

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 27, 2013

In the Matter of HOSANG/GROGAN, Minors.

No. 311586
St. Clair Circuit Court
Family Division
LC No. 10-000072-NA

Before: STEPHENS, P.J., and SAWYER and METER, JJ.

PER CURIAM.

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

Before terminating a respondent's parental rights, the trial court must find that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it also finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews parental-termination decisions for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). Clear error exists "if the reviewing court has 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). A trial court may consider evidence on the whole record in making its best-interests determination. See *Trejo*, 462 Mich at 356.

The statutory grounds were established by clear and convincing evidence. The conditions that led to petitioner's intervention were respondent's substance abuse and inadequate parenting skills. In April 2010, respondent's three daughters came under the jurisdiction of the court after the youngest child suffered severe drug-withdrawal symptoms shortly after birth. Respondent admitted that she regularly used Vicodin for tooth pain throughout her pregnancy and that she was treated with morphine during a hospitalization during her pregnancy. Respondent had a previous history with Children's Protective Services, including an earlier neglect case for using morphine and THC during a pregnancy and another earlier neglect case for failure to follow through with services required by the middle child as a result of the child's serious injuries, including a traumatic brain injury, suffered as a result of being physically abused by an uncle. After adjudication, the children remained in respondent's care for a short time.

They were removed from her care after the youngest child sustained a head injury after flipping out of a car seat because she was not properly supervised.

The court properly concluded that respondent had not complied with or benefited from her treatment plan. She failed to (1) successfully complete and benefit from individual counseling and life-skills counseling; (2) sufficiently benefit from completed parenting and anger-management classes; (3) complete her GED; (4) maintain stable, suitable housing; (5) maintain regular, legal employment; and (6) maintain regular contact with petitioner. Significantly, respondent failed to complete substance-abuse treatment and follow all recommendations. She missed drug screens or tested positive for drugs for which she did not have a valid prescription. The trial court correctly found that respondent had a chronic substance-abuse issue. Additionally, respondent's therapist testified that respondent failed to make any progress in decreasing her depressive symptoms and improving her life-coping skills. The trial court also heard testimony from the caseworker that, despite support services, respondent's behaviors and drug dependence remained unchanged. Clearly, after more than two years of services, respondent failed to rectify the issues that brought her children before the court along with other conditions that arose after adjudication. Therefore, termination was proper under MCL 712A.19b(3)(c)(i) and (c)(ii).

These proofs similarly satisfied the other statutory grounds for termination. Respondent remained unable to properly provide for her children and keep them out of harm's way. She had more than two years to overcome her drug addiction, acquire necessary parenting/life skills, provide a stable home environment, and achieve financial stability. At the termination hearing, she had, at best, very limited income from working a part-time job, and her ability to maintain suitable housing was questionable.

On appeal, respondent makes a two-fold argument that there was insufficient evidence to support any statutory grounds for terminating her parental rights. First, respondent asserts that she did not have a substance-abuse problem. Second, she contends that she had obtained the necessary parenting skills to care for her children, including her special-needs child. Respondent's arguments are unpersuasive.

While it is undisputed that respondent experienced tooth pain because of dental issues, there was clear and convincing evidence that respondent continued to abuse prescription pain medication without any sufficient attempt at treatment. Respondent was inconsistent in providing court-ordered random drug screens. She had 30 positive drug screens and 10 missed screens, which were deemed positive. Respondent reported that she had been prescribed Vicodin and other pain killers for dental problems and back pain but failed to provide up-to-date medical documentation as ordered by the trial court. According to the assessment recommendations, respondent needed a higher level of care, including Methadone treatment. Respondent appeared to be receptive but then failed to follow through with a Methadone program. Respondent testified that she was jailed in 2011 for violating her probation because she did not complete a substance-abuse program. The caseworker testified that respondent would appear sluggish and "not all there" during parenting visits, yet respondent refused to admit that Xanax impaired her functioning or that she abused Vicodin. Respondent's life-skills coordinator also testified that, during some sessions, respondent appeared dazed as if she could be falling asleep.

There was also ample proof that respondent lacked appropriate parenting skills. Respondent was referred to counseling twice but did not make progress with her therapy goals, including improving communication skills and establishing healthy relationships. Her therapist indicated that respondent minimized issues and that her unwillingness to acknowledge her problems was a barrier to benefiting from counseling. There was evidence that respondent failed to follow through with a referral to a psychiatrist regarding medication and that she was dishonest about her follow-up. Her therapist observed respondent becoming defensive and throwing childlike temper tantrums during joint counseling sessions with P. G., the father of the two younger children. She was unable to calm herself and discuss issues. Respondent's therapist opined that respondent needed to work toward effective communication, empathy and trust. Respondent and P. G. did not take any responsibility for the children being in the court's care and they never got past the point of blaming others. Respondent was unable to specifically identify anything that she had learned from counseling. Respondent was also referred twice to work with a life-skills counselor but was terminated early from the program. The life-skills counselor opined that respondent had deficient parenting skills, including ineffective discipline practices and follow-through; failed to take responsibility for missing sessions; and lied in stating that P. G. was ill when he had been arrested and was in jail. The record shows that there was no reasonable expectation that respondent would be able to provide proper parenting for her children within a reasonable time considering their ages because she did not make any progress in counseling and the life-skills program, and she continued to abuse prescription medication without obtaining effective treatment.

Similarly, the trial court did not err in finding that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). Respondent offered some proof that she was able to care for the children. Certain witnesses testified that she was a loving and caring mother who never directly harmed any of her children. However, the caseworker opined that it was in the children's best interests to terminate respondent's parental rights because she was unwilling to address her substance-abuse issues and she did not follow through with recommendations of her service providers. Respondent believed that she did not need services and was unwilling to make necessary changes in her life. Respondent's credibility was also suspect, particularly regarding her claim that she was no longer involved with P. G., who had a lengthy criminal history. At the termination hearing, the caseworker did not know if respondent had suitable housing because respondent had reported that she was staying with her sister yet told the police that she was living with P. G.

Further, respondent's oldest daughter did not appear to have an attachment to respondent or her siblings, and her behavior was improving in foster care. The two younger children had adjusted well in their foster-care placements and were attached to their respective foster parents. Based on a review of the whole record, the trial court correctly ruled that terminating respondent's parental rights was in the children's best interests.

Respondent argues that the best-interests determination must be reversed because the trial court did not make the explicit best-interests findings required by *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012), in light of the children's placement with relatives at the time of the termination hearing. "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.* at 43. In

Olive/Metts, this Court further found that the trial court “was required to consider the best interests of each child individually and was required to explicitly address each child’s placement with relatives at the time of the termination hearing if applicable[.]” *Id.* at 44. In this case, the two younger children were placed in non-relative foster care. The older child was placed with the stepfather of her putative father, who never established paternity. Therefore, none of the children were placed with relatives, and the explicit best-interests findings required under *Olive/Metts* are not applicable to the present case. Contrary to respondent’s suggestion, in *Olive/Metts*, the Court implicitly concluded that generalized best-interests findings applicable to multiple children can be sufficient in termination proceedings, so long as relative placements are not disregarded. See *id.* at 42-44 (remanding the case for only two out of five children). Here, the evidence pertaining to best interests was applicable to all three children, and reversal is unwarranted.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ David H. Sawyer

/s/ Patrick M. Meter