

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 24, 2013

In the Matter of L. WASHINGTON, Minor.

No. 310229
Wayne Circuit Court
Family Division
LC No. 12-505321 NA

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Respondent adopted the minor child within a year of her foster care placement with respondent. Although there were several Children's Protective Services (CPS) investigations in the year and a half after the adoption, none were substantiated; the current investigator testified that child's history of mental health issues and temper tantrums led the previous investigator to believe the injuries were self-inflicted. Respondent broke her ankle in early December 2011 and claimed that it was due to the then 10-year-old child's kicking her during a tantrum. On January 31, 2012, the police were called to the home after an altercation between respondent and the child. The child had numerous bruises and scrapes all over her body and had a bruise on her forehead, a black eye, and a bite mark on her face. A medical expert testified that some of these injuries could not have been self-inflicted, and that the other injuries were more indicative of intentional child abuse than self-inflicted injury, although the expert could not rule out self-mutilation. Respondent claimed that the child broke respondent's hand with a picture frame during the incident and told police that she did not want the child in her in the home. She also told the CPS investigator a few days later that she did not want the child back in her home, and petitioner filed an initial petition to terminate respondent's parental rights.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the statutory grounds for termination were not established by clear and convincing evidence. In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the court's determination of the child's best interests are reviewed for clear error.

In re Rood, 483 Mich 73, 90-91; 763 NW2d 587 (2009). “A finding is ‘clearly erroneous’ [if] 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.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent mother’s parental rights were terminated under MCL 712A.19b(3)(b)(i), (g), and (j), which provide:

(3) 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 or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home.

* * *

(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.

The trial court did not clearly err in finding that MCL 712A.19b(3)(b)(i) and (j) were established by clear and convincing evidence. There was ample evidence that the child was physically abused by respondent, introduced through the testimony of the child, the photographs taken of the child’s injuries by the CPS investigator, and the doctor’s testimony that the injuries were not self-inflicted. The only issue respondent mother raises is one of credibility, as respondent and her 17-year-old daughter testified that the child inflicted the injuries on herself. In termination proceedings, this Court must defer to the trial court’s factual findings if those findings do not constitute clear error and must give regard to the trial court’s special opportunity to judge the credibility of witnesses. MCR 2.613(C); MCR 3.902(A); MCR 3.977(K). Further, the trial court made detailed factual findings explaining its credibility determinations, with which this Court can find no fault.

The trial court also did not clearly err in finding that there was a reasonable likelihood that the child would be harmed or physically abused in the foreseeable future if returned to respondent’s home. Respondent did not admit any abuse and described a living situation that

would be difficult for anyone. Even if respondent's testimony was to be believed, respondent failed to seek help for the child despite the adoption services in place and her foster care parent training, especially her additional training for children with special needs. Further, respondent failed to seek medical attention for the child after the child allegedly banged her head into the wall and a closet door, putting holes in them. Based on this evidence, the trial court did not clearly err in finding that sections (b)(i) and (j) were established by clear and convincing evidence.

The trial court also did not clearly err in finding that respondent failed to provide proper care and custody for the child and that there was no reasonable likelihood that she would be able to do so within a reasonable time. MCL 712A.19b(3)(g). Respondent admitted that the child's school attendance was horrible. Equally as troubling was the child's attendance at therapy sessions and the failure of respondent to notify the therapist of the child's issues. The therapist testified that if respondent had informed her that the child was hurting herself and banging her head, as respondent asserted in her testimony, the therapist would have increased the child's therapy schedule, formed a crisis plan, and had her medication reviewed. Although the number of therapy sessions missed would not be troubling for another child, it was troubling for this child because of the behavior respondent alleged and failed to report to the therapist. Further, there is no reason to believe that respondent would change so that she could provide proper care and custody where she denied any responsibility for the child's school attendance and did not place importance on the therapy sessions. Respondent also testified that she had been thinking of relinquishing her parental rights for some time, and that shortly after the child's removal from her home, she told the CPS investigator that she did not want the child back in her home.

III. BEST INTEREST DETERMINATION

Finally, the trial court did not clearly err in its best-interest determination. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Given respondent's physical abuse of the child, the child's poor attendance at school, respondent's failure to seek medical and therapeutic attention for the child, and respondent's total denial of any responsibility for these problems, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. See *Miller*, 433 Mich at 339-342.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh

/s/ Mark T. Boonstra