

STATE OF MICHIGAN
COURT OF APPEALS

In re WHITE, Minors.

UNPUBLISHED
October 18, 2016

No. 332114
Wayne Circuit Court
Family Division
LC No. 14-517450-NA

Before: GADOLA, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her two minor children under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood of harm).¹ We affirm.

I. BACKGROUND FACTS

The Department of Health and Human Services (DHHS) filed a petition asking the court to take protective custody of respondent's two children after it received a report that respondent bound her 11-month-old son's wrists and placed tape over his mouth as a form of punishment. The petition alleged that when Detroit Police Officers arrived at respondent's home, they discovered that it lacked food and sleeping accommodations for the children. DHHS later amended the petition to add allegations of improper supervision. Following a preliminary hearing, the trial court authorized the petition and placed the children in protective custody.

¹ The trial court terminated the parental rights of the children's fathers as part of the same order in which it terminated respondent's parental rights. The order states that termination regarding the three parents was appropriate under MCL 712A.19b(3)(a)(i) (the child's parent is unidentifiable and has deserted the child for 28 or more days), (a)(ii) (the child's parent has deserted the child for 91 or more days), (g), and (j), without specifying which statutory grounds applied to which parent. The Department of Health and Human Services concedes, and we agree, that MCL 712A.19b(3)(a)(i) and (a)(ii) do not apply to the circumstances surrounding the termination of respondent's parental rights. Accordingly, we conclude that the lower court terminated respondent's parental rights under MCL 712A.19b(3)(g) and (j) alone.

Respondent entered a no-contest plea, allowing the trial court to take jurisdiction over the children. Thereafter, the court ordered respondent to participate in individual therapy and parenting classes, to regularly visit the children, to obtain suitable housing and a legal source of income, and to submit to psychological and psychiatric examinations. At a review hearing in February 2015, caseworker Stephanie Logan testified that the children were placed together in a licensed foster home. According to Logan, respondent was homeless and lacked any source of income, she missed half of her parenting visits, and she was referred for parenting classes and individual therapy but failed to begin because she did not have a permanent address. Logan also received a report that respondent had been living in a drug house, so the referee recommended ordering respondent to submit to a drug screen after the hearing.

At a subsequent review hearing, caseworker Jalon Moore testified that respondent tested positive for marijuana at the drug screen following the last hearing, she missed approximately half of her parenting visits, and she failed to start parenting classes despite referrals, in part because she was incarcerated for a period following the last review hearing. Respondent testified that she recently moved into rental housing and set up her individual counseling and psychological examination. She explained that she was on probation for 18 months after entering a plea for child abuse related to the incident in which she bound and taped her son, and she agreed that she missed several parenting visits and had not yet started parenting classes. Following the hearing, the court ordered respondent to submit to weekly drug screens as part of her case service plan.

At the following review hearing, caseworker Diane Carbin reported that respondent was referred for parenting classes and individual therapy, but there was no proof that she was participating in these services. According to Carbin respondent had not completed any weekly drug screens and she was living in a shelter in Pontiac, Michigan. Respondent testified that DHHS had given her a bus card, she started parenting classes three weeks earlier and attended two out of three classes, she started individual therapy, and she would be moving into new housing within a month.

In October 2015, the trial court issued an order changing the permanency planning goal for the children from reunification to adoption. The order explained that respondent was early terminated from her parenting classes and individual therapy for noncompliance; caseworkers reported that respondent acted hostile, upset, and impatient with the children during parenting visits; respondent reported that she was employed, but DHHS could not verify her employment; and respondent had new housing, but the housing was not suitable for children because it lacked furniture and carbon monoxide and smoke detectors. The order stated that respondent was pregnant with her third child, but was not receiving prenatal care. Thereafter, DHHS filed a supplemental petition seeking to terminate respondent's parental rights.

At a January 2016 bench trial on the supplemental petition, caseworker Jasmine Logan testified that DHHS referred respondent for parenting classes on five occasions, but respondent was consistently terminated from the classes for lack of participation. According to Logan, DHHS also referred respondent for individual therapy on multiple occasions, but respondent refused to participate because she said it brought up too many memories. Logan testified that respondent missed 17 of 54 parenting visits during the course of the case and left early from seven visits. There were also concerns about respondent's parenting skills at the visits.

Specifically, Logan noted that respondent threatened to hit her daughter at a visit, she was constantly on her cell phone during a visit, she used profanity and hit her son at a visit, and she again hit her son in the mouth and laughed at her daughter when she complained of a stomachache at a visit.

Caseworker Douglas Williams testified that respondent only submitted to three drug screens during the case, despite the fact that she was ordered to complete weekly screens. Williams said he offered to reevaluate respondent's home after it failed the initial inspection, but she refused. Williams explained that respondent attended only two out of six parenting visits since he took over the case in December 2015, and at one of the visits, she was involved in an altercation with the children's foster mother. Williams said respondent would sometimes use threatening tones during visits, and it was clear that the children were fearful when this happened. Williams said the children had a grandfather in Louisiana who had allegedly expressed some interest in taking them, but he believed their current foster care placement was best considering the length of time the children had been in care and the lack of information he had been given about the out-of-state grandparent.

The children's foster mother testified that she shared a bond with the children and was interested in adopting them. The foster mother said that respondent's son called her "mama," and her four children treated respondent's children like they were part of the family. She said respondent only provided clothing for the children on one occasion, and after parenting visits, respondent's son would sometimes act out and her daughter would sometimes urinate on herself. According to the foster mother, respondent's son never asked about respondent and respondent's daughter only asked about her twice during the course of the case.

Respondent testified that she had been living in an apartment for the last four months, but had not received a lease agreement that she could show her caseworker. She acknowledged that the apartment was not large enough to accommodate both of her children in the long term. Respondent said she was currently working under-the-table to make money to pay her rent, but she expected to start working at a new Tim Hortons when construction was finished on the building. Respondent agreed that she never completed the DHHS-referred parenting classes, but said she was taking a parenting class she found online. She also agreed that she was terminated from individual therapy, but said she signed herself up for therapy and had attended one session. Respondent agreed that she was given a phone number for drug screens and was required to go once a week, but she refused because she did not believe she abused drugs. Respondent testified that sometimes she would not attend parenting visits because she was frustrated that she only got to see her children three hours a week and she did not like seeing them cry at the end of visits. She agreed that she hit her son at one of the parenting visits because he spit on her so she "busted him across his face." Respondent said she could not work until her pregnancy was over and had a note from a doctor. She agreed that she lived in four different places over the last 18 months.

Following respondent's testimony, the referee recommended terminating respondent's parental rights, given the young ages of the children and the evidence that respondent had not completed any court-ordered services despite having 18 months to do so. The referee noted that respondent lacked stable and suitable housing and employment, and concluded that termination was in the children's best interests because respondent had not demonstrated proper parenting

skills or an ability to provide for the needs of her children. The trial court adopted the referee's recommendations and terminated respondent's parental rights.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the trial court clearly erred by concluding that sufficient evidence supported terminating her parental rights under any of the statutory grounds found in MCL 712A.19b(3). "In order to terminate parental rights, the court must find that at least one of the statutory grounds set forth in MCL 712A.19b has been met by clear and convincing evidence." *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). We review for clear error a trial court's decision that a statutory ground for termination has been proven by clear and convincing evidence. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). "A circuit court's decision to terminate parental rights 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." *Id.* at 209-210.

Below, the trial court relied on MCL 712A.19b(3)(g) and (j) to terminate respondent's parental rights. Termination is appropriate under MCL 712A.19b(3)(g) if clear and convincing evidence shows that "[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." MCL 712A.19b(3)(j) provides that termination is appropriate if clear and convincing evidence shows 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." A parent's failure to substantially comply with and benefit from a court-ordered case service plan is evidence both that the parent will not be able to provide a child with proper care and custody and that the child will be harmed if returned to the parent's home. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014).

Respondent's children were placed in protective custody after respondent used inappropriate physical discipline on her son and authorities discovered that respondent's home lacked food and sleeping accommodations for the children. The court ordered respondent to participate in parenting classes, individual therapy, parenting visits, psychological and psychiatric examinations, weekly drug screens, and to obtain stable housing and employment as part of her case service plan. Despite these requirements, respondent failed to complete any of the court-ordered services during the 18-month case. Testimony at the termination hearing revealed that DHHS referred respondent for parenting classes and individual therapy on multiple occasions, but respondent failed or refused to participate in both services. Although respondent testified that she participated in an online parenting class and signed herself up for individual therapy, she did not provide proof of these actions and none of the caseworkers testified that these activities were sufficient to fulfill the requirements of her case service plan.

Respondent failed to complete weekly drug screens despite being ordered to do so. She admitted at the termination hearing that she was given a phone number for drug screens and was required to go once a week, but she refused to go because she did not believe she abused drugs. Respondent also failed to obtain stable and suitable housing and employment during the course of the proceedings. At the termination hearing, respondent admitted that she lived in four

different places during the past 18 months, none of which were approved for her children. She also admitted that her current housing was not an appropriate long-term option for the children. Although there was evidence that respondent had some source of income, she admitted that her income was under-the-table and said she could not work during the remainder of her pregnancy.

Testimony at the termination hearing revealed that respondent missed 17 of 54 parenting visits during the proceedings and left early from seven visits. Caseworkers documented that respondent threatened to hit her daughter at one visit, she was on her cell phone the majority of the time during another visit, she hit her son at two different visits, and she laughed at her daughter when she complained of a stomachache at a visit. Williams testified that respondent got into an altercation with the foster mother in front of the children and would sometimes use threatening tones during visits, which scared the children.

Considering this evidence, it is clear that respondent failed to substantially comply with her case service plan, and to the extent that she did participate, she failed to benefit from the services provided. Respondent continued to exhibit violent and threatening behaviors at parenting visits throughout the case, despite the fact that one of the main reasons the children came into protective care was respondent's inappropriate use of physical discipline on her son. Respondent suggests in her brief on appeal that DHHS should have done more by re-referring her for parenting classes and individual therapy and setting up her drug screens. However, respondent also bore responsibility to participate in the services that were offered. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012) (“While [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [the parent] to participate in the services that are offered.”). Caseworkers referred respondent for services several times throughout the case and provided her with free monthly bus passes to accommodate her transportation needs.

Respondent also suggests that the trial court erred by terminating her rights under MCL 712A.19b(3)(j) with respect to her daughter because she only physically abused her son. However, “[h]ow a parent treats one child is certainly probative of how that parent may treat other children.” *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (quotation marks and citation omitted; alteration in original). Further, Logan testified that respondent threatened to hit her daughter at a parenting visit and the CPS investigation report that formed the factual basis of respondent's jurisdictional plea specifically stated that, the summer before the children were taken into protective custody, respondent punched her daughter in the face and cut her lip. Under these circumstances, the trial court did not clearly err by terminating respondent's parental rights under both MCL 712A.19b(3)(g) and (j).

III. BEST INTERESTS

Respondent next argues that the trial court erred by concluding that terminating her parental rights was in her children's best interests. We review for clear error a trial court's decision that termination of parental rights is in a child's best interests. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). “The trial court should weigh all the evidence available to determine the children's best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). “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). In assessing a child’s best interests, courts may consider factors such as “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.” *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Courts may also consider a parent’s compliance with his or her case service plan, a parent’s visitation history, and the possibility of adoption. *White*, 303 Mich App at 714. A best-interest determination must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

At the termination hearing, respondent admitted that she lacked a steady source of income and suitable housing for the children. Testimony at the hearing showed that respondent never completed parenting classes or individual therapy despite numerous referrals. Respondent also failed to submit to weekly drug screens and she failed to consistently attend parenting visits. Respondent testified that she enrolled herself in therapy and was participating in online parenting classes, but caseworkers testified that she continued to exhibit violent and threatening behaviors at parenting visits. The children were initially taken into protective custody because respondent failed to provide suitable housing, lacked a stable income, and used inappropriate physical discipline on her son. Despite having 18 months and the opportunity to improve her situation and behavior, respondent continued to struggle with the same problems that brought the children into protective care.

Further, the children, who were very young at the time of the termination hearing, were placed together in a licensed foster home with a foster mother who was interested in adopting them. The foster mother testified that she shared a bond with the children, that respondent’s son called her “mama,” and that her children treated respondent’s children like part of the family. Although there is some evidence in the record that respondent and the children shared a bond and that the children were happy to see her at visits, the foster mother testified that respondent’s son never asked about respondent and respondent’s daughter only asked about her twice during the course of the proceedings. To the extent the children shared a bond with respondent, the strength of that bond was only one factor among many that the trial court was allowed to consider. See *White*, 303 Mich App at 714. In light of respondent’s failure to comply with or benefit from her case service plan, her lack of stable and suitable housing and employment, her inappropriate behavior at parenting visits, the benefits of the children’s foster home, the children’s young ages, and the length of time that they were in foster care, the court did not clearly err by concluding that a preponderance of the evidence supported terminating respondent’s parental rights.

Affirmed.

/s/ Michael F. Gadola
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens