

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 22, 2013

In re EWING, Minors.

Nos. 313313 & 313315
Ingham Circuit Court
Family Division
LC No. 12-001054-NA

AFTER REMAND

Before: BOONSTRA, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

This consolidated appeal is back before this Court after remand. The parents of ME and EE appealed as of right from the trial court's order terminating their parental rights. We vacated the trial court's order with respect to the trial court's best interest determination regarding respondent mother, and remanded for further proceedings. *In re Ewing*, unpublished opinion per curiam of the Court of Appeals, decided May 9, 2013 (Docket Nos. 313313, 313315). Following a best interest hearing on remand, the trial court again terminated respondent mother's rights to her children. We affirm.

The facts of this case as of the initial termination are set forth in our previous opinion. *Ewing*, unpub op 1-4. On remand, we directed the trial court to consider whether it was in ME and EE's best interest for respondent-mother's parental rights to be terminated in the absence of risk from respondent-father, and further directed the court to consider the recommendation of the lawyer guardian at litem for the minor children, who at the time recommended allowing respondent-mother to work toward reunification with her children and allowing her to demonstrate that she had disengaged from respondent-father. *Id.* at 12.

At the remand hearing, the trial court heard testimony that respondent-mother had contact with respondent-father in jail following his sentencing for CSC I. Respondent-mother also visited respondent-father in prison, including two visits in the month before the remand hearing. The trial court also heard testimony from respondent-mother that she currently resided 50 percent of the time with respondent-father's parents, and had not secured her own housing. Respondent-mother testified that she had filed for divorce from respondent-father; however the trial court noted that the divorce papers had been filed the day before the remand hearing; respondent-mother admitted that respondent-father was not even served with the divorce papers. Respondent-mother also testified that she had obtained part-time, minimum-wage employment

and was planning on continuing schooling to become a nursing assistant. Respondent-mother stated that she did not “intend on doing anything with [respondent-father] in the future.”

The lawyer guardian ad litem stated that he now recommended that respondent-mother’s rights be terminated because respondent-mother could not be relied upon to safeguard the children from harm and had not sufficiently disengaged herself from respondent-father.

The trial court found that it was in the best interest of ME and EE to terminate respondent-mother’s rights to them. Regarding EE, the trial court noted that he had no bond with his mother, and that he was placed in a foster home with the goal of adoption and had significant emotional attachment to his foster parents. Regarding ME, the trial court noted that although he does have a bond with his mother, he was doing well in foster care and had tantrums both “coming to parenting time and leaving parenting time, which did cause the foster care worker concern about his bond.” The trial court concluded with regard to both children that respondent-mother had been abusive toward her nieces and had not appropriately processed the fact of respondent-father’s sexual abuse of her niece. The trial court further found that respondent-mother had visited respondent-father at least three times, in both jail and prison, following the termination hearing. The trial court found respondent-mother’s testimony to be not credible, and noted that she continued to live with respondent-father’s family. The trial court also found that respondent-mother was “devoid of remorse or empathy towards the children she abused” and that she could not “be trusted to be a fit parent.” The trial court also noted her unfavorable psychological evaluation following the children’s removal from her home. Finally, the trial court noted that respondent-mother had not divorced respondent-father and had only filed for divorce the day prior to the remand hearing, and that it appeared that respondent-mother was continuing a relationship with respondent-father. The trial court concluded that respondent-mother lacked the appropriate judgment regarding the persons with whom she associates, and presented her children with a serious risk of harm.

II. STANDARD OF REVIEW

“[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence.” *In re Moss*, ___ Mich App ___, ___ NW2d ___, slip op at 6. We review the trial court’s decision regarding the best interest of the child for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court’s decision is clearly erroneous “[i]f although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations and quotation marks omitted; alteration in the original).

III. ANALYSIS

In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home. 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 at unification not be made. [*In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal quotation marks and citations omitted).]

Here, the trial court determined that EE had no bond with respondent-mother and that he had bonded with his foster parents. As for ME, the trial court determined that he did have a bond with respondent-mother, although there was concern over the strength of the bond; the trial court also determined that ME had bonded with his foster parents. Regarding both children, the trial court found that respondent-mother lacked the parenting ability to keep her children safe from harm; specifically by failing to acknowledge her abuse of her nieces and failing to disassociate herself from respondent-father.

These findings were not clearly erroneous. Although respondent-mother did testify as to her intent to divorce respondent-father and to have no further contact with him, the trial court found her testimony not credible. We give deference to the trial court's superior opportunity to judge witness credibility. See *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). Additionally, this conclusion was supported by evidence that respondent-mother had engaged in several visits with respondent-father following the termination hearing, had filed divorce papers only one day before the remand proceedings, and had not served respondent-father with those papers. Further, respondent admitted to still residing with respondent-father's family. These same concerns appear to have prompted the lawyer guardian ad litem to recommend termination, rather than work toward reunification. Respondent-mother demonstrated an inability to sever herself from respondent-father and seeming inability to empathize with the abuse her nieces suffered. The trial court's finding that termination was in ME and EE's best interest was supported by at least a preponderance of the evidence. *In re Moss*, slip op at 6.

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Joel P. Hoekstra