STATE OF MICHIGAN

COURT OF APPEALS

In re CRIPPEN, Minor.

UNPUBLISHED
April 16, 2015

No. 321923
Wayne Circuit Court
Family Division
LC No. 13-511459-NA

In re PONDS/CRIPPEN, Minors.

No. 322912
Wayne Circuit Court
Family Division
LC No. 13-511459-NA

Before: HOEKSTRA, P.J., and MARKEY and DONOFRIO, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right the trial court's order terminating their parental rights. In Docket No. 321923, respondent-father appeals the termination of his parental rights to the minor child PMC under MCL 712A.19b(3)(a)(*ii*) (parent is unidentifiable and has deserted the child for more than 28 days), (c)(*i*) (the conditions leading to the adjudication continue to exist), (c)(*ii*) (other conditions have caused the child to come within the court's jurisdiction that continue to exist), (g) (failure to provide proper care and custody), and (j) (children will likely be harmed if returned to parent's care). In Docket No. 322912, respondent-mother appeals the termination of her parental rights to the minor children PMC and ZMP under the same statutory subsections. We affirm.

A trial court must terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) a preponderance of the evidence establishes that that termination is in the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court terminated respondent's parental rights under MCL 712A.19b(3)(a)(*ii*), c(*i*), c(*ii*), (g), and (j), which provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> (a) The child has been deserted under either of the following circumstances:

* * *

(*ii*) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(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.

(*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(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 provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

I. RESPONDENT-FATHER'S APPEAL IN DOCKET NO. 321923

Respondent-father raises a single issue on appeal—he challenges the trial court's finding that termination of his parental rights was in the best interests of PMC. We review the trial court's best-interest determination for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A trial court's finding is clearly erroneous when, after a review of the record, we are left with a definite and firm conviction that a mistake was made. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).

The evidence showed that respondent-father was without suitable housing, was living with his sister, and needed assistance to obtain housing. Moreover, respondent-father had no

bond with the child. Shortly after PMC was born in 2010, respondent-father stopped visiting her because he did not want to interact with respondent-mother. When he was first notified of the hearing in 2013 and given a chance to reconnect with PMC, he failed to appear in court. He did not pursue care or custody of PMC until March 2014, one year after she was adjudicated a temporary court ward. Despite respondent-father's claim to the contrary, his actions demonstrated that he was not committed to caring for his child. Accordingly, the trial court did not clearly err in finding that a preponderance of the evidence established that termination was in the child's best interests.

Moreover, respondent-father lacked insight into his issues. Despite his history of domestic violence, he questioned why the court ordered a treatment plan that included domestic violence therapy. And, although respondent-father argues that no service referrals were made for him until one month before the termination hearing, the record shows that referrals were not made because respondent-father did not come forward to plan for PMC until the termination petition was filed. Respondent-father could have had more time to work on his treatment plan if he had come forward at the onset of the case. His claim on appeal that he was ready and willing to care for his child but not given an opportunity to do so is unsupported by the trial court's record. The record shows that respondent-father said he would not be ready to take care of the child until he had housing and addressed his domestic violence issues. Moreover, as the trial court properly found, given the child's special needs, she requires a proactive parenting effort and respondent-father did not demonstrate that he was in a position, or would be in the foreseeable future, to care for PMC.

Contrary to respondent-father's claim on appeal the trial court properly considered the child's placement with a relative, see *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010); *In re Olive/Metts*, 297 Mich App at 43, but found that termination was nonetheless in the child's best interests. Respondent-father fails to show how placement with the child's maternal aunt undermines the court's best-interest finding. The child is doing well in placement, and the relative caregiver can address her special needs. Respondent-father's contention that he did not know that his child was in relative placement until recently only supports the court's findings that he was not invested in his child's care. Had respondent-father been engaged in the child's life, he would have known her whereabouts. Respondent-father was unable to meet the child's special needs or provide her with permanency and stability like her maternal aunt. Thus, the trial court did not clearly err in its best-interest determination.

II. RESPONDENT-MOTHER'S APPEAL IN DOCKET NO. 322912

A. REQUEST FOR ADJOURNMENT

Respondent-mother first argues that the trial court erred when it refused to adjourn the lower court proceedings when respondent did not appear at the termination hearing. We review a trial court's decision on a motion for a continuance for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). A court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010).

MCR 3.973(D)(3) provides that the trial court "may proceed in the absence of parties provided that proper notice has been given." MCR 3.973(D)(2) prohibits the trial court from denying a respondent's right to attend the hearing, but does not require the trial court to secure the respondent's physical presence at the dispositional hearing of a proceeding to terminate parental rights. *In re Vasquez*, 199 Mich App 44, 49; 501 NW2d 231 (1993). In the present case, respondent-mother does not dispute that she was personally served with notice of the correct date of the hearing and was in the courtroom for the pretrial on March 17, 2014, when the trial court set the termination hearing date for May 1, 2014. As a result, the court did not deny respondent-mother's right to be present.

Further, MCR 3.923(G) provides that

> [a]djournments of trials or hearings in child protective proceedings should be granted *only*
>
> (1) for good cause,
>
> (2) after taking into consideration the best interests of the child, and
>
> (3) for as short a period of time as necessary. [Emphasis added.]

The use of the conjunction "and" means that all three criteria must be satisifed in order to grant an adjournment; if any one is lacking, then the request for adjournment is to be denied. See *Titan Ins Co v State Farm Mut Auto Ins*, 296 Mich App 75, 85-86; 817 NW2d 621 (2012) (explaining that "and" and "or" are different and that they should be given their literal meanings).

"Good cause" under MCR 3.923(G) requires showing "a legally sufficient or substantial reason." *In re Utrera*, 281 Mich App 1, 11; 761 NW2d 253 (2008). At the termination hearing, the foster care worker informed respondent's attorney that she believed that respondent was not present because she was incarcerated. When respondent's counsel requested an adjournment based on this information, the court indicated that it "definitely" would adjourn the proceedings if respondent was incarcerated, noting that being incarcerated "would be a good reason for an adjournment." But after the court made some inquiries and concluded that there was no evidence to show that she actually was incarcerated, it proceeded with the hearing. Thus, even though it did not cite to MCR 3.923(G), the court nonetheless attempted to determine if good cause existed under the court rule. Accordingly, the trial court did not abuse its discretion.

Lastly, respondent-mother suggests that the trial court had an obligation to call her on the phone to ascertain her whereabouts. Respondent cites to no authority that *requires* a court to make such an inquiry. An appellant cannot merely announce a position and leave it to this Court

to search for authority in support of it. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Thus, the position is abandoned.[1]

B. STATUTORY GROUNDS

Respondent-mother next argues that the trial court erred in finding that at least one statutory ground was proven by clear and convincing evidence. We review a trial court's factual findings, including its determination that a statutory ground for termination of parental rights has been proven by clear and convincing evidence, for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). A trial court's finding is clearly erroneous when, after a review of the record, we are left with a definite and firm conviction that a mistake was made. *In re Moss*, 301 Mich App at 80.

The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(*i*), (g), and (j) were established with regard to respondent-mother. Respondent's child ZMP came into protective care in January 2013. Respondent's parental rights had previously been terminated to a child out of state, and she had agreed to a guardianship for PMC after she failed to benefit from services aimed at addressing issues of domestic violence and improper supervision. At the time of the adjudication for ZMP, respondent admitted that she suffered from depression and anxiety and that she had stopped seeking mental health treatment. She admitted using marijuana in 2007 and 2008. One day after ZMP's adjudication, PMC's guardianship was terminated, and petitioner filed a petition seeking temporary custody of PMC due to the same history and allegations.

Respondent-mother initially denied domestic violence with Ponds, who was ZMP's father. She only admitted to engaging in domestic violence with respondent-father. However, the record shows that the police were called in response to domestic violence between respondent-mother and Ponds. By April 2013, respondent-mother had contacted the caseworker to say that Ponds was abusive to her. Respondent-mother pleaded guilty to malicious destruction of property and was sentenced to one year of probation after she set fire to the home she shared with Ponds in May 2013. While in jail, respondent-mother tested positive for opiates and stated that she could not maintain a life without pain medication. Respondent-mother was discharged from domestic violence therapy for failure to attend. She eventually stopped attending individual therapy and did not submit court-ordered drug screens for the Department of Human Services caseworker or for her probation officer.

[1] To the extent that respondent also argues that trial counsel was ineffective, that argument also is abandoned. First, that issue is not specifically called out in respondent's statement of the questions presented in her brief on appeal. See MCR 7.212(C)(5); *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 543; 730 NW2d 481 (2007). Second, respondent provides virtually no discussion or analysis in her brief addressing the distinct legal issue of ineffective assistance of counsel. See *Walgreen Co v Macomb Twp*, 280 Mich App 58, 67 n 3; 760 NW2d 594 (2008); *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003). Therefore, any ineffective assistance claim is abandoned, and we will not consider it.

Respondent-mother's inability to provide proper care of the children was also apparent during visits that she attended because the visits did not go well. PMC was nervous with respondent-mother and had tantrums. Respondent-mother was unable to soothe her children and suggested that PMC be placed on medication to stop the tantrums. She was unable to balance her time with the children and showed favoritism toward PMC. There was no evidence she benefited from parenting classes. She did not use age-appropriate methods of discipline and was unable to handle PMC's tantrums. Moreover, PMC's self-harming behavior worsened after visits with respondent-mother. The children would have been at risk of emotional harm in respondent-mother's care and her poor parenting skills were not improved by the time of the termination. The trial court eventually suspended respondent-mother's visits after she threatened to kidnap the children and demonstrated combative behavior.

Respondent-mother was also unable to provide proper care of her children because she did not have suitable housing. Early in the case, she was being threatened with eviction. She shared a home with Ponds, with whom she continued to engage in a violent relationship and never sought treatment. Respondent-mother also refused mental health treatment and never completed a psychological assessment or psychiatric assessment. She admitted using substances to cope with anxiety and never participated in random drug screens or substance abuse therapy.

By the time of the permanent custody hearing, respondent-mother had not addressed any of the issues that led to the children's adjudication and placed them at risk of harm. She also failed to demonstrate that she could provide proper care and custody of the children. Given all of these unaddressed issues that continued from the time of the adjudication, which exposed the children to risk of harm and prevented respondent-mother from providing proper care or custody, termination of her parental rights was proper under MCL 712A.19b(3)(c)(*i*), (g), and (j).[2]

Respondent-mother also briefly argues that petitioner failed to make reasonable efforts to reunite her with her children. However, she failed to indicate to the trial court that the services provided to her were inadequate. This issue is therefore unpreserved, *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), and review is for plain error affecting substantial rights, *In re Utrera*, 281 Mich App at 8.

Generally, in petitioning for termination of parental rights, "petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). The failure to make reasonable efforts to avoid the termination of parental rights may prevent the establishment of statutory grounds for termination. *In re Newman*, 189 Mich App 61, 67-68; 472 NW2d 38 (1991). Here, over the course of this lengthy proceeding, petitioner offered respondent-mother drug screens, domestic violence counseling, psychological evaluation, transportation, parenting time, and parenting classes. Accordingly, the record shows that petitioner

[2] Although the trial court clearly erred in attributing statutory grounds MCL 712A.19b(3)(a)(*ii*) and (c)(*ii*) to respondent-mother, the error was harmless because only one statutory ground needs to be proven to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

expended reasonable efforts to provide services to secure reunification of respondent-mother and the children, but respondent-mother failed to adequately participate in the offered services. Respondent-mother has not shown plain error in her claim that petitioner failed to make reasonable efforts to avoid termination of parental rights in this case.

C. BEST INTERESTS

Respondent-mother next argues that the trial court erred in finding that termination of her parental rights was in the best interests of the children. We review the trial court's best-interest determination for clear error. *In re Olive/Metts*, 297 Mich App at 40.

Based on the record as a whole, the trial court correctly found that termination of respondent-mother's parental rights was in the children's best interests. The children needed to be cared for by someone who could provide a stable home life. Their maternal aunt, with whom the children were placed, was able and willing to do this, while respondent-mother was not. Given respondent-mother's history of unaddressed domestic violence, substance abuse, and mental health issues, and the fact that she had not demonstrated that she could maintain a drug-free lifestyle without violence for any significant length of time, it is unlikely she would be able to provide the children with the stability and safety that they need. It is in the children's best interests to be cared for by someone who can meet their needs.

The children's placement with their maternal aunt does not undermine the trial court's best-interest finding. The trial court expressly considered the children's placement with a relative caregiver. PMC has special needs, and there was no evidence respondent-mother could meet them. Moreover, the evidence showed that respondent-mother could not handle PMC's tantrums and that the child's self-harming behavior worsened after visits with respondent-mother. Thus, we conclude that the trial court did not clearly err in determining that termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Pat M. Donofrio