

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of COSTELLO/MIGUEL, Minors.

UNPUBLISHED
February 13, 2014

No. 316987
Wayne Circuit Court
Family Division
LC No. 10-492537-NA

Before: MURPHY, C.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother appeals of right the trial court’s order terminating her parental rights to her minor children, PC and BM, under MCL 712A.19b(3)(a)(i), (3)(b)(ii), and (3)(j). Because we conclude there were no errors warranting relief, we affirm.

Respondent first argues that the trial court clearly erred when it found that statutory grounds for termination of her parental rights were proven by clear and convincing evidence. Specifically, respondent argues that reversal is warranted because the trial court clearly erred when it found termination was appropriate under MCL 712A.19b(3)(a)(i) and because respondent was not provided reunification services prior to termination of her parental rights.

“To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence.” *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). This Court reviews a trial court’s findings for clear error. *Id.* at 33; see also MCR 3.977(K). To be clearly erroneous, a trial court’s determination must be more than possibly or probably incorrect. *Ellis*, 294 Mich App at 33. “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 has been made.” *Id.*

The trial court terminated respondent’s parental rights as well as those of “unknown [f]athers” in its termination order. The rights of the parents were terminated on three statutory grounds: abandonment, MCL 712A.19b(3)(a)(i); failure to prevent sexual abuse of a child or sibling, MCL 712A.19b(3)(b)(ii), and likelihood of further harm to the children if returned, MCL 712A.19b(3)(j). With regard to MCL 712A.19b(3)(a)(i), the trial court stated that “the parent is unidentifiable and has not sought custody of the children” At the best interests hearing, the trial court expressly found that BM’s father was unknown and unascertainable. As the trial court used the term “parent”, it is likely that it intended to apply this ground only to BM’s father.

Even if the trial court erroneously intended to apply this particular ground to respondent, such error would not require reversal. “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *Ellis*, 294 Mich App at 32. Respondent has not addressed two other grounds relied upon by the trial court to terminate her parental rights, MCL 712A.19b(3)(b)(ii) and MCL 712A.19b(3)(j). “The failure to brief the merits of an allegation of error is deemed an abandonment of an issue.” *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). Because respondent has not addressed these grounds, it is not necessary to disturb the trial court’s decision. *Id.* at 98-99. However, even if respondent had addressed these grounds, the trial court’s decision was not clearly erroneous.

Under MCL 712A.19b(3)(b)(ii), termination is appropriate where the child or a sibling has suffered sexual abuse and the “parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so” and “there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.” Here, the evidence clearly showed that PC suffered sexual abuse. A therapist who worked with the children testified that PC related various incidents of sexual abuse to her, including incidents where PC was forced to touch a woman’s vagina with his hand and fingers, and then lay on top of the woman and “go up and down[.]” PC reported that he was forced to participate in these sexual activities to obtain food and that he was frequently left alone in his grandfather’s home without food. This evidence clearly supports the trial court’s finding that PC was sexually abused. As respondent was responsible for leaving PC with his grandfather, with full knowledge that he was a convicted sex offender, she not only failed to prevent this sexual abuse, but actually helped create the opportunity for the abuse.

The trial court did not clearly err when it found that there was a reasonable likelihood that the children would suffer further abuse if left in respondent’s care. The trial court determined that respondent had no permanent home and often leaves the state of Michigan for long periods of time. This finding was supported by testimony that respondent had told a case worker that she was living with friends, had no housing, and had no address. The case worker testified that respondent had a history of disappearing for periods of one to three months and would not contact her until respondent returned to Michigan. The trial court also believed, based on the testimony presented, that respondent required PC to talk to his grandfather and express a bond with him. The record demonstrates that respondent is not likely to provide a stable living environment for the children herself, and that she wishes for her children to continue to have a relationship with their grandfather. Thus, there is a likelihood of further abuse if the children are returned to her care because it is likely that she would return the children to their grandfather’s home. And, although only PC suffered the abuse, MCL 712A.19b(3)(b)(ii) also applies to siblings too. Thus, termination of respondent’s rights in regard to BM was supported by the evidence.

Under MCL 712A.19b(3)(j), termination is warranted where “[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.” The trial court did not clearly err in finding that termination of respondent’s rights to PC and BM was warranted under this statutory ground. As discussed, respondent has demonstrated an inability to provide adequate protection to her

children, having left them in the care of a known sex offender. Respondent also admitted that her children did not attend school while living with their grandfather. And respondent has not demonstrated that she has a suitable home or income with which she could provide adequate care for her children.

Respondent's conduct after PC was removed from his grandfather's home demonstrates that respondent is generally not interested in caring for her children. The case worker testified that respondent attended less than half of her scheduled visits with her children. Respondent did not make her first visit with PC until over a month after he was first taken from his grandfather's home. Respondent also reported that she had no bond with BM, that she did not feel like BM was her actual child, and that it was her desire that BM be adopted. Respondent admitted that BM was born with opiates in her blood. Although respondent reported that she was prescribed opiates due to a medical condition, she did not provide any documentation or other evidence to support this claim. On the basis of this evidence, the trial court did not clearly err when it determined that there is a reasonable likelihood that PC and BM would be harmed if returned to respondent's care. MCL 712A.19b(3)(j).

Respondent's argument concerning lack of services is also without merit. A petitioner is not required to provide reunification services where termination of parental rights is the agency's goal. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013). A petitioner must seek termination of parental rights if a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home is suspected of perpetuating sexual abuse upon the minor children or his or her siblings. MCL 722.638(1)(a)(ii); see also *In re HRC*, 286 Mich App 444, 465; 781 NW2d 105 (2009). This request must be made at the initial dispositional hearing if "a parent . . . is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk . . ." MCL 722.638(2). Accordingly, because termination of respondent's parental rights was the agency's goal, petitioner was not required to provide services. *Moss*, 301 Mich App at 91.

In support of her argument regarding petitioner's failure to provide services, respondent cites two Supreme Court decisions. One decision, *In re JL*, 483 Mich 300; 770 NW2d 853 (2009), is entirely inapplicable, as that case turned on the obligation of the petitioner to provide services to parents under the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* The ICWA is not at issue here. See *id.* at 316-317.

The other decision, *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), is equally inapplicable. In *Mason*, our Supreme Court noted that the respondent was entitled to reunification services because there were no aggravated circumstances present that would have eliminated the need for those services. *Mason*, 486 Mich at 152. Here, there was an aggravated circumstance, sexual abuse, which eliminated the usual requirement that reunification services be provided prior to terminating respondent's parental rights. MCL 712A.19a(2)(a); MCL 722.638(1)(a)(ii). Thus, these cases provide no support to respondent's position.

Respondent also cites two opinions from this Court. These opinions also are easily distinguished. In *In re Utrera*, 281 Mich App 1, 22-23; 761 NW2d 253 (2008), the respondent's parental rights were terminated because of the respondent's failure to comply with a limited guardianship placement plan. Neither guardianship nor a limited guardianship placement plan is at issue here. Finally, *In re B and J*, 279 Mich App 12; 756 NW2d 234 (2008), lends no support to respondent's argument. In that case, this Court reversed an order terminating parental rights because the parents' due process rights had been violated when the petitioner took action that created the ground for termination, and then sought termination on that same ground. *B and J*, 279 Mich App at 19-20. Although this Court acknowledged that adequate services had not been provided, the provision of services (or lack thereof) was unrelated to this Court's analysis. *Id.* at 18-24.

Finally, respondent argues that, because more than one year elapsed between the filing of the original petition for termination and a final order terminating her parental rights, petitioner should have provided her with services. The essence of petitioner's argument is that, because there was an opportunity to provide her with services, petitioner should be required to do so. Respondent cites no authority for this proposition, statutory or otherwise. This Court will not search for authority to sustain or reject a party's position. *Spires v Bergman*, 276 Mich App 432, 444; 741 NW2d 523 (2007). Further, respondent's argument is contrary to current statutory law, as previously discussed. See MCL 712A.19a(2)(a).

Respondent also asserts that the trial court erred when it determined that termination of her parental rights was in the best interests of the children. "If a statutory ground for termination is established and the trial court finds '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.'" *Ellis*, 294 Mich App at 32-33, quoting MCL 712A.19b(5). This Court reviews a trial court's determination that termination is in the best interests of a child for clear error. MCR 3.977(K).

In the second-to-last sentence of her brief, respondent asserts that "termination of her parental rights was clearly contrary to the children's best interests." However, respondent provides no further discussion of or support for this contention. "The failure to brief the merits of an allegation of error is deemed an abandonment of an issue." *JS & SM*, 231 Mich App at 92. In any event, the trial court did not clearly err when it made this determination.

When making a determination of whether termination of parental rights is in the best interests of a child, the trial court must consider "the evidence on the whole record" *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008). "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 Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

The record shows that respondent cannot provide a stable living environment, and that she lacks basic parenting skills necessary to raise her children. Respondent left her children with a known sex offender while she lived in other states. Respondent has not provided a permanent address or source of any income. Respondent also failed to attend scheduled visits with her

children, and demonstrated no understanding of the effect this had on them. Respondent expressed no remorse for missing scheduled visits. Respondent's conduct in this regard further demonstrates her inability to provide stability to her children, as well as her lack of parenting skills. In addition, BM was born with opiates in her blood. Respondent acknowledged using opiates, but could provide no evidence to substantiate her claim that these drugs were prescribed to her to treat a medical condition. Thus, it is clear that respondent lacks the ability to provide both PC and BM with a safe and stable home, and that she also lacks the basic parenting skills necessary to their development.

Respondent herself acknowledged that she has no bond with BM and wished that BM would be adopted. Although somewhat conflicted, PC has expressed anger and disappointment with respondent, who he feels has abandoned him. Because of respondent's failure to attend visits, PC has openly questioned whether she loves him. PC has also expressed fear that he could be left with strangers in the future if returned to respondent's care. Based on respondent's prior conduct, PC's fear is quite reasonable. Accordingly, the trial court did not clearly err when it found that respondent did not have a bond with her children. Finally, PC has expressed satisfaction with his foster home, has been doing well in school since being placed, and his medical needs are being met. On the whole, the record demonstrates that termination of respondent's parental rights is in the children's best interests.

There were no errors warranting relief.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause