

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of W. ABRAMSON, Minor.

UNPUBLISHED
May 27, 2014

No. 318255
Gogebic Circuit Court
Family Division
LC No. 2012-000013-NA

Before: BECKERING, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

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

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Three days after respondent's child was born, petitioner filed a petition to remove the child from respondent's care. The petition alleged that respondent was not mentally prepared for the child's birth and that respondent showed no interest in holding, caring for, feeding, or comforting the child. In addition, the petition raised concerns about respondent's cognitive limitations and her ability to care for her child. Furthermore, the petition alleged that respondent admitted to caseworkers that she was not capable of caring for the child on her own. On March 22, 2012, the trial court entered an order to take the child into protective custody. On May 24, 2012, the trial court entered an order of adjudication after respondent entered a knowing, understanding, and voluntary plea to the allegations noted above.

From the outset of this case, petitioner considered potential relative placements for the child, including placing the child with respondent's father, James Abramson. When asked shortly after the child's birth whether he could care for the child, James stated that he could care for the child, then later changed his mind and stated he was unsure if he could care for the child. Caseworkers believed that James was being pressured by other family members into saying that he wanted to care for the child. Thus, petitioner placed the child in foster care, and she remained in foster care throughout this case.

Respondent initially made some progress toward rectifying the conditions that led to adjudication and she complied with some of the services mandated by the court-ordered services plan. However, respondent's participation with court-ordered services began to wane, and she ceased attending counseling sessions. Moreover, counselors testified that when respondent attended sessions, she was often distracted by her cellular telephone. Respondent also failed to

submit to a cognitive assessment. In addition, respondent missed, arrived late to, or left early from, some of her parenting time visits in the fall of 2012. In February of 2013, respondent traveled to Bay City for two weeks to spend time with her boyfriend without giving any prior warning to caseworkers. After respondent returned from the trip, Ashley Whitburn, respondent's caseworker, explained to respondent the importance of parenting time and not missing visits. Shortly thereafter, respondent traveled to Bay City once again, this time for three weeks. While she was in Bay City, respondent informed Whitburn that she was unsure if she was going to return, and that she wanted the child's foster parents to adopt the child. Respondent later recanted her statement about wanting the foster parents to adopt the child.

Julia Bortz, who served as a parenting aide during respondent's parenting time visits, which were held at James's house, testified that respondent and James did not interact with the child with any frequency during the visits. For instance, Bortz testified that respondent would often give the child a toy with which to play and then sit on the couch and preoccupy herself with her cellular telephone. Bortz opined that respondent should not be left alone with the child. Additionally, Bortz observed that James spent very little time with the child during parenting time visits. Bortz estimated that during a typical 90-minute parenting time visit, James spent approximately five to ten minutes with the child and that he spent the rest of the time watching television. Bortz opined that overall, neither James nor respondent were capable of caring for the child. She opined that neither grew in their ability to be caregivers and that their level of progress in this area was at a "standstill." Bortz believed that although respondent and James loved the child, the child was most bonded with her foster mother.

Whitburn also observed respondent during parenting time and expressed concerns about respondent's ability to care for the child. Whitburn believed that respondent made some improvements during the course of petitioner's involvement in this case, but not to the point where she would be capable of caring for the child on her own. Significantly, Whitburn believed that respondent lacked the ability to recognize and attend to the child's needs.

Pursuant to various requests to place the child with James, Whitburn evaluated James's home as a potential placement for the child. Whitburn recommended denying such a placement because James was uncertain as to whether he could care for the child and because James equivocated as to whether he wanted to have the child placed in his home. Additionally, Whitburn recommended denying placement in James's home because of several safety concerns she identified in the home. Despite knowing about these concerns for months, and despite petitioner's offer to provide financial assistance to rectify the conditions, James did nothing to fix the conditions at the time of the termination hearing.

Because of respondent's lack of progress, petitioner filed a petition to terminate respondent's parental rights to the minor child in May of 2013. Thereafter, but before the termination hearing, respondent filed a petition for a juvenile guardianship and requested that James be appointed as the child's juvenile guardian. In June of 2013, the trial court held a four-day termination hearing. At the hearing, respondent admitted that she was unable to care for the child on her own. James and several caseworkers echoed this sentiment. On August 8, 2013, the trial court entered an order terminating respondent's parental rights to the minor child because it found that there were statutory grounds for termination and because it found that it was in the child's best interests to terminate respondent's parental rights. In reaching its best interests

determination, the trial court acknowledged the potential guardianship with James and concluded that termination was nevertheless in the child's best interests.

II. STATUTORY GROUNDS

The trial court found statutory grounds to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). "In a termination of parental rights proceeding, a trial court must find by clear and convincing evidence that one or more grounds for termination exist and that termination is in the child's best interests." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). 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 JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Petitioner need only establish one ground for termination. *In re Trejo Minors*, 462 Mich 341, 360; 612 NW2d 407 (2000).

The trial court found that petitioner satisfied, by clear and convincing evidence, § 19b(3)(c)(i), which provides grounds for termination if:

(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.

Here, the condition that led to adjudication was petitioner's concern, which was prompted in part by respondent's admissions, that respondent was unable to care for the child. This condition continued to exist at the time of the termination hearing, which occurred more than one year after the order of adjudication in this case, and there was no reasonable likelihood that the condition would be rectified within a reasonable time considering the child's age. Contrary to respondent's contentions on appeal, there was no evidence that respondent would be capable of caring for the child on her own within a reasonable time. Indeed, respondent admitted at the termination hearing that she was unable to care for her child. Moreover, several caseworkers testified to the same. Notably, Bortz testified that she would be "very scared" if respondent was given the opportunity to parent the child on her own and that respondent failed to make progress with regard to improving her parenting skills. Consequently, the trial court did not clearly err by finding that petitioner established § 19b(3)(c)(i) by clear and convincing evidence. See *In re Trejo Minors*, 462 Mich at 359-360.

Because only one ground for termination need be established, we need not address the remaining statutory grounds for termination. Nevertheless, the trial court did not clearly err in finding clear and convincing evidence of the remaining grounds for termination. In addition to § 19b(3)(c)(i), the trial court found statutory grounds for termination existed pursuant to § 19b(3)(g), which directs that the trial court may order termination if "[t]he parent, without

regard to intent, 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." For many of the reasons noted *supra*, there was clear and convincing evidence that respondent was not able to provide proper care and custody for her child and that there was no reasonable expectation that she would be able to do so within a reasonable time.

Additionally, the trial court did not clearly err in finding that § 19b(3)(j) had been established by clear and convincing evidence. Pursuant to § 19b(3)(j), the trial court may terminate a parent's rights if it finds, by clear and convincing evidence, that "[t]here 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." Here, respondent failed to comply with the court-ordered services plan. "Failure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *In re Trejo Minors*, 462 Mich at 346 n 3 (quotation omitted). Moreover, respondent acknowledged that there were safety concerns in James's house, but downplayed them at the termination hearing despite being warned about them on numerous occasions. Consequently, the trial court did not clearly err in finding that petitioner established § 19b(3)(j) by clear and convincing evidence. See *In re Moss*, 301 Mich App at 82.

III. BEST INTERESTS

"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). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. This Court reviews for clear error the trial court's decision regarding the child's best interests. MCR 3.977(K); *In re Trejo Minors*, 462 Mich at 356-357.

The trial court did not clearly err by concluding that termination of respondent's parental rights was in the child's best interests. Respondent admitted that she was unable to care for the child, and several caseworkers testified to the same. Additionally, Whitburn testified that respondent was incapable of recognizing and attending to the child's needs. Further, respondent appeared disinterested at times during parenting time visits and skipped multiple weeks of parenting time without warning. Moreover, Bortz testified that although the child shared a bond with respondent, the child shared a stronger bond with the foster mother. In making its best interests determination, the trial court was permitted to consider the child's need for permanence and stability, two things respondent could not offer, as well as the advantages offered by the child's placement in foster care. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Respondent contends that the trial court failed to give adequate consideration to the proposed juvenile guardianship with James and that the trial court's best interests determination was clearly erroneous in light of her request for a juvenile guardianship. Rather than terminating parental rights, the trial court may appoint a guardian for the child if it determines that the guardianship is in the child's best interests. MCL 712A.19a(7)(c). The placement must be in the

child's best interests, and the trial court has discretion whether to approve such a placement. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). See also MCR 3.979(A). We find that the trial court's consideration of the juvenile guardianship was adequate and that the trial court did not clearly err when it found that, despite the petition for the guardianship, termination was in the child's best interests. Indeed, at various times during these proceedings, James equivocated as to whether he wanted to have the child placed in his care. Additionally, Whitburn testified that James could not provide adequate care for the child. Furthermore, petitioner presented testimony that James largely ignored the child during parenting time visits. Moreover, James ignored safety concerns that were expressly identified to him by caseworkers. In addition, James readily admitted that he would have involved respondent in caring for the child had he been granted custody over the child. Given respondent's unstable history, which included leaving for weeks at a time with no prior warning, permitting respondent to remain involved in the child's life could add to the instability already present in the child's life. The child's need for permanency and stability are factors that the trial court may consider in making its best interests determination. *In re Olive/Metts Minors*, 297 Mich App at 42. As such, we find that the trial court did not clearly err by finding that termination, rather than a guardianship with James, was in the child's best interests.

In reaching this conclusion, we reject respondent's assertion that the trial court's decision was erroneous because it relied on information about James's home that was out-of-date and that did not provide an accurate portrayal of James's home at the time of the termination hearing. Regardless of when the home study in this case was completed, James admitted to most of the safety concerns identified with his home at the termination hearing. Furthermore, even absent the safety concerns with James's home, termination was in the child's best interests because caseworkers opined that James and respondent lacked the ability to provide proper care for the child.

IV. MOTION FOR NEW TRIAL

Following the entry of the order terminating her parental rights, respondent moved the trial court for a new trial and a stay of the order terminating her parental rights. In her motion, respondent alleged that she had regular parenting time with the child, as well as her newborn son,¹ during the time period between the termination hearing and the entry of the trial court's order terminating parental rights, and that she showed progress in her parenting skills during that time. She also alleged that James rectified the safety concerns at his house after the termination hearing. The trial court denied the motion. We review for an abuse of discretion the trial court's decision to grant or deny a motion for rehearing or a new trial. *In re Toler*, 193 Mich App 474, 478; 484 NW2d 672 (1992). "An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes." *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008) (quotation omitted).

MCL 712A.21(1) provides, in pertinent part, that:

¹ Respondent was pregnant at the time of the termination hearing and gave birth to a second child shortly after the termination hearing concluded. That child is not at issue on this appeal.

At any time while the juvenile is under the jurisdiction of the court, an interested person may file a petition in writing and under oath for a rehearing upon all matters coming within the provisions of this chapter. Upon the rehearing, the court may affirm, modify, or set aside any order reviewed under this section.

Pursuant to MCR 3.992(A), a motion for a new trial or rehearing “will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case.” “The court need not hold a hearing before ruling on a motion” for a new trial. MCR 3.992(E). See also MCR 3.992(D) (“The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case.”).

The trial court did not abuse its discretion when it denied respondent’s motion for a new trial. The record reveals that throughout the course of these proceedings, respondent lacked the wherewithal and stability needed to care for her child. Several caseworkers expressed strong doubts about respondent’s ability to provide proper care and custody for her child. These doubts were rooted in respondent’s failure to comply with the court-ordered services plan, her failure to faithfully attend parenting time visits, her decision to leave for weeks at a time with no prior warning, and her general inattentiveness to her child during parenting time visits. Moreover, after over a year of petitioner’s involvement in this case, respondent’s parenting skills did not show any significant signs of improvement. Further, respondent even admitted, on several occasions, that she could not provide proper care and custody for her child. That respondent might have made some improvements during the few weeks between the termination hearing and the entry of the order terminating her parental rights did not warrant a new trial.

Additionally, that James remedied the safety issues in his home does not demonstrate that the trial court abused its discretion when it denied respondent’s motion for a new trial. James admitted that he had known about the safety conditions for months and that the conditions were a barrier to the child’s placement in his home. Yet, despite possessing this knowledge, James did nothing to address the safety concerns before the termination hearing, even though respondent offered financial assistance to pay for the requisite repairs. As correctly noted by the trial court, the problem with James as a juvenile guardian was not merely the safety issues, it was that James took several months to do anything about safety issues. Moreover, as discussed *supra*, even absent the safety issues, caseworkers testified that James was incapable of caring for the child on his own. As such, the trial court’s decision to deny respondent’s motion for a new trial was not an abuse of discretion. *In re Toler*, 193 Mich App at 478.

We also reject respondent’s argument that the trial court erred by failing to hold a hearing at which she could present evidence of the allegations she made in her motion for a new trial. A trial court has discretion to hold a hearing on a motion for a new trial. MCR 3.992(D)-(E). Further, even assuming everything respondent alleged in her motion for a new trial was true, respondent was not entitled to a new trial. Her inability to provide proper care and custody for her child was apparent throughout these proceedings, notwithstanding a few weeks after termination where she allegedly made improvements in her parenting skills. Moreover, as discussed above, even assuming James rectified all of the safety issues identified with his home,

there was ample evidence supporting the decision that termination, rather than a guardianship with James, was in the child's best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra