STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
May 14, 2013

In the Matter of S. L. GARLAND, Minor.

Nos. 312149 & 312151
Ingham Circuit Court
Family Division
LC No. 11-001046-NA

Before: FORT HOOD, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from an order terminating their parental rights to their minor child under MCL 712A.19b(3)(c)(g) (failure to provide proper care and custody), (j) (risk of harm if returned to parents), and (l) (prior termination of parental rights). We affirm.

I. FACTS

Respondent-mother went to a hospital because of abdominal pain and rectal bleeding, not knowing that she was pregnant. While using the restroom in the emergency room, she gave birth while on the toilet. She left the baby in the toilet water with fecal matter while she went to tell someone about it. The baby developed respiratory problems and pneumonia from being left in the toilet.

The baby was taken into custody and the trial court ordered respondents to attend parenting classes, have supervised parenting time, and submit to psychological evaluations. The psychological evaluations determined that respondents had cognitive impairments and extremely limited mental capabilities, especially respondent-mother. Both the evaluator and the caseworker determined that respondents did not benefit from parenting classes and could not function as parents. However, it was found that respondents loved the child and participated in almost all court-ordered services.

Ultimately, a petition was filed seeking to terminate parental rights. Despite respondents' substantial compliance with the service plan, the trial court concluded that clear and convincing evidence established that termination was warranted under the three statutory grounds at issue and that termination was in the child's best interests.

II. STANDARDS OF REVIEW

The court's decision to terminate parental rights is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's finding is clearly erroneous if we are left with "a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

III. RESPONDENT-MOTHER

Respondent-mother argues that the trial court erred in finding that termination was proper under MCL 712A.19b(3)(g), (j), and (l), and in finding that termination was in the child's best interests. We disagree.

"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). MCL 712A.19b(3)(g), (j), and (l) provides:

> (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:
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> * * *
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> (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.
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> * * *
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> (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.
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> * * *
>
> (l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

The trial court did not err in finding that termination was warranted under subsection (g). A psychological evaluation indicated that the mother had the intellectual capacity of "approximately the 1st percentile for adults her age, with an approximate second grade word recognition/reading level." The evaluator determined that respondent had good intentions towards children, but that her capacity limitations compromised her ability to parent. Respondent-mother also had problems dealing with frustrating or anger-producing events. The evaluator found that respondent-mother had not changed since 1998, when an earlier psychological evaluation was performed, and that she was still of limited intellectual capacity. At trial, the evaluator testified that respondent-mother did not have the capacity to safely and consistently parent the child.

With regard to her actual ability to parent, a caseworker testified that respondent-mother would feed the baby as soon as she started to cry, even when feeding was not needed. When the child cried, respondent-mother would become very upset and hand the baby to respondent-father. Despite parenting classes and a year of supervised parenting time, respondent-mother showed no benefit from the parenting classes and no improvement with the child. According to the caseworker, respondent-mother lacks the basic understanding of the child's development and cues.

Respondent-mother argues that the trial court erred in not rendering services that focused on her mental capacity. However, respondent-mother does not have a mental illness but an extremely limited mental capacity, a limitation that cannot be addressed by services. The trial court rendered services that allowed respondent-mother to make strides in her parenting abilities, if possible. However, respondent-mother was unable to benefit from them or show that she had the capacity to adequately parent the child. Although she complied with the service plan, a respondent must participate and "demonstrate that they sufficiently benefit from the services provided." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). There was no evidence that respondent-mother sufficiently benefited from the parenting classes. Accordingly, there was ample evidence to support a finding that respondent-mother lacked the mental capacity or parenting skills to provide the child with proper care or custody immediately or within a reasonable time. MCL 712A.19b(3)(*g*).

Because only one subsection need be proven by clear and convincing evidence to support termination of respondent-mother's parental rights, we need not consider the trial court's decision on subsections (j) and (l). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). However, we note that there was sufficient evidence to support termination under both subsections. Respondent-mother's mental limitations and lack of capacity to properly care for the child, as evidenced by her decision to leave the newborn child in toilet water and fecal matter, is sufficient to support a finding of a reasonable likelihood of harm if the child is returned to respondent-mother. MCL 712A.19(3)(j). Furthermore, the trial court took judicial notice of the prior involuntary termination of respondent-mother's former son and the voluntary termination of her former daughter. Because MCL 712A.19b(3)(l) only requires a prior involuntary termination of the rights to another child, not all previous children, the trial court did not clearly err in concluding that termination was proper based on the involuntary termination of her former son. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

Finally, the trial court did not clearly err in determining that termination of respondent-mother's rights was in the child's best interests. Respondent-mother had the rights to two former children terminated shortly after she gave birth to them. Here, she again had the child removed before she could even attempt to take care of her. Respondent-mother had an opportunity to learn and grow as a parent through classes; while she was dedicated to attending the classes and supervised visits, she showed no benefit from them. In addition, it was not likely that respondent-mother could benefit or increase her parenting skills based on her cognitive impairment. Furthermore, the child has done well in her new home and has a strong bond with her foster parents and siblings. Considering respondents-mother's limited capacity, her previous terminations, and her inability to better her parenting skills, the trial court did not clearly err in concluding that termination was in the child's best interests. MCL 712A.19b(5).

IV. RESPONDENT-FATHER

Respondent-father argues that the trial court erred in finding that termination was proper under MCL 712A.19b(3)(g), (j), and (l), and in finding that termination was in the child's best interests. Again, we disagree.

The trial court did not err in finding that termination was warranted under subsection (g). Respondent-father failed to show that he had the skills to properly care for the child. The testimony established that respondent-father did not show any benefit from the parenting classes, anger-management courses, or supervised parenting time. This was a concern because respondent-father previously had his rights to a child involuntarily terminated. The evaluator did not believe that respondent-father could adequately care for the child or ever learn to do so, and noted that respondent-father did not recognize concerns or issues with regard to the child's safety. As a result of the injuries sustained from being in the toilet, the child might have special needs, and there was testimony that respondent did not comprehend the type of care that would be necessary if those needs arose. Respondent-father also did little to care for the child during supervised parenting time. Instead, he would instruct respondent-mother on how to care for the child. Because the service plan continued for almost a year, and respondent-father showed little to no benefit from the services rendered, and considering respondent-father's past involuntary termination, there was clear and convincing evidence to support a finding that respondent-father could not provide proper care and custody for the child within a reasonable time. MCL 712A.19(3)(g).

Because only one subsection need be proven by clear and convincing evidence to support termination of parental rights, we need not consider the trial court's decision on subsections (j) and (l). *In re Powers*, 244 Mich App at 118. However, we note that there was sufficient evidence to support termination under both subsections. Respondent-father's past sexual assault of his previous daughter and his current probation based on domestic violence, along with his inability to benefit from parenting classes, make it reasonably likely that the child would be harmed if returned to his care. MCL 712A.19(3)(j). Furthermore, the trial court took judicial notice of the prior involuntary termination of respondent-father's rights to his former daughter. Accordingly, termination was proper under MCL 712A.19(3)(l). *In re Jones*, 286 Mich App at 129. Respondent-father's argument that the court's decision based on MCL 712A.19(3)(l) was unfair and means that he could never be a father again is unavailing. In order to terminate parental rights, the court must determine that there are grounds for termination and that termination is in the child's best interests. MCL 712A.19b(5). Respondent-father is not automatically precluded from being a father under MCL 712A.19b(5) because he could show that termination is not in the child's best interests. *Id*.

Finally, respondent-father argues that the trial court erred in determining that termination was in the child's best interests because there was no evidence presented to support that finding. Respondent-father testified at trial that it might be in the child's best interests for her to be in a good home with people that could care for her. In addition, for many of the reasons supporting a finding that the child would likely be harmed if returned to respondent-father's care, the record supports a finding that termination was in the child's best interests. A sexual assault claim involving his previous daughter was substantiated. He has done little since then to change and was recently placed on probation for domestic violence. The child will need significant care

going forward, and respondent-father did not establish that he has any ability to handle the daily needs of the child. After a psychological evaluation, it was concluded that respondent-father was incompetent and potentially dangerous. There is no evidence that the child would be properly cared for if left under respondent-father's supervision. Despite an incident where the minor child fell out of her crib in foster care, she has done well in her new home and has a strong bond with her foster parents and siblings. Accordingly, the record supports the finding that termination was in the child's best interests. MCL 712A.19b(5).

Respondent-father also argues that the trial court erred in terminating his parental rights despite evidence that he substantially complied with the service plan. We disagree. In *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part by statute as discussed in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010), we discussed substantial compliance and stated:

> 'Compliance' could be interpreted as merely going through the motions physically; showing up for and sitting through counseling sessions, for example. However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the child would no longer be at risk in the parent's custody. In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement or case service plan. For example, attending parenting classes but learning nothing from them and, therefore, not changing one's harmful parenting behaviors, is of no benefit to the parent or child

When services are offered, a respondent must participate and "demonstrate that they sufficiently benefit from the services provided." *In re Frey*, 297 Mich App at 248.

In this matter, the trial court did not clearly err in determining that respondent-father did not benefit from the services rendered. The caseworker did not believe that respondent-father showed a benefit from the parenting classes. She testified that respondent-father could explain what a parent should do but did not demonstrate the abilities to actually do it. She further testified that she did not believe respondent-father could care for a child on his own because he just gave instructions to respondent-mother and did little himself. Moreover, when asked whether respondents could adequately parent the child if respondent-father committed to learning parenting skills, the evaluator testified that he did not think respondents could be minimally adequate parents. He reiterated that respondent-father could not articulate anything he learned from anger-management class and did not believe that respondent-father could parent the child on his own because he did not recognize the legitimacy of the concerns about the safety of the child. Because there was clear and convincing evidence submitted at trial to find that respondent-father did not benefit from the services rendered, the trial court did not commit clear error in terminating respondent-father's parental rights despite his substantial compliance with the service plan. *In re Frey*, 297 Mich App at 248.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell