

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 27, 2012

In the Matter of L. A. N. POWELL, Minor.

No. 310444
Wayne Circuit Court
Family Division
LC No. 07-473403-NA

In the Matter of L. A. N. POWELL, Minor.

No. 310445
Wayne Circuit Court
Family Division
LC No. 07-473403-NA

Before: RONAYNE KRAUSE, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeals as of right the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(g), failure to provide proper care and no reasonable expectation that the parent will be able to; (i), rights to a prior child were terminated for serious and chronic neglect or abuse and prior rehabilitation was unsuccessful; and (l), parental rights to another child previously terminated under the Probate Code. We affirm.

In Docket No. 310444, respondent mother argues that the trial court's order of termination is fatally infirm because the trial court did not list the statutory basis for termination and did not make findings of fact and conclusions of law on the record. She also argues that the record does not present clear and convincing evidence to support termination of her parental rights. In Docket No. 310445, respondent father argues that the trial court erroneously terminated his parental rights solely because he had previously had parental rights to other children terminated, with no consideration given to whether he was presently an unfit parent. We reject all of respondents' arguments.

We review for clear error the trial court's factual findings as well as its ultimate decision that a statutory ground for termination of parental rights had been proved by clear and convincing evidence. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the basis of all evidence is left with the definite and firm conviction that a mistake has been made, giving due regard to the trial court's opportunity to observe the witnesses. *In re Miller*,

433 Mich 331, 337; 445 NW2d 161 (1989). Because establishment of only one statutory ground is necessary, erroneous termination on one ground is harmless if another ground was also properly established. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). In general, a trial court's conclusions of law are reviewed de novo. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). We will not disturb a lower court's order unless "failure to do so would be inconsistent with substantial justice." *In re TC*, 251 Mich App 368, 371; 650 NW2d 698 (2002), citing MCR 2.613(A).

In relevant part, MCR 3.977 requires the trial court to "state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions . . . are sufficient." MCR 3.977(I)(1). The trial court held a bifurcated hearing; after the statutory grounds hearing, it issued an order that stated in relevant part as follows:

[T]he Court finds there are grounds to take jurisdiction under MCL 712A.2(b)(1)&(2). The parents' rights to [C.P.] have been terminated and [C.P.] and [T.S.] were born positive for cocaine and opiates. The Court finds that there is clear and convincing evidence to terminate parental rights under MCL 712A.19b(3)(g), (i), & (l). Parents have been non-compliant with their prior service plan and the medical records of St. John Hospital (Ex. 1) indicate this child was born positive for cocaine and opiates. Drug use during pregnancy is evidence of neglect.

The trial court subsequently held a best interests hearing, after which it issued an order that stated in relevant part as follows:

The Court previously ruled that there was clear and convincing evidence to terminate the parental rights [of respondents], inasmuch [sic] as their rights were previously terminated by this Court to their prior child [C.P.] and their child [T.S.] was also not in their care and is the subject of a guardianship. Both of these children were born positive for illegal substances. [T.S.] was born positive for cocaine and [C.P.] was born positive for cocaine, opiates and methadone. [L.A.N.P.], the subject of this Petition also tested positive for cocaine and opiates at birth. The evidence at trial indicated that the parents were not committed to addressing their long term substance abuse issues. [Respondent mother] admitted that she snorted heroin approximately 2 weeks before the final day of trial in this matter. [Respondent father] admitted to using cocaine after the birth of [L.A.N.P.]. He also consistently tested positive for opiates and while he claimed to have a valid prescription for vicodin he failed to produce documented evidence of this at trial.

The Court finds that in light of the long standing and unaddressed substance abuse of the parents that it is in the best interest of [L.A.N.P.] to terminate the parental rights of [respondents]. Appellate rights were provided on the record.

The trial court therefore unambiguously made factual findings and conclusions of law on the record establishing that respondents had a long history of exposing their children to harmful

substances and failing to rectify the problems in their lives that were endangering their children—a pattern of detrimental behavior that *remained* unaddressed.

The trial court therefore made adequate findings on the record, in compliance with MCR 3.977, and did not terminate respondent father’s rights solely on the basis of prior, rather than present, unfitness. Furthermore, the record clearly supports the trial court’s conclusions. Respondents have a lengthy history with petitioner, beginning in 2004 when they lost custody of son, T.S., after he tested positive for cocaine at birth. T.S. has been in a guardianship with his maternal aunt since birth. In 2008, respondents’ parental rights to their daughter, C.P., were terminated after she was born positive for cocaine and opiates. Before that termination, petitioner provided respondents with a treatment plan to address their substance abuse issues. Services included random drug screens, inpatient drug treatment, individual therapy, and parenting classes. Respondents failed to comply with any aspect of their treatment plan. The trial court reasonably concluded that respondents made no efforts to remedy their longstanding drug habit. Petitioner sought permanent custody of L.A.N.P. shortly after her birth when she and respondent mother tested positive for cocaine and opiates.

Because respondent mother’s parental rights to the child’s sibling were involuntarily terminated, petitioner was not required to provide her with services or attempt reunification with L.A.N.P. MCL 712A.19a(2)(c); *In re Smith*, 291 Mich App 621, 623; 805 NW2d 234 (2011), amended 291 Mich app 801 (2011). Nonetheless, there was un rebutted evidence that petitioner made referrals for drug screens, drug treatment, and individual therapy, but respondent mother failed to fully participate in these offered services. There was also an established record of petitioner providing respondents with reunification services, including drug treatment, in previous years but sadly to no avail. The record shows that respondents were fully informed of the actions they needed to take to be reunited with their child. Whether they would not or could not, they did not take those actions, and on that basis the trial court properly terminated their parental rights and found doing so in the child’s best interests.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Deborah A. Servitto

/s/ Douglas B. Shapiro