

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 20, 2012

In the Matter of WALTER/CLARK, Minors.

No. 310675
Ottawa Circuit Court
Family Division
LC No. 11-069054-NA

Before: HOEKSTRA, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to three minor children under MCL 712A.19b(3)(c)(i), (g) and (j). Because we conclude that the trial court did not clearly err by determining termination was in the children's best interests and because respondent was not denied effective assistance of counsel, we affirm.

On appeal, respondent does not contest the fact that sufficient evidence supported at least one statutory ground to terminate her parental rights; however respondent argues that termination of her parental rights was not in the children's best interests. Respondent argues that termination was not in the children's best interests because she began making marked improvement toward rectifying the conditions of substance abuse and unstable emotional health after investing in services several months into the proceeding. Further, respondent notes the trial court was not required to terminate parental rights, and argues it would have been in the children's best interests to allow her additional time to rehabilitate, particularly given the fact that at the time of the termination hearing petitioner had not identified any alternate, viable permanency option for the children.

If the trial court determines that there are statutory grounds for termination of parental rights, it must then determine whether termination is in the child's best interests. MCL 712A.19b(5). We review the trial court's decision regarding the child's best interests for clear error. *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). A decision is clearly erroneous if after reviewing all the evidence this Court is left with a definite and firm conviction that a mistake has been made. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The trial court must state its findings and conclusions regarding any best interest evidence on the record or in writing. MCL 712A.19b(1); *In re Trejo Minors*, 462 Mich at 356.

As noted recently in *In re Olive/Metts Minors*, 297 Mich App 35; ___ NW2d ___ (2012), slip op at 3, when deciding whether termination is in the child'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. The trial court has a duty to decide the best interests of each child individually. A trial court's best interests decision may be made from evidence on the entire record. *In re Trejo Minors*, 462 Mich at 353.

Here, the evidence showed respondent's children were removed in April 2011 because of respondent's dual and interrelated issues of substance abuse and unstable mental health, and because of neglect. Respondent did not begin addressing those issues until December 2011. Her hostility toward caseworkers, service providers, and foster parents hindered her progress toward reunification for much of the proceedings. In its oral opinion, the trial court based both its finding of sufficient evidence to establish statutory grounds for termination and the children's best interests on its summary of the evidence presented. It did not specifically note MW's strong bond with respondent, or EC and SC's lesser bond, but it relied on other factors, noting that respondent's belligerent attitude during the case had harmed the children:

And particularly egregious was her [respondent's] anger and . . . the harmful way in which this had on her children when she would make contact – comments to them, particularly [MW], that would get him geeked up and, you know – and helped to ruin his placements that he went through many of. All of that was harmful.

With regard to respondent's parenting ability at the time of the termination hearing, the trial court specifically found that respondent had refused for most of the proceeding to admit that she was an inappropriate parent when using substances, had demonstrated a genuine desire to become sober during the past three to four months but otherwise had not made progress in rectifying the issues of unstable mental health, abuse of substances and neglect, and that the changes required of respondent were significant and could take years. With regard to the children's need for permanency, the trial court observed that the children needed a permanent environment and were "not close to getting it today," and found:

It may be that if we had two – a two or three-year period of time within which to work with [respondent], the recent positive changes in her life might continue and might demonstrate her appropriateness to care for children. But I don't have three years. I have one. And in that one year she has not done what she needed to do.

Although the trial court was not required to terminate respondent's parental rights after one year of temporary wardship¹, it was not prohibited from doing so, and had heard evidence that respondent had received nearly a year of intervention services in Allegan County immediately

¹ MCL 712A.19a(6) provides that "[I]f 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." (Italics added). A termination petition is not required even for children who have remained in foster care for 15 of the last 22 months, under certain conditions. MCL 712A.19a(6) and (7).

before this proceeding. It also heard evidence that allowing respondent additional time to rehabilitate would be harmful to 12-year-old MW because his behavior was negatively affected by continued contact with respondent.

The trial court did not make a comparison of respondent's home with any of the foster homes in which the children resided, but heard evidence that MW had made progress in the structured environment provided by residential placement, had been diagnosed with oppositional defiant disorder and ADHD, could not focus enough to even begin addressing his behavioral issues without medication and that respondent had refused to authorize medication for him, and that he required a home environment that was very structured and provided close supervision, attention, firm boundaries, parental interaction with his school, and implementation of behavior modification techniques. It heard evidence that EC regressed after visits with respondent and that SC had resided approximately half of her life outside of respondent's care.

In summary, although MW was opposed to termination of respondent's parental rights and the evidence showed he would suffer emotionally if that bond was severed, and the other children would also suffer a level of loss, respondent's barriers to reunification were significant and she would not be able to provide the children proper and stable care within a reasonable time, let alone the dedicated and superior parenting MW required. We conclude that the trial court did not clearly err by finding termination of respondent's parental rights was in the children's best interests.

Respondent also raises the issue of ineffective assistance of counsel for the first time on appeal. "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). Whether respondent was denied the effective assistance of counsel presents a question of constitutional law that is subject to de novo review. *Id.* at 197. However, because no evidentiary hearing was held in regard to respondent's claim of ineffective assistance of counsel, our review is limited to errors apparent on the record. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). To establish a claim of ineffective assistance of counsel, respondent is required to show that counsel's performance fell below an objective standard of reasonableness and that there is "a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *In re CR*, 250 Mich App at 198 (citations omitted).

In this case, court-appointed counsel represented respondent at the outset of the proceeding, and she retained counsel for the final review/permanency planning hearing and the termination hearing. On appeal, respondent specifically argues that retained counsel's sparse questioning of witnesses, failure to address statutory grounds or best interests, failure to raise the fact that the children were significantly bonded to respondent and that petitioner had no permanency plan for the children after termination, failure to mention relevant statute or case law, and general failure to advocate her position, constituted a complete lack of advocacy and deprived her of effective assistance of counsel.

We conclude that the record evidence demonstrates that counsel's performance did not fall below an objective standard of reasonableness. First, at the final review/permanency planning hearing, counsel raised issues concerning respondent's visits, MW's placement, and MW's desire that respondent's parental rights not be terminated. He adequately advocated

respondent's position on those matters. No witnesses testified at that hearing, so counsel did not question witnesses. Next, at the termination hearing, counsel's questioning of the three witnesses who testified elicited evidence that respondent had stopped using substances and had maintained sobriety for nearly four months because her children were more important to her than drugs, that she had complied with services and had applied concepts learned during visits with the children, and had improved her ability to interact with others. In closing argument, counsel reiterated the services in which respondent had participated and emphasized that respondent was not merely going through the motions but had truly benefitted, had applied skills learned in counseling and had improved her interactions with others, and argued that reunification was a "tremendous incentive" for respondent to continue her efforts and asked that the termination petition be denied.

Moreover, any deficiency in counsel's performance did not prejudice respondent. The trial court was aware of which statutory grounds petitioner was advancing for termination of respondent's parental rights, and it was unnecessary for counsel to reiterate them. The evidence showed the trial court was aware of relevant statutes and the standards that must be met to terminate respondent's parental rights and to find that termination was in the children's best interests, and there was no need for counsel to reiterate statute or case law on those matters. Counsel did not raise the fact that the children were significantly bonded to respondent or that petitioner had no permanency plan for the children beyond termination, but evidence of the very strong bond between MW and respondent, and the lesser bond between respondent and EC and SC, was presented to the trial court through the foster care caseworker's testimony, and petitioner did not dispute it. Petitioner's permanency plan for the children was adoption, although no prospective adoptive homes were identified on the record, and the trial court heard evidence that the children's needs were being addressed in foster care, while respondent remained unable to properly care for them.

Therefore, we conclude that counsel did not fail to advocate for respondent, or make a serious omission or mistake, and there is no indication that any additional argument, citation of statute or case law, or questioning of witnesses by respondent's counsel would have mitigated the fact that respondent failed to invest in sobriety and emotional stability for much of the proceeding and had significant issues that she was not reasonably likely to rectify within a reasonable time. Nor would it have mitigated the fact that her interactions with MW and his placements had a negative impact on him, that all of the children needed a permanent home, and that termination of respondent's parental rights was in the children's best interests. Counsel committed no error, nor is there a reasonable probability that counsel's performance negatively impacted the outcome of the proceeding. Thus, we conclude that respondent was not denied effective assistance of counsel.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra