

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 9, 2013

In the Matter of VOGTS, Minors.

No. 314253
Muskegon Circuit Court
Family Division
LC No. 11-041099-NA

Before: BECKERING, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Respondent mother appeals the trial court's order that terminated her parental rights to two minor children, J and T, under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm in part, but remand for further proceedings related to the trial court's best interest determination.

Respondent does not challenge the trial court's finding that statutory grounds for termination were established by clear and convincing evidence, so any claim in this regard is deemed abandoned. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Nonetheless, the record reflects that the court did not clearly err in ruling that the statutory grounds were amply established, and we affirm that ruling.

Respondent maintains that the trial court erroneously ruled that termination was in the minor children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). Respondent argues termination was not in J's and T's best interests because her parental rights to four other children were not terminated. In general, it is in the best interests of children to keep siblings together, but if keeping siblings together is contrary to the best interests of a child, the best interests of the individual child control. *Id.* at 42. The record does not show that J and T ever lived with, had a relationship with, or even had contact with two of respondent's other children, F and M. Thus, keeping these siblings together or maintaining a relationship among them was a nonissue. Respondent references two other children, M and H, but the record does not support that these children were respondent's children or that they were siblings of J and T or had any relationship or contact with J and T. On this record, the trial court did not err when it declined to consider the sibling relationships in making a best interest determination.

Respondent also challenges, generally, the trial court's finding that termination was in J's and T's best interests. A child's need for stability and permanency may be considered in

determining the child's best interests. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). Here, evidence showed that J and T needed permanency and stability. They were placed in a stable home with an aunt related to them by marriage, and the aunt wanted to adopt both children. Meanwhile, during the case, respondent disappeared, without warning, for weeks at a time. These unpredictable disappearances were difficult on the children and exemplified her disregard of the effects of her actions on the children. Testimony also showed that respondent would require at least two years to overcome her barriers, and that it is unlikely she will ever be able to care for the children. On this record, the trial court did not clearly err when it ruled that termination was in the children's best interests. MCL 712A.19b(5).

Respondent further asserts that the trial court erred because it did not explicitly address, in determining J's and T's best interests, that they were in a relative placement. Our Supreme Court explained in *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), that a child's placement with relatives "was an explicit factor to consider in determining whether termination was in the children's best interests." The Court reaffirmed the requirement of explicit consideration of placement with relatives at the time of termination in *In re Mays*, 490 Mich 993; 807 NW2d 307 (2012). In *Mays*, the Court stated that the trial court's failure to consider the children's placement with relatives at the time of the termination resulted in a factual record "inadequate to make a best interests determination." *Id.* at 994. In *In re Olive/Metts*, 297 Mich App at 43, this Court also ruled that 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 interests determination and requires reversal."

Here, the children were placed with a relative, their paternal great aunt by marriage. MCL 712A.13a. There is no evidence that the trial court considered the minor children's placement with a relative when considering the children's best interests. In fact, during the best interests analysis, the trial judge referred to the children's "foster parents" and their "out of home placement," and made no reference to the relative placement.

Therefore, the factual record is inadequate for purposes of the best interest determination, *In re Mays*, 490 Mich at 994, and we are constrained to remand for consideration by the trial court of the relative placement in the context of the best interest analysis. However, we observe that, but for this failure to address relative placement on the record, we would affirm.

Affirmed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O'Connell