STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of J.A. GOSSAGE, Minor.

UNPUBLISHED
June 12, 2014

No. 319111
Macomb Circuit Court
Family Division
LC No. 2012-000200-NA

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Respondent[1] appeals by right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist). We affirm.

I. FACTS

On April 11, 2012, petitioner, the Department of Human Services, ("DHS"), filed a petition to initiate child protective proceedings with respect to the minor child. On June 14, 2012, the referee authorized an amended petition with respect to the minor child. The amended petition alleged that, among other things, the minor child "tested positive at birth for Hydromorphone[,] which is a form of Opiate," and that the minor child's "exposure to drugs seriously impaired [his] health requiring him to receive medical treatment. [The minor child] is currently receiving Morphine treatment for withdrawals." The amended petition further alleged that respondent did not have stable housing, was not receiving treatment for issues of mental health and emotional impairment, that her parental rights to another minor child had been previously terminated due to noncompliance with court-ordered services, and that she would not be able to adequately care for the minor child, a newborn, at the time the amended petition was filed.

[1] Both the natural mother and legal father were respondents in the underlying matter; the parental rights of both were terminated by the order from which this appeal is taken. The natural mother is the only appellant; the legal father does not appeal. The use of the term "respondent" refers to the natural mother.

Respondent pleaded no contest to the allegations in the amended petition. In exchange for respondent's plea, the prosecutor dismissed the request for termination and instead asked that the minor child be made a temporary ward of the court. At a hearing on June 14, 2012, the court also conducted an initial disposition. Cherie Plevek, the DHS worker assigned to the case, prepared a parent-agency treatment plan and service agreement ("PAA") for respondent. Respondent's treatment plan set seven goals for her: (1) maintain emotional stability; (2) demonstrate appropriate parenting skills; (3) refrain from the use and abuse of drugs and alcohol; (4) find and maintain a legal source of income; (5) acquire and maintain suitable and safe housing; (6) maintain a lawful lifestyle; and (7) comply with the PAA and requests of DHS. The minor child was placed with relatives and a supervised visitation schedule was established for respondent. On June 15, 2012, the trial court entered an order of adjudication based on respondent's no-contest plea and took jurisdiction over the minor child.

Review hearings were held in August, October and December of 2012. Plevek reported that the minor child was thriving in his relative placement. Respondent missed scheduled visits with the minor child because of her lack of reliable transportation, confusion over scheduled times, and communication problems with Plevek. Respondent's transportation problems also resulted in her missing two random drug screens. On January 8, 2013, a permanency planning hearing was held. Plevek said that respondent had not started court-ordered therapy. Respondent tested positive for Vicodin, which was, according to respondent, prescribed by a doctor, and methamphetamine. Respondent missed a third random drug screen. On April 1, 2013, the permanency planning hearing was continued. Respondent's transportation reportedly "fell through," and she was unable to attend the hearing. Kendall Byrd, a DHS representative, reported that respondent had made minimal progress on her treatment plan. Respondent had started in-home parenting coaching, but failed to follow through on scheduled meetings and was dropped from the program; she failed to participate in individual counseling, and did not return calls from DHS seeking to schedule visitation. She also failed to provide evidence of stable housing to DHS. DHS filed a supplemental petition seeking termination under MCL 712A.19b(3)(c)(*i*), (g), and (j), alleging that respondent had not completed any of the goals previously established in her PAA.

The termination hearing was held on September 26, 2012.[2] The testimony centered on respondent's lack of compliance with the treatment plan established at the time of her plea to the amended petition. Erica White, a visitation coach at the Judson Center, said that respondent's visitation had been inconsistent and that respondent had completed only nine out of a possible 22 visits with the minor child. Consequently, the Judson Center elected to cancel its services because of respondent's noncompliance. Byrd reviewed each of the goals of respondent's PAA and described respondent's lack of compliance with them. Respondent did not achieve the first

[2] The termination hearing was originally scheduled for June 6, 2013, but respondent's attorney was unable to continue his representation of respondent due to his suspension from the practice of law in the state of Michigan. The court necessarily adjourned the hearing to allow for the appointment of substitute counsel for respondent. The matter was reset for August 7, 2013, but adjourned a second time to September 26, 2013, to allow for additional discovery.

goal because she did not follow up on recommendations made following a psychological evaluation, for individual counseling, in spite of numerous attempts by representatives of the service provider and DHS to encourage her to do so. Respondent failed to meet the second goal of the PAA because she missed, without explanation, numerous scheduled visits. Even when the Judson Center closed its case, respondent did not respond to Byrd's phone messages informing her that DHS would then be supervising visitation and establishing a schedule for future visits. Respondent finally responded to Byrd's certified letter but missed 10 scheduled visits in June, July, and August of 2012.

The third goal of the PAA was that respondent refrain from the use and abuse of drugs. Respondent never provided proof that she had been legally prescribed any medication. Respondent never reported for random drug tests during Byrd's supervision of the case, and respondent refused a forensic fluid drug test attempted by Byrd after a court appearance. With respect to the fourth goal of the PAA, respondent never provided verification of her purported SSI benefits. And with respect to the fifth goal of the PAA, respondent would not permit Byrd inside her residence or allow Byrd to inspect it; nor did she provide a copy of her lease. Because respondent had an open bench warrant for failure to appear in the 37th District Court, respondent did not meet the sixth goal of maintaining a lawful lifestyle. Finally, the seventh goal under the PAA required that respondent comply with the PAA and requests of DHS workers. Due to numerous instances of respondent's noncompliance with DHS's requests and directives, respondent did not meet this goal either. In Byrd's opinion, respondent "[had] not made any progress on the parent-agency agreement whatsoever." Byrd believed that termination of respondent's parental rights was in the minor child's best interests because respondent had not rectified any of the initial issues that brought the child into care, especially respondent's history of substance abuse and failure to submit to drug screening. In addition, respondent's failure to participate in counseling precluded her emotional stability from being addressed, which could result in great harm to the minor child. There was no proof that respondent could become financially stable, and respondent's inconsistent visitation had prevented the development of a parental bond with the child. In fact, the minor child hardly knew his parents. Byrd believed that respondent had been given a sufficient amount of time to comply with the terms of the PAA, and that no additional time would help induce her compliance with its terms.

On October 30, 2013, the court terminated respondent's parental rights. In considering the evidence presented at the termination hearing and all previous hearings as a single, continuous hearing, the court found that "the prosecutor met the burden of proof by clear and convincing evidence that respondent failed to resolve the issues that brought the child into care," and further determined that "it is in the child's best interests to terminate parental rights as the parents have not demonstrated that they are able to provide a safe and stable environment for the child."

II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that she took several steps to start to plan for the care and custody of her child, but due to her cognitive impairment, she needed extra help that was not provided. Respondent also argues that DHS did not assist her in participating in individual therapy after she was referred for it; nor did DHS provide assistance with her drug screens or inquire why she was not participating. We disagree.

"We review for clear error a trial court's findings of whether a statutory ground for termination has been proven by clear and convincing evidence." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). A finding of fact is clearly erroneous 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. *Id*. "To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights . . . ." *Id*.

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(*i*), which provides that the trial court may terminate a respondent's parental rights if the court finds, by clear and convincing evidence, that:

> (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.

This statutory ground is satisfied when the conditions that brought the children into care continue to exist despite "time to make changes and the opportunity to take advantage of a variety of services." *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

More than 182 days had elapsed between the issuance of the initial dispositional order and the order of termination. The evidence showed that the main reason the newborn minor child came into care was because he tested positive for opiates at birth. Respondent pleaded no contest to the amended allegations in the petition, including specifically the allegation that the minor child "tested positive at birth for Hydromorphone which is a form of opiate." Respondent's drug use continued and the court justifiably found, based on respondent's failure to submit to random drug screens on a regular basis and her positive test for opiates and methamphetamine, as well as her failure to provide proof of what medications she was lawfully prescribed, that respondent had failed to meet the requirement under the PAA that she "refrain from the use and abuse of illegal drugs." The court noted further that, in spite of the many services offered to respondent by DHS, respondent was not compliant with several of the requirements of her PAA, noting respondent's "sporadic participation" in parenting classes, having completed only nine of 22 sessions, which resulted in the Judson Center's closure of her case for noncompliance. Although respondent completed a required psychological examination, she failed to follow through with necessary individual counseling with two different providers. The court thus properly found that respondent failed to complete the individual therapy component of her PAA. The court also took note of respondent's failure to substantially comply with additional terms of the PAA, in that she never provided documentary proof of a legal source of income, and failed to follow through with domestic violence treatment.

Respondent contends in essence that, because of her cognitive limitations, DHS "should have done more" for her and, for example, should have "inquired as to why respondent was not [drug] testing." DHS only needs to make reasonable efforts to reunite a family. *In re Moss*, 301 Mich App at 90-91. The record shows that DHS made reasonable efforts to reunite respondent with the minor child by offering numerous appropriate services to address respondent's apparent drug addiction and parenting deficiencies. The record at the permanency planning hearing on April 1, 2013, showed that respondent failed to follow through on scheduled meetings and was dropped from the in-home parenting coaching program, failed to participate in individual counseling, did not return calls from DHS seeking to schedule visitation, and failed to provide evidence of stable housing. DHS mailed a bus pass to respondent, but it was returned to DHS after three attempts to deliver it; respondent never came to DHS to claim it after being told she could do so. We conclude that DHS made reasonable efforts to reunite respondent with the child by providing various services. See *id.*

The court properly found that respondent was given "ample time, more than average amount of time, actually, to complete the services," *In re Powers Minors*, 244 Mich App at 119, and that respondent has not "demonstrated here that [she has] taken care of the issues that brought the minor child into care to begin with." Only one statutory ground for termination need be established. *In re Ellis*, 294 Mich App at 32. The trial court did not clearly err by finding that DHS proved the statutory ground for termination set forth in MCL 712A.19b(3)(c)(*i*) by clear and convincing evidence.

III. BEST INTERESTS

Respondent also argues that she engaged in, benefitted from, and completed services, and that the evidence did not establish by clear and convincing evidence that termination of her parental rights was in the best interests of the child. Again, we disagree.

We review for clear error a trial court's determination that termination of parental rights is in the child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). If a statutory ground for termination is found by clear and convincing evidence, the petitioner must prove by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App at 90. If the court finds that this burden has been met, "the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). When deciding if termination is in the child's best interests, the trial 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." *In re Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted). The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. *In re White*, 303 Mich App 701, 714; ___ NW2d ___ (2014).

In finding that termination of respondent's parental rights was in the minor child's best interests, the court found that the minor child had not lived with respondent at all during his life, and therefore "sees his foster parents as his parents for purposes of stability," that he was "doing wonderful [sic] in his relative placement and he is getting everything that he could possibly need

or want," and that "[h]e seems to be thriving and . . . growing up just fine," suffering no lingering effects from the exposure to opiates that brought him into care when he was born. In reaching these conclusions, the court considered the appropriate *Olive/Metts* factors. The record also shows that the court properly considered respondent's unsatisfactory compliance with her case service plan, her "sporadic" visitation history with the minor child, and his well-being while in care. See *In re White*, 303 Mich App at 714. The trial court did not clearly err by finding that termination was in the minor child's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Mark T. Boonstra