

STATE OF MICHIGAN
COURT OF APPEALS

In re S. M. HARRIS, Minor.

UNPUBLISHED
March 26, 2019

No. 345643
Wayne Circuit Court
Family Division
LC No. 16-523662-NA

Before: MURRAY, C.J., and GADOLA and TUKEL, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to her minor child under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if returned). We affirm.

I. CONSTITUTIONAL RIGHT TO CARE AND CUSTODY OF CHILD

Respondent’s sole argument on appeal is that the trial court erred in terminating her parental rights because she has a constitutional right to the care and custody of her child. Respondent did not raise any constitutional objections at the trial court; accordingly, the issue is not preserved, and our review is for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Parents possess a fundamental interest in the companionship, custody, care, and management of their children, an element of liberty protected by the due process provisions in the federal and state constitutions. US Const, Am XIV; 1963 Const, art 1, § 17. Because child protective proceedings implicate “an interest far more precious than any property right,” *Santosky v Kramer*, 455 US 745, 758-759; 102 S Ct 1388; 71 L Ed 2d 599 (1982), “to satisfy constitutional due process standards, the state must provide the parents with fundamentally fair procedures.” *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009) (quotation marks and citation omitted). [*In re Yarbrough*, 314 Mich App 111, 122; 885 NW2d 878 (2016)]

However, “[a] parent’s right to control the custody and care of her child[] is not absolute, as the state has a legitimate interest in protecting ‘the moral, emotional, mental, and physical welfare of the minor’ and in some circumstances ‘neglectful parents may be separated from their children.’ ” *In re Sanders*, 495 Mich 394, 409-410; 852 NW2d 524 (2014), quoting *Stanley v Illinois*, 405 US 645, 652; 92 S Ct 1208; 31 L Ed 2d 551 (1972). “Once the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under [MCL 712A.19b(3)], the liberty interest of the parent no longer includes the right to custody and control of the child[.]” *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); see also *In re Moss*, 301 Mich App 76, 85-86; 836 NW2d 182 (2013). “In other words, at that point, ‘the parent’s interest in the companionship, care, and custody of the child gives way to the state’s interest in the child’s protection.’ ” *In re Moss*, 301 Mich App at 93-94 (WILDER, J., concurring), quoting *In re Trejo*, 462 Mich at 356.

Thus, a parent’s constitutional right to the companionship, care, and custody of her child is not violated if the trial court appropriately finds that a statutory ground for termination was proven by clear and convincing evidence. Here, the trial court found that the statutory grounds in MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence. Therefore, respondent has failed to show if or how her constitutional rights were violated by the termination of her parental rights.¹

II. BEST INTERESTS OF THE CHILD

Once a trial court finds that at least one statutory ground for termination has been proven, it still needs to determine whether termination of parental rights is in the best interests of the child. If the court finds that termination of parental rights is in the best interests of the child, then the court shall terminate those rights. MCL 712A.19b(5). However, unlike its findings related to the statutory grounds, the standard of proof for this best-interests determination is a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. When considering best interests, the focus is on the child, not the parent. *Id.* at 87. The trial court should weigh all the evidence available to determine the child’s best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court may consider such factors as the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home. *Id.*; *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012). The court may also consider a parent’s compliance with his or her case service plan and the parent’s visitation history with the child. *In re White*, 303 Mich App at 713. This Court reviews the trial court’s determination of best interests for clear error. *In re Olive/Metts*, 297 Mich App at 40.

While not raised in her statement of the questions presented, respondent cursorily avers in her brief on appeal that it was not in the child’s best interest to terminate respondent’s parental

¹ Notably, respondent on appeal does not challenge the trial court’s findings related to these statutory grounds. Regardless, our review of the record shows that the trial court did not clearly err in making these findings.

rights. Although we could deem the issue abandoned, see *In re BKD*, 246 Mich App 212, 218; 631 NW2d 353 (2001), we nevertheless will review it.

Respondent had not addressed any of the substance abuse concerns that prompted the original petition. She had missed a total of 48 drug screenings since the inception of the case. And for the 21 drug screenings in which respondent did participate, all of them were positive for one or more substances. Moreover, respondent often arrived at visitation with glassy eyes and acted fidgety, shaky, and agitated, all of which suggested that she was under the influence of drugs at the time.

Respondent also failed to address the concerns with her mental health. Her mental health treatment was sporadic, and she did not provide any documentation regarding the minimal mental health treatment that she did receive. The caseworker concluded that respondent's mental health problems directly affected her ability to parent the minor child because respondent was not properly focused on the child.

With regard to housing, the house was evaluated as not being suitable for the child in January 2018. The home looked abandoned and it did not look like respondent had done any updates since a previous visit. Windows were still boarded up and paint was still chipped, and the ceiling was tilted down above where the child's bed would be. There was still no working furnace, and a rod was still used to prop open the front door. Also, the house was in foreclosure for unpaid back taxes, a fact that respondent denied when asked about it.

Along with the evidence regarding continued substance abuse, mental health, and housing problems, there was other evidence to establish that maintaining respondent's parental rights would not be in the child's best interests. The caseworker testified that even though the child was in her father's care, the child would not be safe from respondent's influence. The caseworker testified that respondent manipulates the child, and does not let the child be herself and be independent in a manner appropriate to her age. Respondent always wants to answer for her and think for her, which gets the child agitated. Respondent has also shown up at the child's school and tried to talk to the child. The CASA specialist concluded that it would be in the child's best interests to terminate respondent's parental rights since respondent has mental health issues that include delusions, schizophrenia, and being bi-polar, and she does not take her prescribed medication for those conditions. Those factors make it unsafe for the child to be with respondent. Although there was evidence of a bond with the child, the strength of the bond is only one factor for the court to consider. *In re White*, 303 Mich App at 714. The court found that respondent and the child had a bond, but that the bond was dysfunctional. We cannot conclude that the trial court clearly erred.

Affirmed.

/s/ Christopher M. Murray
/s/ Michael F. Gadola
/s/ Jonathan Tukel