STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of REGISTER/HAYES/JOHNSON-HAYES, Minors.

UNPUBLISHED
July 10, 2014

No. 318657
Wayne Circuit Court
Family Division
LC No. 11-498913-NA

In the Matter of REGISTER/HAYES/JOHNSON-HAYES, Minors.

No. 318660
Wayne Circuit Court
Family Division
LC No. 11-498913-NA

Before: MURRAY, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

In Docket No. 318657, respondent-mother appeals by right the trial court's order terminating her parental rights to her four minor children pursuant to MCL 712A.19b(3)(b)(*ii*), (g), and (j). In Docket No. 318660, respondent-father appeals by right the same order terminating his parental rights to the youngest minor child pursuant to the same statutory subsections. Although we affirm the trial court's determination that there was sufficient evidence to establish the statutory grounds for termination with respect to both respondents, we find it necessary to remand for more complete findings and conclusions regarding the best interests of the children.

I. RESPONDENT-MOTHER: STATUTORY GROUNDS

The trial court did not clearly err by finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(b)(*ii*), (g), and (j) had been established by clear and convincing evidence with regard to respondent-mother. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). At the jurisdictional hearing, respondent-mother admitted that she had been involved in an extremely violent relationship with respondent-father and that her children were also struck and attacked by him. During respondent-mother's Clinic for Child Study evaluation, she acknowledged that she had also been involved in a violent relationship with the father of her older children. The record showed that respondent-mother's home burned down in

2009, after which time respondent-father became even more abusive and especially violent toward respondent-mother's three-year-old son, TA, who was blamed for the fire.

The Department of Human Services (DHS) became involved and provided services. Respondent-mother was instructed to obtain a personal protection order (PPO) against respondent-father, but she did not follow through. At one point, respondent-father locked respondent-mother and the children in the house for three weeks and physically abused them all. By June 2010, DHS had helped respondent-mother separate from respondent-father and had helped her obtain a home with furniture. DHS also provided domestic-violence counseling and child-safety instruction. Respondent-mother continued her involvement with respondent-father but denied that he stayed in her home. Eventually, respondent-mother lost her income and the home. She moved into a shelter with her boys, put the two older girls in the home of her sister, and obtained a PPO. However, she continued to have a relationship with respondent-father. In February 2011, respondent-mother took the children to respondent-father's home, where respondent-father physically assaulted TA, locked TA in a room, and then physically assaulted respondent-mother when she tried to assist her child. Only respondent-mother's screams, which alerted a neighbor who intervened, permitted her to escape. Afterward, respondent-father threw TA off the porch. Because of respondent-mother's exposure of her children to respondent-father's continued violence, as well as her homelessness, the children were removed from respondent-mother's care after this incident. Sometime later in 2011, despite the loss of her children and the existence of the PPO, respondent-mother became pregnant by respondent-father; her youngest child, KD, was born in February 2012.

Although respondent-mother regularly visited with the children during the two and a half years that this case was pending, she never had stable or suitable housing and had only a few weeks of temporary employment for which she never provided documentation. She completed a parenting class and attended family therapy with the children, but was never able to control her children, especially TA, who had serious psychological and behavioral problems. Respondent-mother was referred to a second parenting class but did not attend it. Thus, her parenting never improved and she was never permitted unsupervised visitation. Respondent-mother complained that she could not find employment because she did not have her GED. However, she made only minimal attempts to obtain her GED and dropped out of the program without taking the GED test.

Respondent-mother also had an admitted history of drug abuse. Therefore, it was imperative that she comply with the requirement to participate in random drug screens. Her testing was sporadic, and she had tested positive for opiates. Although respondent-mother complied with the psychological and psychiatric evaluations, she never participated in individual therapy as recommended and ordered by the court. After two and a half years, she was in the same position as she was when the children were removed. She was homeless, without any income, and lacked sufficient parenting skills. Further, she had demonstrated that she would not comply with the requirements of the treatment plan.

We conclude that the statutory grounds set forth in MCL 712A.19b(3)(b)(*ii*), (g), and (j) were established by clear and convincing evidence. It was undisputed that respondent-mother's children, especially TA, had been physically abused by respondent-father, that respondent-mother had the opportunity to prevent the abuse but failed to do so, and that respondent-mother

continuously placed her children in a situation where abuse was likely to occur. Furthermore, respondent-mother was homeless, without income, and had been evicted from a shelter when the children were removed from her. During the entire time that her children were in foster care, respondent-mother never obtained suitable housing or income sufficient to care for even her own needs. She had failed to provide proper care or custody for her children before their removal. After two and a half years of noncompliance with the treatment plan and failure to obtain any income or suitable housing, there was no reasonable expectation that respondent-mother would be able to provide proper care or custody for the children within a reasonable time considering their ages. There was also no evidence that respondent-mother had benefited from any of the services provided or that she had addressed her substance abuse problems and her tendency to gravitate toward physically abusive men. Based on her history and her failure to address the conditions that led to the removal of the children, there was a reasonable likelihood that respondent-mother's children would be harmed if they were returned to her care.

II. RESPONDENT-FATHER: STATUTORY GROUNDS

The trial court did not clearly err by finding that the statutory grounds set forth in MCL 712A.19b(3)(g) and (j) had been established by clear and convincing evidence with regard to respondent-father. MCR 3.977(K); *Sours*, 459 Mich at 633.[1] The record established that respondent-father physically abused respondent-mother and her children. He was especially violent toward respondent-mother's son, TA, who was three years old at the time. TA had serious psychological and behavioral problems as a result of this abuse. Respondent-father's biological son, KD, was born in February 2012. Although respondent-father went to the hospital to see his son right after the birth, respondent-father did not sign an affidavit of parentage. He contended that he could not attend court hearings because of the PPO that respondent-mother had obtained against him. Interestingly, however, the PPO was also in effect when respondent-mother became pregnant with KD by respondent-father. The court ordered respondent-father to establish paternity several times. He finally submitted to a DNA test when KD was seven months old and signed an affidavit of parentage when KD was nine months old.

At a hearing when KD was 13 months old, it was reported that respondent-father had not provided a suitable address or evidence of income or employment. Respondent-father had recently been released from jail. The caseworker reported that respondent-father had signed a treatment plan and was just getting started with services. Respondent-father had been referred for a psychological evaluation but did not keep the appointment. He was then re-referred, but did not keep that appointment either. Respondent-father did not comply with any of the requirements of his treatment plan. He argued that he was not given enough time to comply. When KD was 16 months old, it was learned that respondent-father was again incarcerated. At

[1] We need not determine whether the trial court erred by finding that the statutory ground set forth in MCL 712A.19b(3)(b)(*ii*) was established with regard to respondent-father. Only one statutory ground need be established in order to terminate a respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

the termination hearing, respondent-father was still incarcerated and did not have any housing or income.

Respondent-father testified that he was incarcerated for a probation violation, resulting from his assault of a police officer. Respondent-father confirmed that, before his most recent incarceration, he had been in jail for domestic violence against another woman. He did not want his parental rights to KD terminated. Respondent-father testified that, when he was released, he would return to the job that he had before his incarceration, would obtain housing, and would be "back on his feet." He did not understand why he had to go "through all them classes." He had not attended parenting classes because, in his opinion, he did not "need them." He testified that he knew how to take care of a baby. He did not believe that he needed substance-abuse treatment because he did not do any drugs. He was not able to participate in the Clinic for Child Study evaluation or the psychological assessment because he kept getting incarcerated. Nonetheless, respondent-father claimed he would do everything required when he was released in order to keep his parental rights to KD. He stated that he would "be obedient" and "follow the rules."

There was clear and convincing evidence to establish the statutory grounds for termination set forth in MCL 712A.19b(3)(g) and (j) with regard to respondent-father. Respondent-father knew that he was KD's biological father from the time of KD's birth but avoided all parental responsibilities for almost a year and did not acknowledge parentage. Then, when it was finally determined that he was KD's father, and he signed a treatment plan, he did nothing to comply with the requirements of the plan and refused to put himself in a position to care for his son. Respondent-father told the caseworker that he would not quit drinking alcohol and refused to go to substance-abuse counseling. He never contributed anything toward the care of his son and visited only sporadically. He continued his violent and criminal behavior, spending a large part of the time incarcerated. He never had a suitable home and did not produce any evidence of financial ability to care for his child. Although respondent-father testified that he would be compliant with the requirements of the treatment plan and would work toward providing a home for his child, his past actions and his failure to address his issues provided little support for that contention. Respondent-father never provided proper care or custody for his child, and his conduct during the pendency of this case amply supported the conclusion that there was no reasonable expectation that he would be able to do so within a reasonable time considering his child's age. Moreover, respondent-father's failure to address his serious issues of violence, criminal behavior, and alcohol abuse provided clear and convincing evidence that there was a reasonable likelihood, based on his conduct, that his child would be harmed if placed in his care.

III. BEST INTERESTS OF THE CHILDREN

The trial court did not comply with the requirement to decide the best interests of each child individually, *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012); see also *In re White*, 303 Mich App 701, 715-716; 846 NW2d 61 (2014), and failed to consider the fact that respondent-mother's three older children were placed with relatives, *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). In fact, the trial court made no reviewable findings whatsoever concerning the best interests of the children.

It is axiomatic that in order to terminate a respondent's parental rights, the trial court must find by a preponderance of the evidence that termination is in the best interests of the children. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 88-90; 836 NW2d 182 (2013). The trial court must set forth sufficient findings of fact and conclusions of law to support its best-interests determination. MCR 3.977(I)(3).

In the present case, the trial court set forth no specific findings or conclusions, merely announcing that "termination of parental rights is in the children's best interest." Such a statement by the trial court is insufficient to comply with the requirements of MCR 3.977(I)(3), and essentially provides this Court nothing to review. Therefore, although we conclude that there was sufficient evidence to establish the statutory grounds for termination with respect to both respondents, we must remand this matter to the trial court for additional findings and conclusions concerning the best interests of the children. On remand, the trial court shall make specific best-interests determinations with regard to all four children.

IV. CONCLUSION

We affirm the trial court's determination that there was sufficient evidence to establish the statutory grounds for termination with respect to both respondents in this case. However, we remand to the trial court for more complete findings and conclusions regarding the best interests of the children. The trial court shall have 28 days from the date this opinion is released to make all necessary findings and conclusions on remand, to prepare a supplemental order containing those findings and conclusions, and to transmit a copy of that supplemental order to this Court. See MCR 7.216(A)(7). The trial court need not take any additional evidence on remand.

Affirmed in part but remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro

Court of Appeals, State of Michigan

ORDER

In re REGISTER/HAYES/JOHNSON-HAYES, Minors.

Docket Nos. 318657; 318660

LC No. 11-498913-NA

Christopher M. Murray
Presiding Judge

Kathleen Jansen

Douglas B. Shapiro
Judges

In accordance with the opinion of this Court issued concurrently with this order, this matter is REMANDED to the trial court for further findings and conclusions concerning the best interests of the children. We retain jurisdiction.

The trial court shall have 28 days from the date of the Clerk's certification of this order to make all necessary findings and conclusions on remand, to prepare a supplemental order containing those findings and conclusions, and to transmit a copy of that supplemental order to this Court. See MCR 7.216(A)(7). The trial court need not take any additional evidence on remand.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 10 2014
Date

Chief Clerk