

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 4, 2013

In the Matter of A. A. RAPHAEL, Minor.

No. 312227
Kent Circuit Court
Family Division
LC No. 10-050408-NA

Before: WILDER, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Respondent mother (respondent) appeals as of right the trial court order terminating her parental rights to a minor child under MCL 712A.19b(3)(c)(i) and (g). We affirm.

After a statutory ground for termination has been established by clear and convincing evidence, the trial court must order termination of parental rights if termination is in the best interests of the child. MCL 712A.19b(5). Here, respondent does not challenge the existence of statutory grounds to support termination of her parental rights. Rather, she challenges the trial court's determination that termination was in the child's best interests. We review the trial court's decision for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

First, respondent claims that the trial court failed to give adequate consideration to the child's relatives' alleged plans to keep the child together with her half-sibling. In *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012), quoting *Wiechmann v Wiechmann*, 212 Mich App 436, 440; 538 NW2d 57 (1995), this Court indicated that "in most cases it will be in the best interests of each child to keep brothers and sisters together . . . , [but] if keeping the children together is contrary to the best interests of an individual child, the best interests of that child will control." In its best-interests discussion, the trial court stated, "I do believe after considering all the evidence and testimony that I've just spent a couple hours going through, that it is in [the child]'s best interests to terminate her parents' parental rights." Earlier in its opinion, the trial court recognized on the record that the child had been placed separately from her half-sibling and that respondent wanted the two children united. Thus, the record indicates that the trial court had considered the child's separation from her half-sibling but found that it was still in her individual best interests that respondent's parental rights be terminated (for

reasons discussed more fully at the end of this opinion). This finding was consistent with *Olive/Metts Minors*. Contrary to respondent's argument, there is no basis from which to conclude that the court failed to give the "sibling" issue adequate weight.¹

Respondent also appears to be arguing that the trial court failed to explicitly address whether termination was appropriate in the light of the child's placement with relatives. In *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), the Michigan Supreme Court held that because "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)," a child's placement with a family member is "an explicit factor to consider in determining whether termination was in the children's best interests" Here, the record shows that the trial court discussed the child's placement with relatives *at length* and ultimately found that termination of respondent's parental rights was in the child's best interests, despite her placement with relatives. This decision was not clearly erroneous, as discussed more fully below, and respondent's appellate argument is without merit.

Finally, respondent argues that the trial court speculated that reunification of the child with her would take two years and that the trial court improperly used that speculation as a basis for termination. Speculation or "conjecture" may not be used as a basis for termination. *In re Sours Minors*, 459 Mich 624, 636; 593 NW2d 520 (1999). It is true that the trial court stated that reunification could take *up to* two years. However, the trial court acknowledged on the record that respondent could in fact be reunited with the child in as little as six months after her release from prison and that the release could occur by October 12, 2012.² At a later point, the trial court referred to the unfairness of making the child wait "another year" for respondent to rectify her problems. Respondent has simply not provided any indication that the trial court used its speculation that reunification *could* take two years as a basis for termination. Thus, respondent's argument is without merit.

The record shows that the trial court properly considered a number of factors in finding that termination was in the child's best interests, including respondent's history of substance abuse, respondent's unfavorable psychological evaluation, the child's young age, the length of time the child had been removed from respondent, respondent's inappropriate parenting techniques, respondent's involvement with domestic violence, the damaged bond between the child and respondent, respondent's history of "odd" visitation, respondent's questionable relationship with the father of her second child, respondent's lack of full compliance and straightforwardness with regard to her treatment plan, the possibility of the child being adopted,³ and the length of time the child would need to wait for respondent to rectify the conditions

¹ We note that a therapist testified that the benefits of termination outweighed the potential adverse consequences of sibling separation.

² The trial court made these findings on the record on August 6, 2012.

³ At the time of the termination hearing, the relatives with whom the child was placed had not decided whether to try to adopt the child, but they were considering it. However, even if we disregard this specific aspect of the trial court's findings, the court's ultimate conclusion was not clearly erroneous.

leading to termination. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009), *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001), and *McIntyre*, 192 Mich App at 52-53. The evidence supported the factors relied upon by the trial court. We find that the court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Michael J. Riordan