

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 12, 2013

In the Matter of FOULK, Minors.

No. 312076
Branch Circuit Court
Family Division
LC No. 02-002282-NA

Before: JANSEN, P.J., and WHITBECK and BORRELLO, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm.

The principal condition that led to adjudication was respondent's struggles with mental health and her consequential inability to provide necessary and safe care for the children. One child needed medication for attention deficit hyperactivity disorder (ADHD), and respondent failed to give the medication as prescribed and take the child to all necessary appointments. At times, respondent would double up on medication leading to the child being without medication for significant periods of time. As a result, the child struggled at school without his medication. The trial court also found that mother damaged both children by yelling at them and blaming them for the involvement of child protective services. Throughout the 2-1/2 years of court proceedings, mother failed to participate in individual counseling as ordered to address her numerous mental health issues. She was always jailed for charges stemming from the manufacture of methamphetamine.¹ Respondent did not always avail herself of visitation with the children, alleging that there was interference with state agencies that precluded her from doing so. Respondent also had difficulty keeping and maintaining a stable home environment. Once respondent lost sources of income from the minor's SSI benefits, her utilities and rent were often not paid, leading to evictions and homes without heat or electricity. Respondent remarried over the course of the proceedings and moved to Indiana, giving birth to another child. The trial court found termination was in the child's best interests. Respondent does not challenge on appeal the trial court's finding that the statutory grounds for termination were established by

¹ Respondent also had a criminal history from a theft conviction in 2005 and a operating while intoxicated conviction in 2004.

clear and convincing evidence, but argues that the termination was not in the child's best interests.

Respondent's primary argument is that the trial court erred in terminating her parental rights without fully exploring the possibility of a permanent guardianship. A court may, but is not required to, continue a child in a placement with relatives or establish a guardianship if the court finds it is in the best interests of the child. MCL 712A.19a(6) and (7); *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991). In this case, there was testimony that a guardianship was the most traumatic option for the children because it would continue the uncertainty of their placement. Additionally, there was no indication mother would address her issues and be able to have the children returned to her care.

In reaching its decision, the trial court reviewed what was asked of respondent during the course of the case. Specifically, the trial court noted that on October 5, 2010, respondent was ordered to attend individual therapy and sign a release of information for DHS and the court to obtain progress reports from the therapist. The trial court noted respondent had never attended individual therapy or signed releases. The trial court noted that throughout the case, at each of the review hearings, it ordered respondent to attend counseling, but she failed to do so and maintained that removal of the children was not her fault.

The trial court found that the grounds of MCL 712A.19b(3)(a)(ii) (desertion), did not apply in this case. Regarding MCL 712A.19b(3)(c)(i) (conditions continue to exist), the trial court found that the conditions were the same and there was no reasonable likelihood they would be rectified in a reasonable time considering the ages of the children. The trial court stated it did not believe the conditions would change because respondent continued to believe she did not do anything wrong.

Regarding MCL 712A.19b(3)(g) (proper care and custody), the trial court noted that respondent had her husband, but she continued to not have a home of her own without help from others. The trial court found respondent failed to provide proper care and custody and that there was no reasonable likelihood that she would be able to within a reasonable time considering the ages of the children.

Regarding MCL 712A.19b(3)(j) (likelihood of harm), the trial court found respondent would unintentionally hurt the children emotionally if they were returned to her. The trial court noted respondent had a lack of understanding of the situation.

The trial court noted that the difficult part of the case was determining if termination was in the best interests of the children. The trial court stated that the children loved respondent and respondent loved the children. The trial court noted respondent had another young child that another state determined mother was caring for appropriately. However, the trial court found that respondent went to another state to have her youngest child so the state of Michigan would not be involved with that child. The trial court believed mother chose to not go to counseling even when she knew that was all she would have to do to have her children returned to her. The trial court noted that this indicated that her children were not important enough to her. The trial court acknowledged that the children would be harmed from not having contact with their aunt and grandfather, but that the potential harm of being returned to mother was even greater. The

trial court concluded by finding that the children were in a “never-never land” with no permanence, hence it was in the best interest of the children to terminate parental rights. This appeal ensued.

Our review of the record leads us to conclude the evidence established that termination of respondent’s parental rights was in the children’s best interests. MCL 712A.19b(5). In *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000) our Supreme Court stated:

The best interest provision of subsection 19b(5) provides the court the opportunity to find that termination is clearly not in the child’s best interest. The primary beneficiary of this opportunity is intended to be the child. Secondly, the provision affords respondents additional protection by permitting the court to consider evidence, within the whole record, that termination is clearly not in a child’s best interests. Again, the court must state its findings and conclusions regarding any best interest evidence on the record or in writing. MCL 712A.19b(1); MSA 27.3178(598.19b)(1).

This Court has previously held that a child’s need for stability and permanency may be considered in determining best interests. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). On the evidence presented, we cannot conclude that the court clearly erred by finding that the children were thriving in foster care, the foster family desired to adopt both children, and the children needed stability and permanency. Given respondent’s long history of failing to adhere to the orders of the trial court, and her continuing denial of fault for DHS intervention, respondent failed to demonstrate that she was able to change any of the behaviors which led to the filing of the petition. Coupled with the fact that the children had been thriving and would be adopted by their foster parents who were able to provide them with a stable and safe home environment, the trial court did not err in finding that termination was in the children’s best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ William C. Whitbeck
/s/ Stephen L. Borrello