

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 27, 2015

In re G. M. HELGE, Minor.

No. 322256
Oakland Circuit Court
Family Division
LC No. 14-817007-NA

Before: MURRAY, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

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

I. FACTUAL BACKGROUND

Respondent was referred to Child Protective Services (CPS) when she informed her doctor, after giving birth to her child, that she had used cocaine during the 18th week of her pregnancy. The Department of Human Services (DHS) did not immediately petition for custody of the child because both the child and respondent tested negative for drugs at birth. A caseworker later interviewed respondent and her fiancé, R. Helge (the child's father), at their home. The worker had no concerns with respondent's home, income, or interaction with the child. However, respondent had a lengthy history of substance abuse and her parental rights to her second son were terminated in 2000 due to substance abuse and unstable housing. R. Helge admitted that he was a former heroin addict and had a criminal history, but claimed that he had been sober for two years. The caseworker spoke to respondent's case manager at Easter Seals and a public health nurse who worked with respondent, and lacked any concerns about respondent parenting her newborn child, or her mental health or substance abuse issues. The worker also confirmed that the child had attended a well-baby check-up and her doctor had no concerns.

Despite respondent's prior history, the caseworker was leaning toward not filing a petition for court intervention in light of the positive information she learned during her investigation. However, when the worker arrived at respondent's home to conduct a random drug screen on February 10, 2014, respondent informed the worker that it would be positive for cocaine and marijuana. Respondent explained that she had been feeling depressed after giving birth to the child and had used drugs while out with friends on February 7, 2014. Respondent's drug screen was positive for cocaine, but not marijuana. As a result, the DHS filed a petition

requesting jurisdiction over the child and termination of respondent's parental rights at the initial dispositional hearing. Following a hearing, the trial court found that statutory grounds for termination existed pursuant to MCL 712A.19b(3)(g), (i), (j), and (l), and that termination of respondent's parental rights was in the child's best interests.¹

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence.

The petitioner has the burden of establishing a statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). The trial court's factual findings as well as its ultimate determination that a statutory ground for termination has been proven is reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Regard is given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

The trial court found that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(g), (i), (j), and (l), which permit termination of parental rights under the following circumstances:

(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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(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.

* * *

(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.

¹ The court declined to terminate the parental rights of R. Helge.

It is undisputed that respondent's parental rights to her second son were terminated in 2000 as a result of a child protection proceeding initiated in 1999 due to substance abuse and neglect. She left the child with her parents shortly after giving birth to him because she could not stay clean or sober, and she was living on the streets. This evidence supports the trial court's finding that a statutory ground for termination was established under § 19b(3)(l).

The evidence also showed that respondent had another son who became severely impaired due to an apparent shaking incident when she left the child with a roommate. Although respondent's parental rights to that child apparently were never terminated, respondent had not seen the child for approximately seven years and he was being cared for by his paternal grandparents. The evidence also clearly showed that respondent's substance abuse has been a serious and chronic problem, and that prior efforts to rehabilitate respondent have been unsuccessful. Respondent, who was 39 years old at the time of the termination hearing, admitted that she began using alcohol and marijuana on a daily basis at the age of 12, was using cocaine regularly by the age of 19, began using heroin at the age of 23, and had completed at least 11 residential substance abuse treatment programs. She further admitted that she used cocaine both while she was pregnant with the instant child and again shortly after the child's birth, when CPS was involved. This evidence supports the serious and chronic neglect or abuse element of § 19b(3)(i), and also shows that prior attempts to rehabilitate respondent have been unsuccessful. Accordingly, the trial court did not clearly err in finding that § 19b(3)(i) was also established by clear and convincing evidence.

The trial court also did not clearly err in finding that §§ 19b(3)(g) and (j) were both established by clear and convincing evidence. The evidence showed that respondent failed to provide proper care and custody for her child by using cocaine while pregnant and then again after the child's birth. Prenatal drug use is evidence of neglect. *In re Baby X*, 97 Mich App 111, 115-116; 293 NW2d 736 (1980). Respondent argues that she will be able to provide proper care and custody within a reasonable time because she recently completed a 30-day inpatient program, is seeing a psychologist, a psychiatrist, and a therapist, and she is compliant with her psychiatric medications.

Despite respondent's recent completion of a drug treatment program, the evidence showed that she had been abusing drugs for more than 20 years and had participated in at least 11 drug treatment programs over the years. These treatment efforts were unsuccessful in preventing respondent from resuming her drug use, both while pregnant with the instant child and after her child's birth. Whether a parent has benefitted from past services is relevant in assessing whether a child will be at risk if placed in the parent's home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). While there is hope that respondent can change, the evidence of her extensive history of drug abuse, treatment, and relapse supported the trial court's finding that there is a high probability that she will relapse again. The clinician who conducted respondent's psychological evaluation testified that given respondent's history, the likelihood of relapse was high and respondent would require daily monitoring and intensive therapy for at least two years if she hoped to plan for her child. Given this evidence, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody for her child within a reasonable time. The evidence of respondent's longstanding and extensive substance abuse history, and the evidence that her condition prevented her from caring for two other children, one of whom became seriously

impaired after being left with a roommate, also supports the trial court's determination that the child was reasonably likely to be harmed if returned to respondent's care. Therefore, the trial court did not clearly err in finding that termination was also warranted under §§ 19b(3)(g) and (j).

III. BEST INTERESTS

Respondent next argues that the trial court erred in finding that termination of her parental rights was in the child's 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). Whether termination is in the child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining what is in a child's best interests, the 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, *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012), as well as a respondent's history, psychological evaluation, and parenting techniques, *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). A trial court's decision regarding a child's best interests is also reviewed for clear error. *In re Trejo*, 462 Mich at 356-357.

Respondent argues that she loves and is bonded with her daughter, that she is able to care and provide for her, and that she is making positive changes of her own accord. She also argues that, given the relationship between herself and the child's father, she will most likely have future contact with the child; therefore, any alleged protection afforded by the termination of her parental rights is illusory and the child will be afforded greater protection by the provision of additional services and supervision.

Notwithstanding these assertions, we cannot conclude that the trial court clearly erred in finding that termination of respondent's parental rights was in the child's best interests. The purpose of child protective proceedings is to protect the child, not punish the parents. *In re Sanders*, 495 Mich 394, 437; 852 NW2d 524 (2014). Sadly, respondent's inability to refrain from using illegal drugs places the child's well being in jeopardy, and her drug use during and after pregnancy mitigates her otherwise satisfactory parenting abilities. The clinician who evaluated respondent opined that because of respondent's history of frequent relapse, there is a high likelihood she will relapse again. She further opined that respondent's thought that she could use drugs one time without relapsing suggested that she has not internalized the concept that she will always be an addict and will never be able to use substances without placing her daughter in jeopardy. Although respondent has good knowledge of parenting skills and abilities, and a genuine desire to make positive changes in her life, respondent's desire to parent her child could, according to the clinician, be outweighed by her attachment to drugs. The psychologist concluded that respondent will require a *minimum* of two years of court supervision with no guarantee that she will remain sober during that period or thereafter. The trial court opined that respondent would require services for the rest of her life, which is supported by the extensive period of years that respondent has been abusing drugs, the large number of prior failed attempts

at treatment, and respondent's inability to refrain from returning to drug use both during her pregnancy and after the child's birth.

Termination of respondent's parental rights is not illusory. First, whether Helge will be reunited with the child remains to be determined. Second, even if Helge and the child are reunited and respondent's relationship with Helge enables her to have continued contact with the child, it would still be in the child's best interests to preclude respondent from having any parental authority with respect to matters of care and custody.

For these reasons, we conclude that the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ Henry William Saad

/s/ Kirsten Frank Kelly