STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of Webster Minors.

UNPUBLISHED
June 24, 2014

No. 318817
Genesee Circuit Court
Family Division
LC No. 11-0143396-NA

Before: O`CONNELL, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's October 3, 2013 order terminating her parental rights to six of her children by finding after trial that petitioner had proved by clear and convincing evidence four statutory grounds under MCL 712A.19b(3) and that termination of parental rights was in the best interests of the children, MCL 712A.19b(5). Respondent argues on appeal that the trial court clearly erred in finding a statutory basis for termination because reasonable efforts were not made to reunite the family and that the trial court also clearly erred by finding termination was in the children's best interests. We affirm.

On October 12, 2012, the Department of Human Services (DHS) filed a petition seeking to terminate respondent's parental rights regarding the following children (age at the time of the entry of the termination order in parenthesis): SW (10); JW (9); NW (6); TW (4); DW (3); and RW (2). The petition cataloged an undisputed history of respondent with the court, showing a pattern of DHS and other agency intervention, provision of services, and dismissal, followed by new DHS and court involvement.

After trial, the court ruled that the following statutory grounds to terminate respondent's parental rights had been proved by clear and convincing evidence: (1) § 19b(3)(b)(ii) (a parent having the opportunity to prevent the physical injury or sexual abuse of child or a sibling failed to do so and there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home); (2) § 19b(3)(k)(iii) (the parent abused the child or a sibling of the child involving battering, torture, or other severe physical abuse); (3) § 19b(3)(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 do so within a reasonable time considering the child's age); and (4) § 19b(3)(j) (a reasonable likelihood exists, based on the conduct or capacity of the child's parent, that the child will be harmed if returned to the home of the parent).

The trial court also determined that it was clearly in the best interests of SW and JW that respondent's parental rights be terminated as them. With respect to the younger children, the court ruled that termination of respondent's parental rights was in their best interests. The court reasoned that in light of respondent's long history of failing to protect her children as they grew older, there was a reasonable likelihood that the younger children would suffer the same fate. Accordingly, the trial court entered its order terminating respondent's parental rights.

We review the trial court's decision to terminate parental rights for clear error. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). A decision is clearly erroneous only when this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

We conclude that the trial court did not clearly err by finding at least one statutory ground for termination of parental rights had been proved by clear and convincing evidence. Although respondent's argument regarding MCL 712A.19b(3)(k)(iii) has merit because respondent did not cause SW's facial scar on which the trial court relied to find this ground, only one statutory ground for termination need be proven by clear and convincing evidence. MCL 712A.19b(3); *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012). Thus, an error in finding one statutory basis for termination is harmless when the trial court also properly finds another statutory ground for termination. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent's other arguments are specious or are based on the credibility of witnesses and the weight assigned to the evidence. But on appeal, regard must be accorded the trial court's special opportunity to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Also, "the trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony." *Id*. Here, in light of the trial court's credibility determinations and the weight the trial court assigned to the evidence, and in particular, respondent's repeated failure to protect her children after being provided services, the trial court did not clearly err by finding clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(b)(ii), (g), and (j).

Respondent's argument that DHS failed to make reasonable efforts to reunite respondent with her children, see *In re Rood*, 483 Mich 73, 89, 99-100; 763 NW2d 587 (2009), and *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), is meritless. The record shows that respondent through the years has repeatedly been provided services by DHS and other agencies with regard to her predilection for favoring relationships with bad-acting men over protecting her children. In the instant case, the evidence is undisputed that respondent was not only provided services but she completed services. The issue at trial was whether respondent had benefited from the services so that she would protect her children if they were returned to her care. The trial court has a responsibility to determine whether respondent sufficiently benefited from the services so that the children would no longer be at risk of harm in her care. See *Frey*, 297 Mich App at 248; *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). The trial court determined that the child protective system had not failed to provide respondent services because respondent understood what she needed to do to protect the children but she simply was not

willing to do it. This finding was supported by the testimony and report of limited license psychologist Victoria Cox and the children's current case workers. The trial court also did not ignore the testimony that was favorable to respondent but gave it less weight because it came from well-intentioned people working to support respondent. See *Miller*, 433 Mich at 337-338. The trial court also found that respondent's testimony and assurances were not credible. MCR 2.613(C). The trial court's finding that the children would remain at risk of harm if returned to respondent was not clearly erroneous because it does not create a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich at 152.

Respondent also argues that the trial court clearly erred by finding grounds to terminate her parental rights because she lacked notice that Antuan Jones would injure her children. This argument is specious. The 2011 petition to terminate respondent's parental rights was prompted, in part, by Jones' assault on JW, as confirmed at trial by Natasha Love, who filed that petition. The petition in the current proceedings alleged in part that "[Respondent] failed to protect [JW and SW] from Antuan Jones. [Respondent] knowingly allowed Antuan Jones to physically abuse [JW and SW] without taking the appropriate measures to stop the abuse or to prevent it from recurring when she was able to do so." The trial court obtained jurisdiction in this case when, as stated in respondent's brief on appeal, respondent "admitted that she had allowed a man into her home who had previously abused her children and he abused them again, so she admitted that she failed to protect the children but she had obtained a PPO against him."

Finally, respondent argues that the injuries the children suffered were not severe or serious enough to warrant termination of parental rights under §§ 19b(3)(b)(ii). Nothing in the plain language of this subsection limits the type of "physical injury or physical or sexual abuse" to which it applies to serious, severe, or permanent injury. Cf MCL 712A.19b(3)(k)(iii) (pertaining to "[b]attering, torture, or other severe physical abuse"). Respondent cites *In re Sours*, 459 Mich 624; 593 NW2d 520 (1999) in support of her argument. But *Sours* held only that the petitioner had not presented clear and convincing evidence that there was a "reasonable likelihood that the children will suffer injury or abuse in the foreseeable future if placed in the parent's home" as required by MCL 712A.19b(3)(b)(ii). *Sours*, 459 Mich at 635. In addition, respondent cites numerous unpublished opinions of this Court, but aside from not having precedential value, MCR 7.215(C)(1), none of the cited cases supports her argument. "[W]here a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

The trial court's decision to terminate respondent's parental rights under §§ 19b(3)(b)(ii), (g), and (j) was not clearly erroneous. MCR 3.977(K); *In re JK*, 468 Mich at 209. The court's ruling that statutory grounds exist to terminate respondent's parental rights does not evoke a definite and firm conviction that a mistake has been made. See *Miller*, 433 Mich at 337-338

Next, respondent argues that the trial court erred by finding that termination of her parental rights was in the best interests of the children. MCL 712A.19b(5). We disagree.

Respondent argues that testimony at trial indicated a strong bond still existed between her and the children. And, respondent notes that while SW and JW testified they did not want to go home, she still loved them. She also states that no harm came to the younger children and that she has been successfully parenting her new baby.

This Court reviews for clear error a trial court's determination that the termination of the parental rights is in the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich at 152. However, the petitioner must only prove that termination of parental rights is in the best interests of the child by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83, 90; 836 NW2d 182 (2013).

Because in this case petitioner proved by clear and convincing evidence two statutory grounds for termination, §§ 19b(3)(b)(ii) and (j), which include a finding of a reasonable likelihood of harm to the children if they were returned to respondent, the trial court did not clearly err by finding termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *Trejo*, 462 Mich at 356-357. Furthermore, this determination is supported by a preponderance of the evidence. *In re Moss*, 301 Mich App at 83, 90.

We affirm.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey