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STATE OF MICHIGAN

COURT OF APPEALS

In re PTASZYNSKI, Minors.

UNPUBLISHED
April 29, 2021

No. 354282
Wayne Circuit Court
Family Division
LC No. 2017-001998-NA

Before: BECKERING, P.J., and FORT HOOD and RIORDAN, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's orders[1] terminating his parental rights to the minor children, KEP, LEP, MAP, STP, and DWRP, pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to the adjudication continue to exist), (c)(*ii*) (failure to rectify other conditions), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood the children will be harmed if returned to the home).[2] We affirm.

I. BACKGROUND

In November 2017, petitioner, the Michigan Department of Health and Human Services (DHHS), sought the children's removal from respondent's care, alleging in relevant part that the home was unsuitable. The children were placed with respondent's father and stepmother. Respondent pleaded to the trial court's jurisdiction and was ordered to participate in services. While respondent participated in services and consistently visited the minor children once a week, DHHS filed a supplemental petition to terminate respondent's parental rights to the minor children in July 2019, alleging that he failed to benefit from services. Specifically, it asserted that despite being financially able to do so respondent failed to make his home suitable for the minor children,

[1] A separate petition was filed in regard to DWRP because she was born after the removal of the other children. Thus, the trial court entered two identical orders: one order terminating respondent's parental rights to KEP, LEP, MAP, and STP, and one order terminating respondent's parental rights to DWRP.

[2] The trial court also terminated the parental rights of the minor children's mother with the same orders. However, she is not a party to this appeal.

he did not demonstrate adequate parenting techniques, and he never attended the children's therapy and other medical appointments.

The termination hearing entailed seven hearings over the course of nine months. DHHS worker Dominique Dalton testified about respondent's progress under his parent agency treatment plan. She noted that he completed individual counseling with a domestic violence component and parenting classes, had a legal source of income, and consistently visited the children for a few hours once a week. However, he did not complete infant mental health services, which were terminated early by the provider because respondent was not benefiting from the services. In addition, Dalton testified that when she assessed respondent's home just before the December 16, 2019 termination hearing, it was not suitable for the children, in part because the main bathroom was torn up and in the process of being repaired, with electrical cables exposed. Neither Dalton nor Alexandra Barnes, the most recent foster care worker, were able to assess respondent's progress during the six months between when Dalton initially testified at the termination hearing and when the termination hearing was concluded, as respondent had not made it available to them for inspection.

Respondent's father testified that he had supervised nearly every visit respondent had with the minor children for about a year and a half, beginning when supportive visitation ended, and he did not believe respondent could safely parent the minor children. The children did not listen to respondent during visits; they ran around and threw their food on the floor. By contrast, respondent's father and stepmother did not have this problem, as the children listened to them. Respondent's father also testified that LEP's behavior changed after respondent's visits. Generally, respondent's father and stepmother had to have the children just relax for 10 minutes after a visit with respondent while they prepared a snack for the children. While most of the children had no problem just sitting and watching cartoons, LEP tended to lash out at her siblings in some way. Cynthia Smith, LEP's therapist, testified that LEP had dissociative identity disorder, which used to be called multiple personalities disorder. Asked to explain, Smith said that LEP had a very angry part and a very happy part. "And when she is happy [LEP], she does not remember the things that mad [LEP] did. When she is mad [LEP], she does not remember the things that happy [LEP did]." Smith opined that the condition was related to trauma associated with respondent, and that visits with respondent provoked episodes of dissociation for LEP and brought out mad LEP, who tried to hurt her siblings.

Respondent's father also testified that respondent did not usually check the children's diapers during visits, even though only LEP was potty trained, and respondent did not ask about the children's medical or therapy appointments, even though a calendar with the dates was posted on the wall of his home. Respondent's father testified that KEP had a severe speech problem that continued to require a speech specialist, MAP had a cognitive communication issue that required some form of therapy, and STP required a special high protein and high vitamin diet because he was diagnosed with "Failure to Thrive and Crate Baby Syndrome."

Respondent testified that his father owned the home in which respondent lived, that he did not pay rent, but he paid for the utilities and repairs to the home, and that he worked at an auto parts store. When the elder children were removed from respondent and their mother's care, respondent knew their mother was exhibiting signs of mental illness, but none of the doctors they sought out would diagnose her because she was pregnant. Further, respondent did not have cause

for concern regarding the mother's health until about eight months before removal when her grandmother died. Nevertheless, respondent was never concerned about the welfare of the elder children with their mother; even if she had a hard time getting out of bed in the morning and taking care of herself, she always took care of the elder children. According to respondent, this was true on the day police officers came to respondent's home, which led to these proceedings. While KEP, MAP, and STP were dirty when the police inspected the home, respondent contended that it was because they had been napping, had diarrhea, and had not yet been cleaned. Further, he claimed that the rotten food on the floor was simply an apple LEP left there after lunch, and the trash was just a closed bag of trash waiting to be taken outside. Respondent testified that he and the children's mother were no longer a couple.

Regarding the condition of the home, respondent testified that as of November 19, 2019, one of the bathrooms, which was in the basement, was fully operational, but the other was still being repaired. The room the four female children would share was ready for them, but the room for STP needed some work done. There were also some garbage bags around the house that were full of things that needed to be donated. Regarding visits, respondent testified the children listen to him fairly well and he is able to control them as much as a parent can be expected to control five children of their ages. Respondent testified that he did not visit on the Saturdays he had off of work because that was when he maintains his vehicle.

At the conclusion of the hearing, the trial court terminated respondent's parental rights to the minor children. Respondent now appeals, arguing that the trial court clearly erred by finding that there were statutory grounds supporting the termination of his parental rights and that termination was in each of the children's best interests.

II. STANDARD OF REVIEW

"This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id*.

III. DISCUSSION

A. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the trial court clearly erred by finding statutory grounds to terminate his parental rights proved by clear and convincing evidence. According to respondent, he completed his entire treatment plan except for making his home suitable for the children, and he can quickly finish the necessary repairs. We disagree.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). In this case, the trial court found MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j) proved by clear and convincing evidence. These provisions provide:

> 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:
>
> * * *
>
> (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, although, in the court's discretion, financially able to do so, 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. [MCL 712A.19b(3).]

On December 15, 2017, respondent pleaded to the trial court's exercise of jurisdiction over the older children, admitting that his home was unsuitable and that his work schedule compelled him to leave the children in their mother's care despite knowing that her mental health impaired her ability to properly care for them. The trial court entered an initial order of disposition three days later. On April 20, 2018, respondent pleaded to the trial court's exercise of jurisdiction over two-month old DWRP, admitting that the older children had been removed from his care and he had not completed the service plan. The trial court entered an initial order of disposition seven days later. At the termination hearing on November 19, 2019, respondent testified that his home was still unsuitable for the minor children. While there was one fully operational bathroom in the basement, and the bedroom for respondent's girls was completed, respondent was still working on the main bathroom and STP's bedroom. Dominique Dalton, one of the DHHS workers, also testified that respondent's home was not ready for the minor children. Moreover, foster care workers' attempts to inspect respondent's home during the last six months of the proceedings were unsuccessful.

Given this evidence, the trial court's conclusion that MCL 712A.19b(3)(c)(*i*) was proved by clear and convincing evidence was not clearly erroneous. Many more than 182 days elapsed after both initial orders of disposition were entered, respondent continued to have unsuitable housing for the minor children, and his inability to correct this condition in over 2½ years did not bode well for his ability to do so in a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(*i*). See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009) (holding that clear and convincing evidence supported termination pursuant to MCL 712A.19b(3)(c)(i) because the evidence showed that the parent "had not accomplished any meaningful change in the conditions existing by the time of the adjudication"). Because only one statutory ground is needed for termination, we need not address the remaining statutory grounds for termination. See *In re Powers Minor*, 244 Mich App 111, 118-119; 624 NW2d 472 (2000). (observing that a court's error with regard to one statutory ground will be harmless if the court properly found another ground for termination).

B. BEST INTERESTS

Respondent also argues that the trial court erred by finding termination to be in the minor children's best interests because there was no evidence that he was unable to parent them, and he had very little to do to make his home suitable for the children. Respondent asserts that the trial court failed to adequately consider the possibility of a guardianship, failed to individually assess the best interests of each child, and failed to consider the fact that the children were placed with relatives. We disagree.

Once a trial court finds that at least one statutory ground to terminate parental rights has been established, the court must determine whether termination is in the children's best interests. See MCL 712A.19b(5) (requiring that the court find a statutory ground *and* that termination is in the children's best interests before terminating parental rights). Best interests must be proved by a preponderance of the evidence on the basis of the whole record. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Further, the trial court should consider a variety of factors, including the parent's parenting ability, the child's need for permanency, stability, and finality, the parent's compliance with his case service plan, the parent's visitation history, and the possibility of adoption. *Id*. at 713-714. "The trial court may also consider how long the child was in foster care or placed with relatives, along with the likelihood that the child could be returned to [the] parents' home within the foreseeable future, if at all." *In re Mota*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 351830); slip op at 11 (quotation marks and citation omitted; alteration in original). When children are placed with a relative, the trial court must "explicitly address whether termination is appropriate in light of the children's placement with relatives." *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012). In addition, "the trial court has a duty to decide the best interests of each child individually." *Id*. at 42.

These proceedings were ongoing for over 2½ years, yet respondent had not made his home suitable for the minor children. During that same time period, respondent never inquired into the minor children's medical or therapy appointments. There was also testimony that respondent was unable to control the minor children during the visits he had for a few hours one day each week. Given this evidence, respondent's arguments that there was no evidence he was unable to parent the minor children and that he had very little to do to make his home suitable for the children are unpersuasive. Further, the trial court explicitly considered the possibility of a guardianship and

that the minor children were placed with a relative. The court simply found the minor children's need for permanency, stability, and finality, and the minimal likelihood of respondent completing work on his home or acquiring the necessary parenting skills, outweighed the benefits of continuing the minor children's placement with respondent's father and stepmother under a guardianship. This finding was not clearly erroneous. *In re Hudson*, 294 Mich App at 264. Finally, in announcing its best-interests determinations, the court noted that it was dealing with five children of varying ages. It also observed: "[I]t would have to be a very exceptional set of circumstances for me to appointment [sic] a guardian for any one of those children." Therefore, the court was clearly aware it was obligated to consider the best interests of each child individually. Further, respondent does not identify how the best interests of any of the individual children differed from the others. See *In re White*, 303 Mich App at 716 (explaining that "if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children's best interests") (emphasis in original). For these reasons, the trial court did not clearly err by finding termination of respondent's parental rights to be in the minor children's best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Karen M. Fort Hood
/s/ Michael J. Riordan