

STATE OF MICHIGAN
COURT OF APPEALS

In re B. B. BROWN, Minor.

UNPUBLISHED
October 16, 2014

No. 321561
Clinton Circuit Court
Family Division
LC No. 13-024359-NA

Before: SAAD, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Respondent appeals the trial court order that terminated her parental rights under MCL 712A.19b(3)(c)(i), (g) and (j). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

The Department of Human Services (“DHS”) filed a petition to remove the child from respondent’s care in March 2013, and alleged, among other things, that respondent was mentally unstable, a heavy drug user, neglectful, and in an abusive relationship. The court sustained the petition and DHS took custody of the child.

While the child was in foster care, DHS provided services to respondent to help her resolve her substance-abuse and mental-health issues, and improve her parenting abilities. Sadly, respondent attended these sessions only sporadically, continued to abuse alcohol, and did not comply with the drug-screening process. She also frequently failed to attend parenting-time sessions. At the sessions in which she did participate, she exhibited limited parenting skills, and the child did not seek comfort from her.

The trial court held termination proceedings in April 2014, and heard testimony from respondent’s various therapists, her DHS caseworker, and respondent herself. Her therapists said that she continued to have mental-health and substance-abuse problems, and the caseworker recommended that her parental rights be terminated. Indeed, respondent admitted that she had not been compliant with the services provided to her by DHS.

The Court, which noted that the child was now in the custody of his father, found grounds for termination under MCL 712A.19b(3)(c)(i), (g) and (j). It based its holding on respondent’s failure to use or comply with the state-provided services, and her continued mental-health and substance-abuse issues. The trial court also held that termination was in the child’s best interests

because of respondent's lack of empathy for the child, her chaotic lifestyle, and general instability.

On appeal, respondent argues that the trial court erred when it found: (1) statutory grounds for termination; and (2) that termination was in the child's best interests.¹

II. ANALYSIS

A. STATUTORY GROUNDS FOR TERMINATION²

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). MCL 712A.19b(3) provides, in relevant part:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

* * *

¹ Respondent also claims that the state did not make reasonable efforts to reunify her with her child—a claim that is fatally undermined by respondent's own testimony at the termination hearing, in which she admitted that she did not comply with services provided to her by DHS. In any event, the record reflects that DHS went to great lengths to assist respondent in combating her substance-abuse problems and treating her mental-health afflictions—a process that was necessary for her to complete before regaining custody of her child. As noted, respondent did not comply with these services, missed several appointments, and refused to participate in certain mental-health services offered to her by DHS. The trial court thus properly held that DHS made reasonable efforts to reunify respondent with her child.

² We "review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

(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.

* * *

(j) There 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, the testimony of multiple witnesses at the termination hearing indicated that respondent: (1) continues to have substance-abuse problems; (2) remains emotionally unstable; (3) did not attend parenting-time sessions;³ and (4) cannot provide proper care for the child. Accordingly, the trial court found proper grounds for statutory termination under MCL 712A.19b(3)(c)(i), (g), and (j).

B. BEST INTERESTS DETERMINATION⁴

A trial court may determine a child's best interests through reference to a number of factors, including the child's bond to respondent, respondent's parenting ability, the advantages of a foster home over the parent's home, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41–42; 823 NW2d 144 (2012). Whether children are in the care of a relative at the time of the termination hearing is an “explicit factor to consider in determining whether termination was in the children's best interests.” *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010).

Again, respondent failed to attend parenting sessions and did not notify DHS that she would be absent, which left the child upset and confused. Further, she did not appear to understand the emotional effect of these “no call, no shows” on her child and also displayed “limited empathy” when she did engage in parenting. Moreover, respondent's continued substance abuse and mental health problems hindered her ability to provide a suitable home for her son. The child also flourished in foster care and adjusted well when placed in his father's care. And, the trial court explicitly addressed the fact that the father had custody of the child when it determined whether termination of respondent's parental rights was in the child's best

³ Respondent did not only fail to attend parenting-time sessions—she also frequently failed to notify DHS that she would not be attending the sessions. As a result, her child was left waiting for his mother only to be disappointed and unable to understand her absence. While respondent offered excuses for some missed visits, and her work schedule may have played a legitimate role on occasion, the number of missed visits and the extent of her excuses demonstrate a failure to care for her child and understand his emotional needs.

⁴ A court's decision that termination is in the child's best interests is reviewed for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

interests. Accordingly, the trial court's decision is correct, and respondent's appeal is without merit.

Affirmed.

/s/ Henry William Saad
/s/ Peter D. O'Connell
/s/ Christopher M. Murray