

STATE OF MICHIGAN
COURT OF APPEALS

FOR PUBLICATION
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9:10 a.m.

In the Matter of OLIVE/METTS, Minors.

No. 306279
Wayne Circuit Court
Family Division
LC No. 07-473724-NA

Before: K. F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

Respondent W. Metts appeals as of right from a circuit court order terminating her parental rights to minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (c)(ii), (g), (j), and (k)(iii). We affirm the circuit court’s order with respect to the minors RO, AM, and AM. With respect to the minor twins, DM and DM, we affirm the portion of the circuit court’s order determining that at least one statutory ground supported termination, but vacate the court’s best interest analysis and remand for further consideration of that issue.

I. BASIC FACTS

Respondent is the mother of minor children AM, RO, AM, and twins DM and DM. The twins are of different paternity than the other children. The trial court first acquired jurisdiction over the two eldest children in 2007, following a Department of Human Services (DHS) petition for temporary custody alleging that RO was “found poorly cared for, diapers not changed, and the mother threatened to whoop the baby,” that respondent was homeless, AM’s whereabouts were unknown, and no suitable relatives were available for placement. At the preliminary hearing, respondent “made admissions at hearing sufficient for the court to take temporary jurisdiction of the children . . . based on evidence of improper supervision and environmental neglect.” The court placed the children in foster care and directed respondent “to begin anger management and counseling and have a psychological eval[uation]” pending the dispositional hearing.

The trial court entered the initial dispositional order in January 2008. The children were continued in foster care and respondent was directed to participate in services, including parenting classes, individual counseling, anger management, and family counseling if recommended; she was also directed to obtain suitable housing and a legal source of income. Respondent was granted “unsupervised weekend and overnight visits with goal of reunification with mom within six weeks[.]”

Respondent made progress toward being reunited with her children. She secured suitable housing and a job, and began attending parenting classes, anger management classes, and individual therapy. However, individual parenting time was terminated in June 2008 after respondent failed to seek medical attention for the children and left the children with a person who was not authorized to baby-sit them. Respondent was also arrested and lost her job and home in May 2008, and began moving between various housing situations, including a shelter. Respondent developed a pattern of verbal disputes followed by evictions from temporary housing.

Respondent eventually secured somewhat more stable housing and cash and food assistance. She also gave birth to AM in 2009. The court authorized the DHS to return the two eldest children to respondent with in-home services as long as her housing situation was appropriate and “mother’s drug screens are negative.” Respondent continued to work well with DHS, and the court terminated its jurisdiction in October 2009. The twins were born in January 2010 and remained in respondent’s custody.

The DHS filed another petition for temporary custody in March 2011 following allegations of physical child abuse by respondent and her mother. Respondent admitted to pushing AM and scratching her face, and admitted that her mother, Kim Parks, who had a criminal history of felony assault convictions, had been living with her and the children for about three months. Respondent admitted that “she had observed Kim Parks being physically aggressive towards the children” and that “she had noticed changes in her children’s behaviors since Kim Parks came to reside in their home.”

Respondent pleaded no contest to the allegations against her, and admitted to physical child abuse occurring on several occasions. She also admitted that she had been previously diagnosed with “psychiatric issues” and was not currently taking her proscribed medication. Respondent was evaluated by a counselor from the Clinic for Child Study and was given a poor prognosis of her ability to provide all five of her children with a safe and stable environment. At the dispositional hearing, the foster-care worker testified that respondent had been preoccupied or overwhelmed during supervised visits, although the children had a warm relationship with her. Multiple witnesses also testified to respondent’s continuing problem with anger management, including multiple incidents of angry outbursts and at least one incident where DHS personnel had to call the police to remove respondent from her anger management class. At the time of the hearing, respondent was incarcerated for disturbing the peace as a result of that incident. Testimony was also taken from multiple witnesses that the children had begun to internalize and model her aggressive behavior.

Respondent indicated her willingness to continue to attend therapy and anger management classes, and to take psychiatric medication. The trial court found that several statutory grounds for termination of parental rights had been demonstrated by clear and convincing evidence, and that termination of respondent’s parental rights was in the children’s best interest.

II. STANDARD OF REVIEW

A court may terminate a respondent's parental rights if one or more of the statutory grounds for termination listed in MCL 712A.19b(3) are proven by clear and convincing evidence. Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977(E)(4). "We review for clear error both the Court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest" under MCL 712A.19b(5). *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(K). A trial court's decision is clearly erroneous "if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III. STATUTORY GROUNDS FOR TERMINATION

We conclude that the trial court did not clearly err in finding that § 19b(3)(j) was established by clear and convincing legally admissible evidence. *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008); MCR 3.977(E)(3) and (K). The evidence showed that respondent had been struggling with her anger management problem for years. She received treatment for that problem when the two eldest children were previously court wards, and again in 2010 and early 2011. Nevertheless, she was unable to control her anger, even after she resumed her anger management classes in May 2011. She flew into a rage during a June 2011 family visit and was arrested for disturbing the peace in August 2011 after an altercation with a teacher and the police. The evidence showed that the older children were mimicking respondent's behavior. Therefore, the trial court could properly find that the children were reasonably likely to be harmed if returned to respondent's home. Only one statutory ground for termination need be established. *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002).

IV. BEST INTERESTS DETERMINATION

In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, *In re BZ*, 264 Mich App at 301, the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), the child's "need for permanency, stability, and finality," *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992), and the advantages of a foster home over the parent's home. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009). "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); see also MCR 3.977(E)(4).

We find that the trial court has a duty to decide the best interests of each child individually. See *Foskett v Foskett*, 247 Mich App 1, 11; 634 NW2d 363 (2001); see also *In re HRC*, 286 Mich App 444, 457; 781 NW2d 105 (2009). Although "in most cases it will be in the best interests of each child to keep brothers and sisters together . . . if keeping the children together is contrary to the best interests of an individual child, the best interests of that child will control." *Wiechmann v Wiechmann*, 212 Mich App 436, 439; 538 NW2d 57 (1995); *Foskett*, 247 Mich App at 11. While *Foskett* and *Wiechmann* were child custody disputes in which the children's best interests were analyzed under the framework of the Child Custody Act, MCL

722.21 *et seq.*, the same principle – that each child be treated as an individual – applies with equal force in termination of parental rights cases under the Juvenile Code, MCL 712A.19b. It is, therefore, incumbent upon the trial court to view each child individually when determining whether termination of parental rights is in that child’s best interests.

The evidence showed that respondent loved her children and that the three older children loved her. The evidence also showed that respondent struggled to cope with five children, was unable to control her temper to the detriment of the children, lacked a source of income, had lost her home, and was in jail. Respondent failed to derive any lasting benefit from services previously provided and there were no additional services that could be provided. We conclude that the evidence supported the trial court’s determination that termination was in the best interests of RO, AM, and AM.

However, because “a child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a),” the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child’s best interests. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child’s best interests, *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991), the fact that the children are in the care of a relative at the time of the termination hearing is an “explicit factor to consider in determining whether termination was in the children’s best interest.” *Mason*, 486 Mich at 164. A trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best interests determination and requires reversal. *Mason*, 486 Mich at 163-164; *In re Mays*, 490 Mich 993, 993; 807 NW2d 307 (2012).

The trial court did not expressly address the fact that the two youngest children were residing with a paternal relative. Because the trial court was required to consider the best interests of each child individually and was required to explicitly address each child’s placement with relatives at the time of the termination hearing if applicable, *Mason*, 486 Mich at 164; *Mays*, 490 Mich at 993, we conclude that the trial court clearly erred in failing to do so. Therefore, we vacate the trial court’s best interest analysis with respect to the twins DM and DM, and remand this case to the trial court for further proceedings not inconsistent with this order.

Affirmed with respect to minor children RO, AM, and AM. Affirmed in part, vacated in part, and remanded for further proceedings with respect to minor children DM and DM. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Mark T. Boonstra