

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 25, 2013

In the Matter of METTS, Minors.

No. 312235
Wayne Circuit Court
Family Division
LC No. 07-473724-NA

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

In this case concerning the termination of respondent-mother Metts's parental rights, a prior panel of this Court vacated the trial court's best interests determination and remanded for consideration of the best interests of the minor twins in light of their placement with a paternal aunt.¹ On remand, the trial court found that termination was in the twins' best interest. Metts appeals as of right from the trial court's order terminating her parental rights. We affirm.

I. FACTS

A. BACKGROUND FACTS

We briefly summarize the facts in this case, which are recited in full in our previous opinion. Metts is the mother of five children. The trial court initially removed the oldest children from her care in January 2008, and ordered Metts to participate in anger management classes and counseling. The trial court returned the children to Metts's care, and terminated its jurisdiction in October 2009.

The twins were born in January 2010. In March 2011, the trial court again removed Metts's children from her care. Metts pleaded no contest to allegations that she physically abused the children and failed to provide them with proper care and custody. At one point during the pendency of the case, the Department of Human Services called the police to remove Metts from an anger management class. At the termination hearing, multiple witnesses testified that the older children were internalizing and modeling her aggressive behaviors. The trial court

¹ *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012).

found clear and convincing evidence that the children were reasonably likely to be harmed if returned to Metts's home and terminated her parental rights under MCL 712A.19(b)(3)(j).

Metts appealed to this Court. This Court affirmed the trial court's determination that statutory grounds supported terminating her parental rights.² However, this Court vacated the trial court's best interests determination because it did not view the children individually when determining their best interests.³ Specifically, the trial court failed to consider that the youngest twins were placed with their paternal aunt.⁴ This Court remanded for the trial court to determine whether termination was in the twins' best interests in light of that placement.⁵

B. SUPPLEMENTAL PROCEEDINGS

On July 19, 2012, the trial court heard additional arguments concerning the twins' best interests. It subsequently issued a supplemental opinion. The trial court found that the twins' were similarly situated because they were both placed with the same paternal aunt. It found that the record clearly indicated that Metts's aggressive behavior was not likely to be rectified within a reasonable time, and that it placed the twins at a risk of harm. It found that neither twin appeared to have a significant bond with Metts, and that they both needed permanency, stability, and finality. The trial court considered their placement with the paternal aunt, and found that the home was safe and nurturing, and that the children were happy and thriving. The trial court ultimately concluded that terminating Metts's parental rights to the twins would be in their best interests.

II. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once the Department has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the children's best interests, the trial court must terminate the parent's parental rights.⁶ The trial court should weigh all evidence available to determine the child's best interests.⁷ We review for clear error the trial court's determination of the child's best interests.⁸

² *Id.* at 41.

³ *Id.* at 42-43.

⁴ *Id.* at 43-44.

⁵ *Id.* at 43-44.

⁶ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

⁷ *In re Trejo*, 462 Mich at 353.

⁸ *Id.* at 356-357.

B. LEGAL STANDARDS

In determining the child's best interests, a trial court may consider a variety of factors, including "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."⁹ The trial court may also consider the parent's history, unfavorable psychological evaluations, inappropriate parenting techniques, continued involvement in domestic violence, and the child's age.¹⁰ But the trial court's factual findings concerning the children's best interests are factually inadequate if the children are placed with a relative, and the trial court does not consider that factor.¹¹

C. APPLYING THE STANDARDS

As a preliminary matter, we note that whether Metts complied with her parent-agency agreement, the extent to which the Department offered her services, and whether Metts's parental rights were properly terminated under MCL 712A.19b(3)(j) are not at issue in this appeal. Under the law of the case doctrine, this Court's ruling on a specific issue is controlled by the decision of a prior panel of this Court, unless the facts are not substantially the same or a higher court's decision affected the decision on the issue.¹² A prior panel of this Court determined these issues. The facts have not changed. Thus, the prior panel's decisions on these issues are the law of the case, and the only issue before this Court is whether termination of Metts's parental rights was in the twins' best interests.

Here, the trial court evaluated the twins individually when their situations differed, and explicitly considered their placement with the paternal aunt, their young age, their lack of bond with Metts, their need for permanency and stability, and Metts' history of child abuse and anger management issues. None of the trial court's findings on these factors were clearly erroneous.

To the extent that Metts contends that the trial court may have weighted the children's need for permanency and stability more strongly than their placement with their paternal aunt, Metts provides no authority to indicate that the trial court must give presumptive weight to any particular factor that it considers when determining the children's best interests. To the contrary, the trial court should weigh all the evidence available to determine the children's best interests.¹³

⁹ *In re Olive/Metts*, 297 Mich App at 41-42 (quotations omitted).

¹⁰ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

¹¹ *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010); *In re Mays*, 490 Mich 993, 994; 807 NW2d 304 (2012).

¹² *Johnson v White*, 430 Mich 47, 52-53; 420 NW2d 87 (1988); *Driver v Hanley (After Remand)*, 226 Mich App 558, 565; 575 NW2d 31 (1997).

¹³ *In re Trejo*, 462 Mich at 353.

We conclude that the trial court's particularized factual findings and determinations on remand are not clearly erroneous, and that the record is factually adequate because the trial court explicitly considered the twins' placement with their paternal aunt.

We affirm.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood