STATE OF MICHIGAN

COURT OF APPEALS

In re PIANOWSKI, Minors.

UNPUBLISHED
October 23, 2014

No. 320040
Wayne Circuit Court
Family Division
LC No. 11-503087-NA

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Respondent mother appeals as of right an order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

I

A petition was filed to terminate the parental rights of respondent and the children's father in September 2011. The petition alleged domestic violence, substance abuse, prior Children's Protective Services (CPS) referrals, mental health issues, and criminality. The court took jurisdiction in September 2011 after respondents made admissions. Following disposition in October 2011, the parents entered into a parent agency agreement (PAA) requiring substance abuse screens and treatment, domestic violence and individual therapy, psychiatric and psychological evaluations, parenting classes, and parenting time. Respondents were also to have suitable housing and employment.

The parental rights of the father were terminated in December 2012. Respondent mother was permitted to continue working toward reunification for another six to nine months because the trial court saw the possibility of improvement. However, when respondent continued to have problems with substance abuse, criminality, lack of suitable housing, and failure to comply with conditions of parole or rules of substance abuse treatment facilities, a petition to terminate her parental rights was filed. The court terminated respondent's parental rights in December 2013, while respondent was in prison.

II

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination, and that termination is in the children's best interests. MCR 3.977(H)(3); MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 355, 612 NW2d 407 (2000); *In re B and J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court

reviews a trial court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *B and J*, 279 Mich App at 17. 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. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err by finding MCL 712.19A(3)(c)(*i*) (conditions that led to adjudication continue to exist), (g) (without regard to intent, failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to parent) were proven by clear and convincing evidence.

The evidence supported the trial court's findings that respondent failed to provide proper care or custody for her children, she would be unable to do so within a reasonable time, and that the children would be at risk of harm if returned to respondent's care. Respondent has a serious and intractable drug problem, and she only began to deal with her addiction while in prison. Although she argues that her sobriety in prison will continue in the community, her history shows otherwise. For much of the proceeding, she failed to attend substance abuse therapy consistently or provide regular drug screens, and even when on parole, she repeatedly tested positive for cocaine. Respondent was admitted into numerous substance abuse programs, but was discharged for noncompliance. The trial court's finding that respondent did not benefit from substance abuse services even though she was required to participate and benefit in order to provide proper care for the children was not clearly erroneous. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012); *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005).

In addition to her drug addiction, at no time did respondent have suitable housing to which the children could return. At the last hearing, respondent was in prison, and she had outstanding warrants and parole violations, so it was unlikely the lack of suitable housing would be resolved in a reasonable time. Criminal behavior not only removes the parent from the home, but it also sets a poor example for the children. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Besides her criminal behavior, respondent set a poor example for her children by maintaining problematic relationships and ignoring the rules of parole and various treatment programs. These problems adversely impacted respondent's capacity to provide adequate care and custody for the children, and also signaled that the children would be at risk of harm in respondent's care. Respondent has not shown clear error in the trial court's findings or conclusions regarding the statutory grounds.

Respondent also claims that DHS failed to make reasonable efforts to reunite her with her children. Appropriate services must be provided during the proceedings to reunite parents and children. MCL 712A.18f(3)(d), (5); MCL 712A.19(6)(a), (c); MCL 712A.19(7)(a), (b); *In re Mason*, 486 Mich 142, 155-160; 782 NW2d 747 (2010); *In re DMK*, 289 Mich App 246, 255-256; 796 NW2d 129 (2010).

Here, respondent was provided with numerous, properly tailored services, both in and out of prison. Respondent's caseworker met with prison staff to design a program to address respondent's issues while in prison. Before entering prison, respondent had been assigned substance abuse therapy and individual counseling, but she was terminated for missing appointments. Again, respondent alternately failed to consistently submit to drug screens, and

when she did submit to the required screens, she tested positive for drugs. In addition, respondent failed to successfully complete any drug treatment programs. She participated in domestic violence counseling but apparently did not benefit sufficiently because she continued to have contact with the children's father, resulting in domestic violence and violating the rules of her probation and treatment programs. Allowing an abusive environment to continue establishes neglect. *In re Miller*, 182 Mich App 70, 82; 451 NW2d 161 (1990). The trial court did not clearly err in finding that, despite the best efforts of her parole officer, DHS, and the caseworkers, respondent failed to benefit sufficiently from services.

III

Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights if termination is in the child's best interests. MCR 3.977(H)(3); MCL 712A.19b(5). The trial court's decision on best interests is reviewed for clear error. MCR 3.977(K); *Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). The standard of proof for best interests is preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83, 90; 836 NW2d 182 (2013).

In this case, respondent argues that the trial court failed to expressly consider placement with relatives, as required by *Mason*, 486 Mich at 164, *In re Mays*, 490 Mich 993; 807 NW2d 304 (2012), and *In re Olive/Metts*, 297 Mich App 35, 51; 823 NW2d 144 (2012). We conclude that a remand is not required on the basis of this issue.

The referee's most recent opinions do not explicitly consider whether termination of respondent's parental rights was still in the children's best interests given their placement with respondent's parents. Earlier in the proceedings, respondent was allowed additional time to work on her case service plan in light of the placement. But the record demonstrates respondent's rocky relationship with her parents and inability to get along with either her mother or her stepfather. Visitation was hampered because both respondent and her parents had problems with scheduling and cooperation. Respondent's parents were not amenable to guardianship and respondent's stepfather testified that he did not think respondent should have any contact with her children after termination. The oldest child had known his grandmother's phone number and 911 since age 3, and knew to call 911 first and then his grandma. Respondent's parents had previously been guardians of the children, for 12 to 18 months, and did not wish to repeat the experience. The trial court had the discretion to appoint a guardian when it is in the children's best interests, MCL 712A.19a(7)(c); MCR 3.979, and we find this option was sufficiently considered and rejected by the trial court in earlier opinions and throughout the record. A remand for more explicit findings is therefore unnecessary. The court's best-interest findings were sufficient to comply with the requirement of "[b]rief, definite, and pertinent findings and conclusions on contested matters." MCR 3.977(I)(1).

We also agree with petitioner and the children's attorney that a preponderance of the evidence supported the trial court's best-interest findings. The children were in care for over two years, and respondent was no closer to being able to provide a nurturing home than when the children were removed. The children need stability, permanency, and safety, which respondent will not be able to provide for the foreseeable future. She did not conquer her drug problem despite many services, and she continued to commit crimes, have contact with the children's

father, and live an unstable lifestyle during the pendency of the case. Although she loves the children and they had a good relationship, respondent would be unable to provide adequate care or custody within the foreseeable future. The trial court did not clearly err by finding termination to be in the children's best interests.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Donald S. Owens