

STATE OF MICHIGAN
COURT OF APPEALS

In re N. S. A. MCCARTHY, Minor.

UNPUBLISHED
September 23, 2014

No. 318855
Oakland Circuit Court
Family Division
LC No. 07-739244-NA

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Respondent-mother appeals by leave granted the trial court's order terminating her parental rights to the minor child, NSA, pursuant to MCL 712a.19b(3)(c)(i), (g), and (j).¹ We remand for the trial court to make brief, definite, and pertinent conclusions of law regarding the statutory grounds for termination.

I. FACTS AND PROCEDURAL HISTORY

Respondent has a prior history with the Department of Human Services (DHS) that caused her children to be made temporary court wards in 2000, and again in 2007. The most recent proceeding was initiated in 2009, after respondent's oldest child, JN, was involved in a violent altercation with respondent that caused respondent to initiate incorrigibility proceedings. Initially, the DHS filed a petition for temporary jurisdiction over JN, but later amended the petition to include respondent's three younger children, KR, NSA, and RR. In the summer of 2010, after the trial court had acquired jurisdiction over the children, respondent uprooted her two daughters, NSA and RR, to move to Georgia without the DHS's knowledge or consent. With assistance from Georgia authorities, the DHS obtained the return of the girls to Michigan, where NSA was placed in foster care and RR was placed with a paternal grandmother.

The DHS eventually filed a supplemental petition to terminate respondent's parental rights to all four children. Following a hearing, the trial court found that statutory grounds for

¹ Respondent's delayed application for leave to appeal was previously denied by this Court, *In re N S A McCarthy*, unpublished order of the Court of Appeals, entered January 29, 2014 (Docket No. 318855), but our Supreme Court remanded the case to this Court for consideration as on leave granted. *In re N S A McCarthy*, 495 Mich 959; 843 NW2d 558 (2014).

termination were established pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), and that termination of respondent's parental rights was in the best interests of JN, KR, and RR, but not in NSA's best interests. Accordingly, the court terminated respondent's parental rights to JN, KR, and RR, but continued NSA as a temporary ward of the court. This Court affirmed that decision in *In re Nabers/Reed, Minors*, unpublished opinion per curiam decision of the Court of Appeals, issued January 10, 2013 (Docket No. 308818).

After finding that termination of respondent's parental rights was not in the best interests of NSA, the trial court ordered a new parent-agency agreement. Although NSA was placed in foster care in Michigan, respondent decided to participate in services in Georgia. The agreement required (1) a minimum of bi-monthly contact with the agency either through phone or email, (2) attendance and participation in weekly individual therapy with a licensed therapist, (3) completion of comparable parenting classes, (4) a schedule of at least weekly contact with NSA, (5) contact with the child's therapist and engagement in family therapy if deemed appropriate, (6) a home assessment through the interstate compact with evidence of legal residence and paid utilities, (7) a verifiable source of income, and (8) in-person visitation if possible. Respondent's decision to remain in Georgia made her participation in services difficult. Although respondent initially made progress, and it was contemplated that NSA could be returned to respondent's care if she successfully completed a home assessment, the home assessment was denied. Respondent alleged that a prior felony conviction precluded approval of her home assessment, but the caseworker denied that respondent's criminal record was a basis for the failed home assessment, which instead was denied for noncompliance. Respondent obtained her own home assessment through a private agency, but petitioner did not accept that assessment. In addition to the failed home assessment, respondent failed to submit appropriate documentation to substantiate her income, failed to comply with a requirement of face-to-face visits with NSA, and ended her counseling without court approval. Because respondent failed to make substantial progress with her new treatment plan, petitioner filed a supplemental petition to terminate her parental rights to NSA pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Following a bifurcated hearing, the trial court found that statutory grounds for termination were established by clear and convincing evidence, and also found that termination of respondent's parental rights was in NSA's best interests.

II. STATUTORY GROUNDS FOR TERMINATION

On appeal, respondent first argues that the trial court failed to make sufficient findings of fact regarding the statutory grounds for termination. Respondent also argues that petitioner failed to present clear and convincing evidence to support the statutory grounds for termination.

“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). “We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence.” *Id.*, citing MCR 3.977(K). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses.” *Id.* (quotation marks and citation omitted).

“The court shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated.” MCL 712A.19b(1); see also MCR 3.977(I)(1); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). “Brief, definite, and pertinent findings and conclusions on contested matters are sufficient.” MCR 3.977(I)(1).

We conclude that the trial court made brief, definite, and pertinent findings of fact, but failed to make adequate conclusions of law. Following the statutory grounds for termination hearing, on the record, the trial court acknowledged that respondent had made some improvement, but it was “not nearly significant enough to convince the court that she can provide proper care and custody.” The trial court found that respondent had not complied with the parent-agency agreement, and she discontinued counseling without court approval or communication. The trial court found that respondent had no plan to return to Michigan to reunify with the child, given the various financial excuses she had for not visiting the child. The trial court also found that respondent had no intention to “permanently prioritize” the child, given her lack of face-to-face contact and her failure to understand how important that type of contact is. The trial court stated that everything else was a priority over the child, and when respondent did visit, it was only for a few hours. The trial court further found that respondent did not comply with the requirement to obtain a home assessment from the Georgia authorities, where she was living. Finally, the trial court felt that respondent’s mental health may have contributed to some of the issues, but found that respondent was not willing to actively participate in, or complete, mental health treatment.

It is clear from the record that the trial court articulated thoughtful factual findings to support its decision to terminate respondent’s parental rights. However, although the trial court referenced some language of the statutory grounds, it did not explain how these facts supported the statutory grounds for termination alleged in the petition, by clear and convincing evidence. Merely stating, “I am finding statutory grounds” is an inadequate conclusion of law. From this record, we cannot ascertain which statutory grounds the trial court found were established by clear and convincing evidence, particularly where the trial court entered an inapplicable order of adjudication following the statutory grounds for termination hearing that was inexplicable. The order contradicts itself in finding, “There are no statutory grounds to exercise jurisdiction over the child(ren)” and “There are statutory grounds to exercise jurisdiction over the child(ren) (MCL 712A.22[b]).” Notably, the cited statute does not exist. Accordingly, we conclude that the trial court’s conclusions of law were inadequate. Therefore, we remand for the trial court to make brief, definite, and pertinent conclusions of law regarding the statutory grounds for termination.

Because the trial court did not make a proper determination whether there were statutory grounds for termination, we will not address respondent’s argument regarding whether termination was in the child’s best interest until the trial court has had an opportunity to explain its conclusions of law.

III. DUE PROCESS VIOLATION

Respondent also argues that she was deprived of procedural due process by the use of the Interstate Compact on the Placement of Children (ICPC), MCL 3.711 *et seq.*, to preclude her from successfully obtaining a home assessment. Because respondent did not raise this issue

below, our review is for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011).

Respondent asserts that the trial court conditioned the return of the child on the passage of the home assessment in compliance with the ICPC, but knew that respondent would fail the assessment because of her child abuse and neglect history. Respondent argues that she was set up to fail. Respondent also argues that the ICPC's scope is limited to foster care and preadoption placements.

Respondent correctly argues that the ICPC language plainly limits the scope to foster care and preadoption placements. See MCL 3.711, Art III and Art VIII.² However, we conclude that the trial court's imposition of a home assessment under the ICPC did not constitute plain error affecting respondent's substantial rights. Given respondent's prior terminations of her parental rights, the trial court had legitimate concerns with her parental fitness and even acknowledged that the fact that respondent relocated to Georgia made communication, proofs, and reunification more difficult. It is clear from the record that the trial court wanted a reliable home assessment to ensure that respondent's home was suitable for the child if reunification were to be successful, which is presumably why it chose not to rely solely on the private home assessment respondent obtained. Nevertheless, the fact that respondent never complied with the requirement to obtain a home assessment by Georgia authorities, was not the motivating factor in the trial court's decision to terminate her parental rights. Rather, the record reveals that the trial court placed the most emphasis on the fact that respondent did not make the child her main priority and was unwilling to relocate to Michigan to work on reunification with the child. Thus, on this record, it appears that even if respondent had complied with the home assessment requirements, it would not have made a difference in the trial court's decision. Accordingly, respondent failed to demonstrate plain error that affected her substantial rights.

We remand for the trial court to make brief, definite, and pertinent conclusions of law regarding the statutory grounds for termination. We retain jurisdiction.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O'Connell

² This constraint is also recognized in the DHS Children's Foster Care Manual.

Court of Appeals, State of Michigan

ORDER

In re N S A McCarthy, Minor

Docket No. 318855

LC No. 07-739244-NA

Donald S. Owens
Presiding Judge

Kathleen Jansen

Peter D. O'Connell
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 21 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the trial court is to make brief, definite, and pertinent conclusions of law regarding the statutory grounds for termination. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



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

SEP 23 2014

Date

Chief Clerk