a long period of time. Witness testimony also established that respondent-mother could be violent when she was drinking. Testimony not only established that she injured one of the children while drinking, but also established that she engaged in domestic violence with respondent-father and her own mother while drinking. We are not convinced that the trial court erred when it determined under the facts of this case that, if it returned the children, it was reasonably likely they would suffer a future physical injury.

Having found that one of the statutory grounds was supported, we need not address the other. See *In re Trejo*, 462 Mich at 360. However, we do so to provide a more complete understanding of the case. *Id*. For the same reasons stated above, and giving deference to the trial court's role in judging the credibility of the witnesses, the trial court's determination that petitioner established MCL 712A.19b(3)(b)(j) by clear and convincing evidence was also not clearly erroneous.

Next, we address respondent-father, who argues that petitioner did not establish MCL 712A.19b(3)(b)(*ii*), (g), and (j) by clear and convincing evidence. We do not read the court's analysis as indicating that it determined that the evidence supported a finding against respondent-father under MCL 712A.19b(3)(*ii*). However, the trial court did not clearly err when it

determined that petitioner had established MCL 712A.19b(3)(g) and (j) by clear and convincing evidence.

MCL 712A.19b(3)(g) and (j) provide as follows:

> (g) The parent, without regard to intent, 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.

Respondent-father was well aware of respondent-mother's alcoholism and the danger she posed to his children but failed to protect them from her. He was warned by a DHS worker to not leave the children alone with respondent-mother when she had been drinking. Nonetheless, he left her alone with the children in 2007 and D.P.G. was seriously injured. Respondent-father was aware that respondent-mother was drinking three weeks before the events that led to the current case but again left her alone with the children. Only days before the present investigation commenced, respondent-mother struck respondent-father on the head hard enough that he required stitches. Respondent-father testified that he had put a safety plan in place after D.P.G. was injured in 2007, but that he did not put the plan into effect during respondent-mother's 2010 relapse because he "wanted to believe in" her. He continued to leave the minor children in her care. The trial court did not clearly err when it determined clear and convincing evidence established that respondent father did not provide the minor children with proper care and custody, regardless of his intent.

The trial court also did not clearly err when it determined that respondent-father would be unable to provide proper care and custody within a reasonable time. Respondent-father did not fully comply with his service plan. A parent's compliance or failure to comply with a parent-agency agreement is evidence of the parent's ability to provide proper care and custody. *In re JK*, 468 Mich at 214. However, the parent must benefit from the services in order to comply with a parent-agency agreement. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded by statute on other grounds MCL 712A.19b(5).

The trial court noted that it was troubled that respondent-father did not accept responsibility for what he was doing to the children, and noted that respondent-father would not be able to correct the problem until he acknowledged he had it. Respondent-father denied that he had any alcohol problems, even though he had been diagnosed with episodic alcohol abuse. He denied that he had been arrested for domestic violence. He also denied that he had enabled respondent-mother's alcoholism by purchasing alcohol and drinking it in the home, though he admitted that he was enabling her by giving her the "benefit of the doubt."

While there was evidence that respondent-father had complied or was in the process of complying with certain aspects of his service plan, there was also evidence that respondent-father

was not benefitting from services and had failed to comply with other important aspects of the plan. He missed several random alcohol screens over a two-month period in 2011, as well as visits with the children. While there was conflicting testimony about why respondent-father missed the screens and the visits, we defer to the trial court's ability to determine the credibility of the witnesses and weigh the testimony accordingly.

The trial court also did not clearly err when it determined that petitioner had established by clear and convincing evidence that there was the reasonable likelihood that the children would be harmed if returned to respondent-father's care because it was not likely that the home environment would change. Again, the risk of harm posed to the children by respondent-mother was clearly and convincingly established. The same evidence that clearly and convincingly establishes a risk of harm under MCL 712A.19b(3)(j) may clearly and convincingly establish a risk of harm under MCL 712A.19b(3)(g). See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011).

Respondent-father argues that the trial court could have alleviated any concerns about the safety and welfare of the children by ordering respondent-mother out of the home. However, respondent-mother's probation officer testified that she had violated a probation order that prohibited her from contacting the children. The foster care worker also testified that respondent-father had stated at a permanency planning conference that he would not allow respondent-mother to return to the home after she was released from jail. Nonetheless, respondent-mother did return to the home with respondent-father's full knowledge and complicity, and she again relapsed. And while respondent-father testified that he was going to file for divorce, we defer to the trial court's ability to determine whether this statement was credible.

Next, each respondent contests the trial court's conclusions regarding the best interests of the children. Respondent-mother argues that termination was not in the children's best interests because the trial court did not consider that she had not been offered the opportunity to attempt to take medication to control her alcoholism. Respondent-father argues that the trial court made erroneous findings and inappropriately weighed certain findings in favor of termination. Both argue that the trial court's best-interest determination was inadequate because the trial court did not consider how the children's placement with relatives affected whether termination of respondent parents' rights was in the children's best interests. We agree.

Petitioner relies on *In re Hansen*, 285 Mich App 158; 774 NW2d 698 (2009), for its argument that this issue has been waived. However, the Michigan Supreme Court has vacated and remanded *In re Hansen* to the family court "for reconsideration of its decision to terminate respondent's parental rights" in light of *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010). *In re Hansen*, 486 Mich 1037; 783 NW2d 124 (2010). In *In re Mason*, the Michigan Supreme Court stated that the children's placement with relatives was "an explicit factor to consider in determining whether termination was in the children's best interests" under MCL 712A.19a(6)(a), even though the respondent's lawyer had not raised the point at trial. *In re Mason*, 486 Mich at 164 n 16. A factual record will be "inadequate to make a best interests determination" if "there is no evidence in the record that the trial court considered whether termination of respondent's parental rights was appropriate given the children's placement" with a relative. *In re Mays*, 490 Mich 993, 994; 807 NW2d 304 (2012). In this case, there is no

evidence that the trial court considered how the children's placement with relatives affected whether termination was in their best interests. Therefore, the factual record in this case is inadequate for the purposes of the best-interest determination. We remand the case to the trial court to consider the effect of the children's placement with relatives as it relates to the best-interest analysis.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Donald S. Owens

Court of Appeals, State of Michigan

ORDER

In re GOLDIE, Minors

Docket Nos. 307218; 307219

LC No. 07-016413-NA

Cynthia Diane Stephens
Presiding Judge

David H. Sawyer

Donald S. Owens
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, we remand the case to the trial court to consider the effect of the children's placement with relatives as it relates to the best-interest analysis. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

COURT OF APPEALS OF THE STATE OF MICHIGAN
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A true copy entered and certified by Larry S. Royster, Chief Clerk, on

AUG 02 2012

Date

Chief Clerk