

STATE OF MICHIGAN
COURT OF APPEALS

In re B. HOPFINGER, Minor.

UNPUBLISHED
April 16, 2015

No. 323498
Bay Circuit Court
Family Division
LC No. 12-11177-NA

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

PER CURIAM.

Respondent appeals of right an order terminating her parental rights to her child, BH, based on MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and MCL 712A.19b(3)(g) (failure to provide proper care and custody).¹ We affirm.

I. FACTUAL BACKGROUND

BH was initially removed from respondent's care on July 10, 2012. Children's Protective Services (CPS) had an open case on respondent due to homelessness and substance abuse. On the evening of July 10, 2012, CPS workers arrived at respondent's home and found respondent incoherent and with a head injury. There was blood on napkins, pillow cases, and the floor. Some of the blood belonged to respondent and some of it belonged to BH's father who had been in a fight with respondent's ex-boyfriend. Subsequent drug tests showed that respondent had been using benzodiazepines and marijuana. Respondent admitted to using a synthetic heroin that evening.

Things initially progressed very positively for respondent. With the exception of one or two missed appointments, her drug screens consistently tested negative. She moved in with her sister who provided her room and board in exchange for respondent looking after her sister's children while she was at work. At a hearing on May 20, 2013, the trial court indicated that the matter was headed toward reunification. The child was eventually returned to respondent's care. In November 2013, however, after BH had been in respondent's custody for nearly three months,

¹ The parental rights of the children's father were also terminated. He is not a party to this appeal.

the child was again removed from her custody after the results from a drug test came back positive for “something pretty serious.”

During the latter part of 2013 and early part of 2014, respondent continued to have difficulty obtaining stable housing and employment. Respondent did some part-time work for her father, but this was not stable. Respondent also had periods of time where she was living with various friends at various residences. Respondent additionally tested positive twice for alcohol and once for marijuana, and had several diluted drug screens that are considered to be positive tests. Petitioner eventually moved to have respondent’s parental rights terminated.

At the termination hearing, Debbie Wilson, a certified addictions counselor who had been working with respondent since December 3, 2013, and Melissa Woods, respondent’s peer recovery coach at Bay Psychological Associates, testified positively about respondent’s recovery. Both also praised her interaction with the children she babysat and her ability to care for them. By this point respondent had received another babysitting job and was having her rent paid as compensation. Respondent also testified that she was continuing to fill out applications for other jobs but felt the lack of a GED was hindering her. Shawna Kobel, respondent’s case worker, testified that she had an intern available to help respondent with her GED but that respondent did not take advantage of this opportunity. Kobel also testified that she received a Snapchat photograph from respondent in which respondent was pictured playing cards in a circumstance where alcohol was present. BH’s foster mother also testified that BH was becoming more attached to her and considering her home his home.

The trial court found by clear and convincing evidence that a statutory basis for termination existed under MCL 712A.19b(3)(c)(i). The trial court found respondent’s substance abuse problems continued, and described respondent’s housing and employment situation as “tenuous.” Respondent had not shown that she was free from drug and alcohol use after 25 months. The trial court referenced the fact that respondent had not obtained her GED despite knowing that was an employment barrier and having the opportunity to receive help toward achieving that goal. The trial court also found by clear and convincing evidence that a statutory basis for termination existed under MCL 712A.19b(3)(g). The trial court acknowledged that all evidence showed that respondent worked well with children and particularly with BH. However, the trial court again noted respondent’s inability to provide a stable home and maintain stable employment. Finally, the trial court found that termination was in BH’s best interests, noting, in addition to the continuing difficulties respondent was having, that the child was beginning to bond with his foster mother and needed stability.

II. STANDARD OF REVIEW

In an appeal from an order terminating parental rights, we review the trial court’s findings and best-interest determination under the clearly erroneous standard. MCR 3.977(K); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A decision of the trial court is clearly erroneous if “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003) (citation omitted).

III. ANALYSIS

A. STATUTORY BASIS

Petitioner bears the burden of proving the existence of at least one of the Legislature's enumerated specific conditions to terminate a parent's rights to his child by clear and convincing evidence. *In re JK*, 468 Mich at 210. Only one statutory ground is necessary to support terminating parental rights. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To overturn the trial court, this Court must find that its decision was "more than just maybe or probably wrong." *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999) (quotation marks and citation omitted).

1. CONDITIONS THAT LED TO ADJUDICATION CONTINUE TO EXIST.

MCL 712A.19b(3)(c)(i) provides as follows:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence . . .

* * *

(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.

In the present case, the chief condition that led to the adjudication was respondent's substance abuse problems. When BH was first removed from respondent's care, she was in an intoxicated state. She was incoherent and had sustained a serious head injury. Respondent eventually made enough progress to have BH returned to her care. However, a few months later, respondent was found in her residence in what appeared to be an intoxicated state. The trial court noted that the attendant drug screen came back positive for "something pretty serious."

After BH was again removed from respondent's care, she continued to have positive drug screens, including diluted samples that were considered positive. As the trial court found, the Snapchat photograph of respondent playing cards with a Jack Daniels bottle nearby is indicative of either respondent's continuing substance abuse issues or a lack of judgment for someone with respondent's history of substance abuse to put herself in that situation, especially when her problem was not yet under control.

Although Wilson testified that respondent had made progress and "always went above and beyond," she also testified that she was concerned when respondent tested positive for marijuana in July. The facts showed that she still had not gained control over her substance

abuse issues. As the language of § 19b(3)(c)(i) indicates, “the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time.” *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). Based on the evidence, it was reasonable for the trial court to conclude that, considering that BH had been in foster care for the majority of his young life, he could no longer continue to wait for respondent’s substance abuse issues to be resolved.

The other issue that led to adjudication was respondent’s inability to provide proper housing. Homelessness was an identified issue when the initial CPS case began. Throughout the case there were periods of time when respondent was merely staying with different friends. When respondent did have housing, it was almost exclusively tied to baby-sitting jobs. The trial court described respondent’s housing situation as “tenuous,” which was not unreasonable for the trial court to conclude in light of respondent’s history.

2. INABILITY TO PROVIDE PROPER CARE AND CUSTODY.

MCL 712A.19b(3)(g) provides as follows:

The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence . . .

* * *

(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.

“The statute requires ‘clear and convincing evidence’ of both a failure and an inability to provide proper care and custody.” *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990).

Respondent did have adequate housing at the time of the termination hearing. Additionally, no party questioned respondent’s ability to parent. However, throughout the proceedings respondent’s procurement of housing was consistently tied to having a babysitting job, and past babysitting jobs had not shown an ability to last. Additionally, while respondent recognized her lack of a GED as an employment barrier, she did not take serious steps toward getting a GED despite the availability of help from petitioner. Homelessness had been an identified issue since the beginning of the case. Therefore, the trial court’s conclusion on this statutory factor was not clearly erroneous.

B. BEST INTERESTS

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, 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). The trial court must find by a preponderance of the evidence that

termination is in the best interests of the children. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). “[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich at 337. The children’s bond to the parent, the parent’s parenting ability, and the children’s need for permanency, stability, and finality are all factors for the court to consider in deciding whether termination is in the best interests of the children. *In re Olive/Metts Minors*, 297 Mich App at 41-42.

In addition to the concerns that were present in its analysis of the statutory factors, the trial court also considered the fact that BH needed stability in his life and was beginning to bond to his foster mother. It was entirely appropriate for the trial court to consider BH’s long-term need for finality and stability, especially given the fact that the case had gone on for over two years. It is true that every indication was that respondent worked well with children and would have been able to be a good parent but for her issues with sobriety, housing, and employment. However, the trial court could not overlook those concerns, and taking BH’s needs for permanency, stability, and finality into account, it was not clearly erroneous for the trial court to conclude that by a preponderance of the evidence termination of respondent’s parental rights was in BH’s best interests.

IV. CONCLUSION

The trial court did not err in finding that respondent had not rectified the conditions of substance abuse and inability to provide a stable home for BH that caused the adjudication. The court’s best-interests determination was also supported by the record. BH needed stability and despite the fact that the case had gone on for two years, respondent had not reached a point where she could provide for BH as he needed. The trial court did not err in terminating respondent’s parental rights.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Christopher M. Murray