

STATE OF MICHIGAN
COURT OF APPEALS

In re MCNARY/BANKS, Minors.

UNPUBLISHED
September 16, 2014

No. 320788
Bay Circuit Court
Family Division
LC No. 12-011252-NA

Before: FITZGERALD, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

The circuit court terminated the respondent-mother's parental rights to her two sons, DM and HB, pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (3)(g) (failure to provide proper care or custody), and (3)(l) (previous termination of parental rights under the juvenile code). While the circuit court erred in finding that respondent's rights to two older children had previously been involuntarily terminated, the remaining factors were supported by a preponderance of the evidence, as was the court's determination that termination was in the children's best interests. We therefore affirm.

I. BACKGROUND

The Department of Human Services (DHS) took four-year-old DM into care on October 26, 2012, when he and respondent were found inside a house during a drug raid. Respondent was nine months pregnant with HB and was arrested for possession of crack cocaine. When HB was born, he suffered substance abuse withdrawal symptoms and respondent admitted to abusing crack cocaine and marijuana during her pregnancy. The DHS took the infant into care and the brothers were placed in the same foster home.

Respondent initially made good progress under her case service plan. She engaged in psychological and substance abuse treatment and her random drug screens were negative. Respondent's supervised visitation also went well. In July 2013, however, respondent relapsed. She and HB's biological father ended their relationship and respondent returned to using cocaine and marijuana, as well as synthetic marijuana as well. Respondent stopped visiting her children, lost contact with her attorney and case worker, and ceased participating in services. Respondent finally reconnected with her case worker, and he assisted her entry into an in-patient drug treatment program on December 2, 2013. She graduated to a halfway house on January 30, 2014. The termination hearing was held in February 2014, and at that time, respondent required several additional months to solidify her sobriety and prepare to care for her children. Moreover,

she had no home, job, transportation, or plan for the future. Accordingly, the court terminated respondent's parental rights.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the circuit court erred in finding statutory grounds in support of termination. Pursuant to MCL 712A.19b(3), a trial court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Furthermore, the "clear and convincing standard is the most demanding standard applied in civil cases[.]" *Id.* (citations omitted).

The circuit court found termination supported on three separate grounds under MCL 712A.19b(3):

(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.

* * *

(g) The 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.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

The circuit court did not clearly err in finding that termination was supported by MCL 712A.19b(3)(c)(i). The children were taken into care based on respondent's admitted substance abuse and because she and her young child, DM, were living in a home that was subjected to a drug raid. Although respondent initially made progress to rectify these conditions, she relapsed

into drug abuse during the child protective proceedings. By the time of the termination hearing, the children had been in foster care for 15 months. The undisputed evidence showed that respondent required several additional months to maintain a pattern of sobriety before she could regain custody of her children. This delay was unreasonable given the young age of the children and their need for stability. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009) (“Although respondent mother embarked on a commendable effort to treat her addiction several months before the termination hearing, the totality of the evidence amply supports that she had not accomplished any meaningful change in the conditions existing by the time of the adjudication.”).

Further, testimony at the termination hearing indicated that respondent had not yet found suitable housing and did not have clear plans for doing so. Respondent argues that the circuit court erred in suggesting that housing and transportation were conditions that led to the adjudication. Given evidence that respondent used drugs with other persons in her home in DM’s presence, it is fair to characterize housing as a condition that led to the adjudication. And any error in the court’s minimal reliance on transportation issues was harmless. MCR 3.902(A).

Termination was also supported by MCL 712A.19b(3)(g). As the circuit court noted, respondent failed to provide a safe, drug-free home for DM and used illicit drugs while pregnant with HB. Such conduct constituted improper care and custody. And the record showed that respondent would require several additional months before she would be able to overcome her addiction and provide a stable household for her children. The court reasonably observed that additional delay was unwarranted, given that the children had already been in foster care for over a year. Consequently, there was no reasonable expectation that respondent would be able to provide proper care or custody within a reasonable time given the ages and needs of these children.¹

However, the court did err in supporting termination of parental rights under MCL 712A.19b(3)(l). “MCL 712A.19b(3)(l) . . . only applies to a prior *involuntary* termination under the Michigan juvenile code or similar law of another state.” *In re Jones*, 286 Mich App 126, 128; 777 NW2d 728 (2009) (emphasis added). Respondent lost custody to two children in the 1990s. Respondent testified that she granted a guardianship over one child to her mother and that her aunt adopted the other. There is no record indication that respondent’s parental rights were involuntarily terminated to either child. The record equally supports the conclusion that respondent’s eldest child was placed in the care of a guardian in lieu of termination of parental rights, see MCL 712A.19a(7)(c), and that she voluntarily relinquished her parental rights to the second child pursuant to the Michigan Adoption Code, MCL 710.21 *et seq.* MCL 712A.19b(3)(l) “does not apply to a voluntary termination under the Adoption Code.” *In re Jones*, 286 Mich App at 128. Yet, reliance upon this factor was harmless error because the statute requires only one ground in support of termination and the circuit court properly found

¹ Respondent’s medical neglect of DM would also support the court’s resolution under this factor. DM required surgery to remove seven baby teeth because his roots were exposed and he could not chew solid food.

termination supported under two. See *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

III. BEST-INTERESTS DETERMINATION

Respondent also challenges the circuit court's conclusion that termination of her parental rights was in the children's best interests. Pursuant to MCL 712A.19b(5), "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." A circuit court must determine by a preponderance of the evidence that termination is in the child's best interest. *Moss*, 301 Mich App at 83. "In deciding whether termination is in the child's best interests, the court may consider 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." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 701 (2014).

The record established that both children required a heightened level of attention and care. DM suffered emotional trauma, and required intensive therapy. DM's therapist testified that respondent's relapse and sudden absence from her children's lives increased this trauma. Young HB's asthma required twice daily nebulizer treatments and a commitment to providing a meticulously maintained home to avoid triggering a medical emergency. The circuit court reasoned that respondent would be unable to provide for the children's intensive needs in the foreseeable future because she did not have a home or transportation, nor had she demonstrated an ability to care for the children. We discern no error in the court's analysis.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Elizabeth L. Gleicher

/s/ Amy Ronayne Krause