STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 11, 2013

In the Matter of GUBALA/MESSLER, Minors.

No. 313319
Monroe Circuit Court
Family Division
LC No. 10-021926-NA

Before: WHITBECK, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

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

Respondent argues that the trial court violated her due-process rights by failing to orally advise her that her plea admissions could be used against her in a subsequent termination proceeding. We disagree.

An appellate court reviews an unpreserved issue involving the trial court's "fail[ure] to advise the respondent that her plea could later be used in a proceeding to terminate parental rights" for plain error affecting substantial rights. *In re Hudson*, 483 Mich 928; 763 NW2d 618 (2009); see also *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Indeed, the Michigan Supreme Court stated in *Hudson* that the trial court "committed plain error . . . in failing to advise the respondent that her plea could later be used in a proceeding to terminate parental rights in violation of [MCR 3.971(B)(4)]." *Hudson*, 483 Mich at 928.

MCR 3.971(B) provides, in relevant part:

> **Advice of Rights and Possible Disposition.** Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record *or in a writing that is made a part of the file*:
>
> * * *
>
> (4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent. [Emphasis added.]

Respondent's plea agreements advised her that the trial court could use her plea admissions against her during the subsequent termination hearing. Respondent and her lawyer signed two plea agreements. Both plea agreements included the following language: "Respondent is aware of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent." Respondent's signed advice-of-rights forms are contained in the lower court file. Therefore, the trial court complied with MCR 3.971(B)(4).

Respondent's argument that she may have been confused about the consequences of her pleas is speculative. Throughout the proceedings, an attorney was representing respondent. The advice-of-rights forms were short and easy to understand. Respondent signed the advice-of-rights forms on two different occasions. Respondent acknowledged that she had discussed the pleas and their consequences with her lawyer. Further, respondent does not argue that she was actually confused, but instead states that she could have reasonably misunderstood the consequences of her pleas. There is no evidence that respondent was actually confused by the trial court's failure to orally advise her that her plea admissions could be used against her in a subsequent termination hearing.

Respondent next argues that the trial court erred by finding clear and convincing evidence that statutory grounds for termination existed. We disagree.

This Court reviews the trial court's "decision that a ground for termination has been proven" for clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (internal quotation marks and citation omitted); see also MCR 3.977(K). Clear error occurred if this Court is left with a definite and firm conviction that a mistake has been made. *In re Olive/Metts*, 297 Mich App at 41. "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

"The existence of a statutory ground for termination of parental rights must be proven by clear and convincing evidence." *In re LE*, 278 Mich App 1, 26; 747 NW2d 883 (2008).

> [Clear and convincing evidence] must produce[] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. [*Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009) (internal quotation marks and citations omitted).]

Once the petitioner presents clear and convincing evidence of a statutory ground for termination, "the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000).

MCL 712A.19b(3) provides, in relevant part:

> 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:

* * *

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
>
> * * *
>
> (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 petitioner bears the burden of establishing the existence of at least one . . . ground[] by clear and convincing evidence." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

As a preliminary matter, respondent's arguments that the trial court should have believed respondent's testimony about her substance-abuse meetings, and that it improperly used respondent's poverty when determining the statutory grounds for termination, are unpersuasive. First, Heather Williams, a foster-care worker, testified that she did not believe that respondent regularly attended her substance-abuse meetings. The trial court found respondent's testimony not credible and implicitly found Williams's testimony credible. We defer to the trial court's credibility findings. *Fried*, 266 Mich App at 541.

Second, respondent cites an unpublished case for the proposition that the trial court should not take into account the amount of money a respondent earns when determining whether statutory grounds for termination exist. "An unpublished opinion is not precedentially binding under the rule of stare decisis." MCR 7.215(C)(1). Further, even if respondent's earnings were not legally relevant to the statutory-grounds determination, the trial court gave many alternative and relevant reasons to establish the statutory grounds.

There was clear and convincing evidence that a statutory basis for terminating respondent's parental rights to A.G.[1] existed under MCL 712A.19b(3)(c)(*i*). First, more than 182 days elapsed between the trial court's initial dispositional order and the trial court's findings on the statutory factors. In addition, there was clear and convincing evidence that the conditions that led to the adjudication continued to exist at the termination hearing. Among other things, petitioner's initial petition listed as concerns the death of two of respondent's sons during "co-sleeping," respondent's substance-abuse problem, respondent's neglect of A.G.'s medical care, respondent's mental-health issues, her failure to participate in services since petitioner placed A.G. in foster care, and respondent's lack of proper housing and legal employment. In respondent's plea concerning A.G., she admitted to neglecting to provide A.G. with proper medical care and admitted that she was required to submit a drug screen on the same day as her second son's death and that the screen resulted in a positive test for marijuana. She admitted that a "safety plan" was initiated whereby A.G. would be placed with a relative. She admitted to lacking "suitable housing or means of support for herself or the minor child."

The pertinent conditions continued to exist at the time of the termination hearing. Respondent was never criminally prosecuted in the death of her sons and she testified that she obtained suitable housing and had a legal source of income. However, she failed to provide verification of her job, that she was paying her utility bills, or that she had a long-term lease for her apartment. At one point, the electric company turned her electricity off.

Respondent also continued to struggle with substance abuse. Although respondent had not tested positive for substances in the few months leading up to the termination hearing, she did not attend all of the screenings. In May and June of 2012, she tested positive three times for alcohol. She denied having a substance-abuse problem or having had one within two years of the October 1, 2012, hearing. However, in 2011 she tested positive six times—for cocaine, opiates, and alcohol.

Respondent did not show that she was devoted to the children's medical care. She missed some of A.G.'s medical appointments. She did not actively engage in the medical appointments that she attended.[2]

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[1] The trial court explicitly stated that MCL 712A.19b(3)(c)(*i*) was not a statutory basis for termination of respondent's parental rights to B.M.

[2] In addition, respondent refused to address her mental-health issues, which obviously tie in with her ability to properly care for A.G. She did not complete her grief therapy. She did not meet with her therapist once a week, as required. Despite having becoming severely depressed and suicidal in the past, she refused to acknowledge that her bipolar disorder required medication. She refused to take the medication that her psychiatrist prescribed. In the months leading up to the termination proceeding, she was not compliant with her therapy.

There was no reasonable likelihood that respondent would rectify the conditions in a reasonable amount of time given A.G.'s age. At the time of the termination hearing, A.G. had already been in foster care for almost two years, and was three-and-a-half years old. For much of the two years, respondent was noncompliant with at least some parts of her case service plan. Respondent's psychological assessment stated that it would be a prolonged period before reunification with her children would be possible, and respondent failed to follow through with necessary therapy. The trial court properly determined that there was no reasonable likelihood that respondent would rectify the pertinent conditions in a reasonable amount of time.

In addition, there was clear and convincing evidence that a statutory basis for terminating respondent's parental rights to both children existed under MCL 712A.19b(3)(g). Contrary to respondent's argument, she did not learn to cope with her mental-health and substance-abuse problems. Despite an episode where she became suicidal, and despite her psychiatrist's recommendation, she refused to admit that she must treat her bipolar disorder with medication. She refused to acknowledge that she had a substance-abuse problem, despite evidence to the contrary. Martha Smith, the court-appointed special advocate, testified that respondent did not display sufficient parenting skills at her visitations. Alana Tomaro, who supervised respondent's visitations, gave a contradictory account of respondent's parenting skills. The trial court found Smith's testimony credible, and there is no evidence, contrary to respondent's implication, that Smith was biased. Again, "this Court accords deference to the special opportunity of the trial court to judge the credibility of [a] witness[]. *Fried*, 266 Mich App at 541.

Respondent was unlikely to be able to provide proper care and custody within a reasonable time considering the children's ages. As discussed above, respondent was unlikely to be able to overcome her own problems. B.M. had been in foster care her entire life. A.G. had been in foster care for approximately half of her life. Respondent made little progress in the time she was separated from her children. Respondent's psychological assessment stated that it would be a prolonged period before reunification with her children would be possible, and respondent did not sufficiently participate in necessary therapy. The trial court did not clearly err in determining that petitioner presented clear and convincing evidence for terminating respondent's parental rights under MCL 712A.19b(3)(g).[3]

Respondent argues that the trial court erred by finding that termination was in the best interests of the children. We disagree. This Court reviews the trial court's best-interests determination for clear error. *In re Olive/Metts*, 297 Mich App at 40. "'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

[3] We need not address whether there was clear and convincing evidence that a statutory basis for termination existed for either of the children under MCL 712A.19b(3)(j). Indeed, petitioner need only prove one statutory ground in order to terminate a respondent's parental rights. *JK*, 468 Mich at 210.

additional efforts for reunification of the child with the parent not be made.'" *Id*. at 42, quoting MCL 712A.19b(5).

When determining the best interests of a child in a termination case, a trial court may consider the respondent's history, psychological evaluation, parenting techniques during parenting time, bond with the child, participation in the treatment program, and continued involvement in situations involving domestic violence, as well as the foster-care environment and possibility for adoption. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). A court may also consider "the child's need for permanency, stability, and finality . . . ." *In re Olive/Metts*, 297 Mich App at 42.

The trial court found that it was in the best interests of the minor children to terminate respondent's parental rights because Smith, the children's lawyer, and Williams all advocated termination, respondent did not have a strong bond with the minor children, respondent failed to demonstrate substantial parenting ability, and the children needed permanency. The trial court added that if respondent was actually invested in reunification, she would have fully complied with her case service plan.

Respondent's argument that the trial court based its best-interests determination on its mistaken finding that respondent lacked a strong bond with the children is without merit. First, there was sufficient testimony for the trial court to determine that respondent and her children were not strongly bonded. Petitioner presented evidence that respondent did not physically and verbally interact with B.M. in a sufficient manner during visitations. Respondent did not soothe B.M. when she cried. During at least two visitations, respondent played videos for A.G. instead of engaging in more interactive activities. Again, we accord deference to the trial court in matters of witness credibility. *Fried*, 266 Mich App at 541. Respondent testified that her bond with the children was strong. There were some manifestations that A.G. had a bond with respondent. However, the trial court credited petitioner's evidence and determined that respondent did not have a close bond with the children. Second, the trial court did not base its best-interests determination only on the lack of a strong bond between respondent and the children. Rather, it listed several factors in its best-interests decision, as noted above. The termination-hearing testimony supported the trial court's reasoning.

Respondent also argues that the trial court expected respondent to be a perfect parent. However, the trial court specifically noted that it did not require respondent to be perfect, but only that respondent have "a track record of substantial progress . . . ." Respondent's argument is without merit.

Affirmed.

/s/ William C. Whitbeck
/s/ Patrick M. Meter
/s/ Pat M. Donofrio