STATE OF MICHIGAN

COURT OF APPEALS

In re J. M. CAMPBELL-DILLARD, Minor.

UNPUBLISHED
July 21, 2015

No. 325849
Saginaw Circuit Court
Family Division
LC No. 14-034029-NA

Before: FORT HOOD, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to JD, born September 2014, pursuant to MCL 712A.19b(3)(b)(*ii*) (failure to prevent physical injury to sibling), (j) (reasonable likelihood of harm), and (*l*) (the rights to another child were terminated).[1] We affirm.

I. FACTUAL BACKGROUND

Respondent has a history of volatile personal relationships. In 2012, she moved to Saginaw and married the minor's father, which was one of many abusive relationships respondent had. At that time, four of respondent's then-six children were residing with her.

The marital and family violence culminated in the death of one of respondent's children, ED, who is not at issue in these proceedings. During the span of two days in February 2014, respondent's spouse beat ED so severely that the child died from his wounds.[2] Respondent was aware that her husband's beatings were excessive and despite noticing something was not right with ED after the first round of beatings, respondent did nothing to interject or to stop the beatings. When the beatings resumed on the second day, respondent again did nothing to intervene. Although ED became unconscious and unresponsive, respondent did not prevent the father from placing ED in the shower and burning him with hot water. She neither called for

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[1] The minor's father voluntarily relinquished his parental rights.

[2] See *In re Dillard*, unpublished per curiam opinion of the Court of Appeals, issued January 20, 2015 (Docket Nos. 323196, 323197).

medical assistance when the child lay unresponsive and unconscious, nor spoke up when the father lied to the authorities about the child's injuries. The child died from his wounds.

Respondent pleaded nolo contendere to second-degree child abuse in relation to the events causing ED's death. She currently is incarcerated and her parental rights to her three other children were terminated pursuant to MCL 712A.19b(3)(b)(*ii*) (failure to protect sibling from abuse), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if returned to parent).

Respondent then gave birth to the minor at issue in this case, JD. While in the hospital for the birth, respondent attempted to execute a power of attorney with her husband's sister. Respondent's sister-in-law testified that she repeatedly asked for a social worker, a notary, or other help to finalize the document to enable JD to leave the hospital with her. Respondent's sister-in-law claimed that she never received adequate assistance from the hospital or petitioner. Thus, the power of attorney was not authorized, and the newborn minor was placed in foster care with her siblings.

The trial court then determined that there were sufficient grounds to assume jurisdiction and terminate respondent's parental rights pursuant to MCL 712A.19b(3)(b)(*ii*) (failure to prevent physical injury to sibling), (j) (reasonable likelihood of harmed if returned), and (*l*) (the rights to another child were terminated). The court also found that termination was in the best interests of the minor. Respondent now appeals.

II. JURISDICTION

A. STANDARD OF REVIEW

Respondent first contends that the trial court improperly exercised jurisdiction in this case because it prevented her from implementing her care plan for the minor. "We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact[.]" *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "Questions involving the interpretation of statutes and court rules are reviewed de novo." *In re Sanders*, 495 Mich 394, 425; 852 NW2d 524 (2014).

B. ANALYSIS

The court's jurisdiction is established pursuant to MCL 712A.2(b), which provides for jurisdiction concerning a juvenile under 18 years of age:

> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:

* * *

> (B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

In concluding the adjudicative phase of the proceedings, the trial court explained that it "was satisfied that by far more than the necessary preponderance of the evidence this is a child whose home or environment by reasons of neglect, criminality, or depravity on the part of a parent/guardian, non-parent, adult or other custodian is an unfit place for the child to live in." The trial court concluded that if the child was released "to any possible care by Miss Campbell now or in the immediate future, we would have a substantial risk of serious harm to the child." Even though the trial court did not expressly cite MCL 712A.2(b), its reasoning mirrors the statutory language.

Caselaw establishes that a parent is not unfit simply because that parent is incarcerated. See, e.g., *In re Curry*, 113 Mich App 821, 830; 318 NW2d 567 (1982). Further, an incarcerated parent may provide proper care for her child by placing the child with a relative. *In re Sanders*, 495 Mich at 420-421. However, this case does not involve a situation where a fit parent becomes incarcerated, ill, or financially strained, and must send her child to stay with a relative. To the contrary, while respondent cannot physically care for her child due to her incarceration, it is the underlying reason for her incarceration that provides sufficient grounds for the court's jurisdiction.

Respondent was convicted of second-degree child abuse stemming from the murder of her son, ED. She was present and complacent in her husband's brutal beatings of ED. She neither intervened nor sought medical aid for ED, even over the course of several days and even after she knew that ED's mental state had been altered due to the beatings. The court's jurisdictional grounds were not based on respondent's incarceration, but on her underlying behavior. See *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708, 716 (2005), superseded in part on other grounds *In re Hansen*, 285 Mich App 158 (2009) ("A child may come within the jurisdiction of the court solely on the basis of a parent's treatment of another child. Abuse or neglect of the second child is not a prerequisite for jurisdiction of that child and application of the doctrine of anticipatory neglect.").

Indeed, this Court recognized a similar distinction in *In re Ramsey*, 229 Mich App 310, 316; 581 NW2d 291 (1998), by distinguishing *In re Curry*:

> However, *Curry* is distinguishable from the present case on a significant point. In *Curry,* the respondent father was serving a prison sentence for being an habitual offender, and the mother was incarcerated on drug charges. In the present case . . . the respondent parent was convicted of a crime *against the child.*

> By contrast, in *Curry,* the parents' convictions were for crimes that did not involve the children, and their criminal acts were not shown to be related to their ability to care for the children. This is an important distinction. Although criminal status *alone* may not be a sufficient basis for the probate court's assumption of jurisdiction . . . in the present case . . . it is not the respondent's criminal status alone that is alleged to be the basis for the court's jurisdiction, but rather the respondent's violent criminal act against the child, which was directly related to the child's mental well-being and to respondent's ability to care for the child. [Emphasis in original.]

Nor do we find respondent's arguments regarding her attempt to execute a power of attorney availing. First, the power of attorney was never executed. Thus, the minor did not have a legal guardian or other custodian beyond respondent and her husband when the court exercised jurisdiction over minor. MCL 712A.2(b). Nevertheless, respondent contends that the hospital and petitioner essentially ignored her preferred care plan and prevented her from implementing her desires for the minor. However, at most, the record establishes that petitioner was passive toward the efforts of respondent's husband's sister in locating a notary at the hospital. Nevertheless, respondent offers no authority for the proposition that petitioner was required to locate or secure the services of a notary to assist respondent in executing a power of attorney.

Moreover, as the referee recognized, even if the power of attorney had been properly executed, the court's involvement would still be necessary to protect the child. Respondent could simply revoke the power of attorney at any time, subjecting the child to the same dangers warranting the court's intervention in the first place. Nor is there any evidence that the relative caregiver completed the required paperwork in a timely manner.

The trial court reasoned that respondent "has been involved in numerous incidents of domestic violence and problems not only with her husband but with other individuals" and that, as the psychologist testified, "the pattern is very evident for concern about abuse of not only herself but of children in an environment where she's moving frequently, where the various partners are involved with drugs or domestic violence." Further, the trial court found that respondent was hostile and depressed and that "her concerns seemed to be significantly for herself."

Therefore, trial court did not clearly err in light of its findings of fact. *In re BZ*, 264 Mich App at 295.[3] The trial court properly acquired jurisdiction over the child pursuant to MCL 712A.2(b).

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[3] Respondent alludes to the fact that the service plan was not timely, ostensibly because of a computer problem petitioner was experiencing. However, she does not appear to contest the authenticity of petitioner's explanation, nor argue the relevance in terms of the two issues raised on appeal: jurisdiction and best interests. "A party may not merely announce [her] position and leave it to us to discover and rationalize the basis for [her] claim." *Matter of Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

III. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent next posits that the trial court erred in finding that termination was in the child's best interests. "We review for clear error . . . the court's decision regarding the child's best interest[.]" *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (quotation marks and citation omitted). "A trial court's decision 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 41 (quotation marks and citation omitted). "When applying the clearly erroneous standard, MCR 2.613(C) requires that regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Matter of Miller*, 182 Mich App 70, 81; 451 NW2d 576 (1990) (quotation marks and citation omitted).

B. ANALYSIS

The trial court did not err in finding that termination was in the minor's best interests. "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 determining the best interests of a child, the trial court may consider the child's bond to the parent, the parent's parenting ability, the advantages of a foster home over the parent's home, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App at 41-42.

Respondent contends it was her husband's conduct and her fear of him that created the risk of harm to the children. She asserts that now, because he is incarcerated, the danger has passed. However, the trial court astutely recognized that respondent has a long history of unstable and violent relationships. The trial court further noted that respondent did not seek medical care for ED, knowing that after the first day of the beatings, he could not speak correctly. As the psychologist who examined respondent testified, there was "a very high likelihood that [respondent] would continue living a similar lifestyle." The psychologist further opined that respondent displayed a troubling lack of insight into the emotional needs of her children. He testified that respondent did not have much empathy or concern about her children, as most of her reactions tended to focus on her situation and the impact on her. Thus, the trial court properly concluded that respondent's lifestyle fostered a dangerous environment for the minor.

Respondent also raises several arguments regarding her fundamental right to parent her child. She again addresses the power of attorney issue, and the alleged failure of petitioner to implement her preferred parenting plan. What respondent does not recognize is that "once a statutory ground is established, a parent's interest in the care and custody of his or her child yields to the state's interest in the protection of the child." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). Given the fact that respondent has no relationship with the minor, she

has shown very little in terms of any possible bond with the child. *In re Olive/Metts*, 297 Mich App at 41-42.

Respondent also contends that the trial court erred in failing to consider relative placement, in lieu of termination. "[B]ecause 'a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a),' the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). However, JD was not living with a relative when the case proceeded to termination. Moreover, even if the child was living with relatives, the trial court may still find that termination is in the child's best interests after considering the child's placement with relatives. *In re Olive/Metts*, 297 Mich App at 43-44. Nor is there any indication that the trial court's best-interest ruling was based on the fact that respondent was incarcerated.

We find no error warranting reversal in the trial court's best-interests findings.

IV. CONCLUSION

The trial court properly exercised jurisdiction over the minor and found that termination was in the minor's best interests. We affirm.

/s/ Karen M. Fort Hood
/s/ Henry William Saad
/s/ Michael J. Riordan