STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 27, 2013

In the Matter of BARNETT, Minors.

No. 314083
Macomb Circuit Court
Family Division
LC Nos. 2010-000429-NA
2012-000097-NA

In the Matter of BARNETT, Minors.

No. 314085
Macomb Circuit Court
Family Division
LC Nos. 2010-000429-NA
2012-000097-NA

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right the trial court's order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm in both appeals.

Both respondents challenge the trial court's findings that statutory grounds for termination were established by clear and convincing evidence and that termination of their parental rights was in the children's best interests. MCL 712A.19b(3), (5). We review the trial court's decisions regarding the termination of parental rights for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

I. DOCKET NO. 314083 (RESPONDENT-MOTHER)

Termination of respondent-mother's parental rights was proper under MCL 712A.19b(3)(c)(*i*) and (g) because she was not prepared to provide proper care for the children on a full-time basis. When the oldest child came into care, respondent-mother was homeless, had been residing with different family members and friends for seven months, and was unable to provide financially or physically for her daughter. She acknowledged that she had no prenatal

care and used marijuana during her pregnancy. At the time of the termination hearing, respondent-mother was living in the home of another family and paying only $100 monthly rent. Respondent-mother had not demonstrated the ability to financially support her children without this low-cost rent option and had never had independent housing that would accommodate her children. She did not have transportation for herself and her children. The caseworker doubted respondent-mother's ability to sustain long term the parenting skills she acquired in parenting classes. Further, respondent-mother never tried to increase visitation opportunities with her children. After two years, she had not progressed to overnight or unsupervised visits with her children.

Moreover, respondent-mother did not demonstrate the ability to provide stability for the children. Although respondent-mother participated in a treatment plan, the benefit she achieved was insufficient to provide the children with a suitable home environment. A parent must improve parenting skills to the point where the children would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). It is necessary but not sufficient to comply with the terms of the parent-agency agreement. *Id.*

Termination of parental rights was also proper under MCL 712A.19b(3)(j). The trial court did not clearly err in finding that because respondent-mother did not seem interested in caring for her children on a full-time basis, the children would likely be harmed in her care. Respondent-mother could not provide a safe environment for her children if she was not committed to parenting them and making the sacrifices that parenting would require.

We also find no error in the trial court's determination that termination of respondent-mother's parental rights was in the children's best interests. MCL 712A.19b(5). Respondent-mother had not demonstrated the commitment necessary to parent her children. Despite her efforts to complete a treatment plan, it was not clear that she could provide her daughters with an appropriate, stable home environment. Respondent-mother argues that she should have the opportunity to strengthen the existing bond she had with her children. A strong bond will not keep her children safe from harm or neglect. Moreover, respondent-mother's suggestion that the trial court further delay a permanent resolution so the paternal grandmother could obtain a guardianship is not a viable suggestion because the paternal grandmother was not a suitable placement option. Permanent custody was in the best interests of the children given the lengthy period of court wardship, the caseworker's concerns, and the children's needs for permanency. Thus, the trial court did not err in its best-interest determination.

II. DOCKET NO. 314085 (RESPONDENT-FATHER)

Termination of respondent-father's parental rights was proper under MCL 712A.19b(3)(c)(*i*) and (g) because he had not addressed the issues leading to the children's adjudication and was unable to provide proper care and custody of them. At the time of the adjudication, respondent-father was living with his mother, who had her own relationship with Children's Protective Services. At the termination hearing, respondent-father acknowledged that he intentionally delayed starting on his treatment plan. His lack of commitment to parent his children was evident because he waited until April 2011 to establish paternity of the oldest child. Moreover, respondent-father failed to demonstrate that he had addressed his abuse of substances. He did not complete a substance abuse assessment until September 21, 2012, even though he

admitted occasional marijuana use. He never attended substance abuse counseling or submitted to a drug test. He never completed a psychological evaluation or addressed mental health concerns, despite his history of bipolar disorder and anxiety disorder, and waited until October 5, 2012, to begin individual counseling. He never completed parenting classes. He only partially complied with visitation and never demonstrated proof of employment. Respondent-father was hard to reach and never initiated contact with the caseworkers.

Respondent-father argues that he was at a disadvantage because of his youth and status as a putative father. He further argues that he was not ordered to complete a parent-agency agreement until February 2011 even though disposition occurred in August 2010. Respondent-father's arguments are unpersuasive. In this case, any delay in services was due to respondent-father's failure to establish paternity of his oldest child before April 2011, even though he was advised to do it on September 2, 2010, when he turned 18. A putative father must perfect his legal paternity to qualify for services. *In re LE*, 278 Mich App 1, 19; 747 NW2d 883 (2008). Once respondent-father established paternity, he was assigned counsel and provided a treatment plan. Further, respondent-father admitted that he was unwilling to participate in a parent-agency agreement before April 2012. Thus, his own actions caused delays in the case.

Respondent-father also argues that the basis for adjudication was his lack of fitness as a parent. This contention is without merit. At the time of the adjudication respondent-father was considered unfit because had not established paternity and was allowing his children to remain in the care of their homeless, unemployed, substance-abusing mother. Moreover, although he claims there was no testimony that he had a substance abuse problem, he admitted marijuana use and was arrested for possession of marijuana in 2010.

Termination of parental rights was also proper under MCL 712A.19b(3)(j). Because respondent-father did not address his substance abuse or mental health issues, the children would likely be harmed in his care. Moreover, he was arrested and put in jail on a probation violation for marijuana possession and disorderly conduct shortly after the older child was born. Respondent-father's history of criminality would expose the children to risk of harm.

To terminate parental rights, the trial court must not only find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence, but also that termination is in the best interests of the children. MCL 712A.19b(5).

Based on the record as a whole, the trial court correctly found that termination of respondent-father's parental rights was in the children's best interests. Respondent-father had not demonstrated a commitment to parenting his children on a full-time basis. He was unable even to commit to visiting the children on a regular basis. Respondent-father had not demonstrated that he was a fit or suitable caregiver or that he could provide the children with a stable home life. It was not in the best interests of the children to be cared for by someone with unaddressed mental health and substance abuse issues. It also was not in their best interests to be cared for by someone who had not demonstrated the ability to financially support them or provide them with a safe and suitable home environment.

Respondent-father argues that guardianship would have been a better solution than termination of his parental rights. The trial court did consider guardianship; however, both of the relatives proposed by respondent-father as potential guardians were unsuitable. Although a trial court is permitted to place a child with a guardian instead of terminating parental rights, it is not required to do so if it is not in the child's best interests. MCL 712A.19a(7)(c); see also *In re Mason*, 486 Mich 142, 168-169; 782 NW2d 747 (2010). The trial court was not required to place the children with a relative merely because respondent-father proposed the arrangement. The facts here did not mandate a conclusion that a guardianship was in children's best interests. See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991). Thus, the trial court did not err in its best-interest determination or in terminating respondent-father's parental rights.

III. CONCLUSION

In summary, the trial court did not clearly err in terminating both respondents' parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j) and in finding that termination of their parental rights was in the best interests of the children. Further, contrary to respondent-father's argument, the trial court did not fail to investigate the possibility of a guardianship with his relatives; it found that guardianship was not in the children's best interests.

We affirm.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Michael J. Riordan