

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of
PRITCHARD/BELL/MCKENZIE, Minors.

UNPUBLISHED
September 23, 2014

No. 319084
Berrien Circuit Court
Family Division
LC No. 2013-000038-NA

Before: SHAPIRO, P.J., and WHITBECK and STEPHENS, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(l) and MCL 712A.19b(3)(m). We affirm.

I. BACKGROUND

The Department of Human Services (DHS) petitioned for removal of respondent's children and termination of respondent's parental rights in April 2013, because respondent tested positive for cocaine at the birth of her sixth child, had a long history of substance abuse, and two prior terminations in Indiana. Throughout the proceedings, respondent failed to acknowledge her substance abuse issues despite three positive drug tests that resulted in probation violations and jail time. Accordingly, the trial court held a hearing and terminated respondent's parental rights in October 2013.

II. STATUTORY GROUNDS FOR TERMINATION

On appeal, respondent first argues that petitioner failed to prove any of the asserted statutory grounds for termination of parental rights by clear and convincing evidence. We disagree.

An appeal from an order terminating parental rights is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 357; 612 NW2d 407 (2000). "A 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 Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). "To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong" *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999) (quotation omitted). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the

court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 353.

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(l) and (m). MCL 712A.19b(3)(l) provides statutory grounds for termination where "[t]he parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state." Here, evidence of record, including respondent's own testimony, indicated that her parental rights to a child were terminated in Indiana in 2009 after that child tested positive for cocaine at birth. Respondent testified that she attended the termination proceedings and that her rights were terminated because she failed to establish a home for the child and was not employed. In view of this evidence, the trial court did not clearly err in finding that statutory grounds for termination existed under MCL 712A.19b(3)(l).

Given the conclusion that there were statutory grounds for termination under MCL 712A.19b(3)(l), it is unnecessary to address the other ground for termination because the petitioner need only establish one ground. *In re Trejo Minors*, 462 Mich at 360. Nevertheless, we have reviewed the record and conclude that there was no clear error in the trial court's findings that the statutory ground set forth in MCL 712A.19b(3)(m) was also met by clear and convincing evidence based on testimony and evidence presented. MCL 712A.19b(3)(m) provides that termination of a parent's rights is appropriate when "[t]he parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state and the proceeding involved abuse that included 1 or more of the" instances in (m)(i) through (m)(ix). Respondent provided testimony that after proceedings were initiated against her in Indiana for termination of her parental rights, she voluntarily "signed [her] rights over." The trial record supported this testimony with admission of petitioner's exhibit 1: a certified document from the state of Indiana, Marion Superior Court; where Marion County Department of Human Services was petitioner; which displayed respondent's signature; and evidenced notice to the court that respondent was signing consent to adoption.

Respondent nevertheless argues that the failure to introduce certified records related to the Indiana termination proceedings or testimony of a representative of Indiana CPS violated respondent's due process rights. However, a certified record of respondent's voluntary relinquishment of her rights with Indiana CPS as petitioner was admitted. That certified document established that proceedings were initiated and that respondent's parental rights were terminated. Still, respondent fails to adequately brief this issue by not analyzing how her liberty interest would balance with the private interest and governmental interests involved. Most compelling here is respondent's un rebutted testimony to the existence of the prior terminations; this coupled with petitioner's witnesses' testimony and exhibits admitted warrant the trial court's findings that the statutory grounds were met. Further, "[o]nce the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under subsection 19b(5), the liberty interest of the parent no longer includes the right to custody and control of the children." *In re Trejo*, 462 Mich at 355 (internal citation omitted). We have already determined that the trial court did not clearly err in finding that both statutory grounds were established by clear and convincing evidence. Thus, respondents' constitutional claims are without merit.

III. BEST INTERESTS

Respondent also challenges the trial court's best interest determination. We find that the evidence established that termination of respondent's parental rights was in the best interest of the children and that there was no clear error in the trial court's findings of fact. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357.

As was stated by the trial court, despite years of documented substance abuse problems, respondent remained in denial concerning her substance abuse issues. Respondent failed to acknowledge that she had a substance abuse problem and refused substance abuse services. Accordingly, respondent continued to abuse substances and was incarcerated on probation violations related to substance abuse three times during the pendency of this case. The trial court acknowledged that the two oldest children shared a strong bond with respondent; however, the bond between parent and child may be outweighed by the child's need for stability and permanency. *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008). The trial court considered guardianship in lieu of termination because the children were placed with relatives. However, due to respondent's history of manipulation, relatives expressed a desire to adopt instead of enter into a guardianship. On the record before this Court, we find that the trial court did not clearly err by determining that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Cynthia Diane Stephens