

STATE OF MICHIGAN
COURT OF APPEALS

In re L. A. WILEY, Minor.

UNPUBLISHED
December 8, 2015

No. 327412
Wayne Circuit Court
Family Division
LC No. 13-511863-NA

In re R. L. WARRICK, Minor.

No. 328812
Wayne Circuit Court
Family Division
LC No. 13-511863-NA

Before: RONAYNE KRAUSE, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals¹, respondent appeals as of right the orders terminating her parental rights to her minor children, LW and RW. In Docket No. 327412, respondent appeals the trial court's order terminating her parental rights to LW under MCL 712A.19b(3)(b)(i) (parent's act caused physical injury or physical abuse, reasonable likelihood of injury or abuse if returned to the parent) and (j) (child would likely be harmed if returned to the parent). LW had numerous serious medical issues from birth. In Docket No. 328812, respondent appeals the trial court's order terminating her parental rights to RW under MCL 712A.19b(3)(g) (without regard to intent, failure to provide proper care or custody), (i) (parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect, and prior attempts to rehabilitate the parents have been unsuccessful), and (j) (child would likely be harmed if returned to the parent). With regard to both appeals, we affirm.

This case arises from respondent's physical neglect of LW, her second child. Respondent's first child, LG, was already in a temporary guardianship with a maternal aunt. The

¹ The orders that consolidated these appeals are: *In re L A Wiley*, unpublished order of the Court of Appeals, entered August 20, 2015 (Docket No. 327412); *In re R A Warrick*, unpublished order of the Court of Appeals, entered August 20, 2015 (Docket No. 328812).

Department of Health and Human Services (DHHS) removed LW from the home, though the initial plan was to reunify respondent with LW. Respondent later became pregnant with RW and gave birth. After an investigation showed evidence that respondent neglected RW, DHHS filed petitions to terminate respondent's parental rights to both children.

I. STATUTORY GROUNDS FOR TERMINATION

Respondent contends that the trial court erred in finding statutory grounds for terminating her rights to LW because she never harmed him and because there was no evidence that she would harm him if he was returned to her care. Respondent further contends that the trial court erred in finding statutory grounds to terminate her rights to RW because the evidence failed to demonstrate that she was unable to provide proper care or custody for him, that she had harmed him or would harm him if returned to her care, or that the trial court's "essentially contemporaneous" termination of her rights to LW provided adequate grounds for terminating her rights to RW. We disagree.

We review for clear error a trial court's factual findings "as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "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 Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). We review de novo a trial court's interpretation and application of the relevant statutory provisions. *In re Gonzales/Martinez*, ___ Mich App ___, ___; ___ NW2d ___ (2015)(Docket No. 324168); slip op at 2.

"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 at 80. If clear and convincing evidence supports termination under any of the statutory grounds that the trial court cites, the court's erroneous reference to another statutory ground constitutes harmless error. *In re Williams*, 286 Mich App 253, 273; 779 NW2d 286 (2009).

I. LW

In relevant part, MCL 712A.19b(3) authorizes a court to terminate parental rights when

(a) The child has been deserted under either of the following circumstances:

(i) The child's parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(j) There 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.

Under MCL 712A.19b(3)(j), a parent's failure to comply with a treatment plan constitutes evidence that the child may be harmed if returned to the parent's home. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014). A trial court may also rely on a parent's history in determining whether the child would be harmed if returned to the parent's care. *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007). Anticipatory neglect may also argue for terminating a parent's rights. *In re LaFrance*, 306 Mich App 713, 730; 858 NW2d 143 (2014). The contemplated harm may be either physical or emotional. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

The trial court did not clearly err in finding that statutory grounds for termination existed under MCL 712A.19b(3)(j). The evidence clearly established that respondent failed to comply with her treatment plan. After nearly two years, respondent had large gaps in her mental-health treatment, circumvented DHHS's and the Judson Center's efforts to assess her home, and had no verified source of income. She had completed parenting classes, but the fact that she used illegal drugs while pregnant with RW and that she had a drunken, violent visit with LG indicated that she did not benefit from them.

Respondent's apparently increased substance abuse was at least as troubling, if not more so. Early in the proceedings, Ashley Wonnacot, LW's foster-care case manager, told the court she was unaware of any potential substance-abuse issues with respondent. Nearly two years later, respondent admitted smoking marijuana on numerous occasions, was taking prescription-only medication without a prescription, and tested positive for opiates, even while pregnant. Respondent was also missing drug tests, reportedly using a foreign substance to alter the test results, or employing stored urine in an attempt to achieve a false negative result. Both Wiley and Michelle Austin, the maternal aunt who was caring for LG and RW, reported instances of respondent's behaving violently while intoxicated.

Finally, evidence demonstrated that respondent was unable or unwilling to meet LW's considerable medical needs. Respondent herself testified that her mental-health conditions interfered with her ability to care for LW and that she was overwhelmed with the hospital's instructions regarding his care. She also left LW with Wiley, who had no idea how to properly care for the infant, and the fact that LW was admitted to the hospital shortly thereafter indicates that she left him when he most needed her. And while respondent laudably attended many of LW's myriad of medical or therapy appointments, she also missed a high number of them despite the foster parent's proffered assistance. Those appointments assumed critical importance because of LW's many serious conditions, and respondent simply failed to demonstrate the capacity or will to ensure that LW received the requisite medical care. Moreover, three different caseworkers or foster-care managers opined that respondent failed to comprehend the extent of LW's medical needs, and the trial court was in the best position to judge their credibility on the issue. See *In re Moss*, 301 Mich App at 80. Accordingly, the trial court did not err in finding by clear and convincing evidence that a potential return to respondent's care entailed a reasonable likelihood of harm to LW. See MCL 712A.19b(3)(j); *In re Mason*, 486 Mich at 152.

Thus, we affirm the trial court's finding of statutory grounds for termination based on MCL 712A.19b(3)(j) alone. See *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000) ("it is technically unnecessary to address the second ground for termination alleged in the petition because the petitioner need only establish one ground for termination . . ."). Nevertheless, for purposes of completeness, we will also address the other stated grounds for termination.

In its report and recommendation, the trial court did not explicitly delineate which statutory grounds applied to respondent and which applied to LW's unknown father, whose rights were terminated at the same hearing. It is clear from the lower court record, however, that MCL 712A.19b(3)(a)(i) referred only to the unknown father. Respondent was clearly identified as LW's mother, and she did not abandon him for more than 28 days. See MCL 712A.19b(3)(a)(i). To the extent that the trial court may have applied this provision to respondent, it clearly erred in doing so. But any error in this regard was harmless because clear and convincing evidence supported termination under MCL 712A.19b(3)(j). See *In re Williams*, 286 Mich App at 273.

Finally, we are persuaded by the guardian ad litem's contention on appeal that the trial court simply made a transcription error when it listed MCL 712A.19b(3)(b)(i) as a ground for termination in the referee's report and recommendation. That provision was never discussed during the proceedings; but counsel for petitioner specifically mentioned MCL 712A.19b(3)(c)(i) during his closing arguments, and the trial judge stated that he found statutory grounds for termination "based on the statutory grounds cited by the assistant attorney general[.]" Furthermore, as discussed above, there was overwhelming evidence that the conditions that led to the adjudication—respondent's noncompliance with her treatment plan and unresolved mental issues—continued to exist, there was no reasonable likelihood that respondent would rectify them within a reasonable time, and more than 182 days had passed since the initial disposition on April 9, 2013. MCL 712A.19b(3)(c)(i). Regardless, we need not determine the effect of the trial court's potential error in this regard because statutory grounds existed to terminate respondent's parental rights under MCL 712A.19b(3)(j). *In re Williams*, 286 Mich App at 273.

II. RW

In addition to the provisions discussed above, MCL 712A.19b(3) authorizes a court to terminate parental rights under the following circumstances, among others:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

The trial court properly found statutory grounds for termination under MCL 712A.19b(3)(i). The trial court terminated respondent's parental rights to LW at a hearing on February 26, 2015, and the court did not terminate her rights to RW until March 12, 2015. Her rights to LW were also terminated for the reasons stated above. Accordingly, termination of respondent's parental rights was proper under MCL 712A.19b(3)(i) alone.

Additionally, the trial court did not clearly err in finding statutory grounds under MCL 712A.19b(3)(g) and (j). Although RW did not share his older brother's serious medical issues and their concomitant, elevated risk of harm, ample evidence still existed to demonstrate a reasonable likelihood that he would be harmed if returned to respondent. MCL 712A.19b(3)(j). This evidence included respondent's unresolved mental-health issues, her lack of suitable housing or a legal source of income and her substance-abuse issues. These same factors provided sufficient evidence that respondent was unable to provide proper care or custody for RW, and her continued inability to make the necessary changes in her life indicated that she would not be able to provide the requisite care and custody within a reasonable time. MCL 712A.19b(3)(g).

II. BEST INTERESTS

Respondent contends that the trial court erred because there was no evidence that LW's foster parent might adopt him and because no one could adopt RW due to Warrick's remaining parental rights. We disagree.

We review for clear error a trial court's finding that termination is in a child's best interest. *In re Hudson*, 294 Mich App at 264. "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction a mistake has been made." *Id.*

To terminate parental rights, a trial court must find by a preponderance of the evidence that termination is in the child's best interest. *In re Moss*, 301 Mich App at 90; see also MCL 712A.19b(5). "The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. In doing so, a court "should

consider a wide variety of factors that may include 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.” *Id.* (citation and quotation marks omitted). A trial court may also consider a parent’s history, including substance abuse or mental health issues, *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001), and the parent’s compliance with reunification services and visitation history with the child, *In re White*, 303 Mich App at 714.

In this case, multiple factors supported the trial court’s finding that terminating respondent’s rights was in the children’s best interests. Respondent lacked parenting ability for the reasons discussed at length above, not to mention the fact that her first child, LG, was under a temporary guardianship. The trial judge also specifically noted LW’s and RW’s needs for permanency and stability, and we agree that respondent’s moves between her mother’s home and Wiley’s residence, in addition to her unstable relationships with Wiley and Warrick, failed to meet those needs. LW’s foster home was also clearly superior to respondent’s, at least in terms of meeting his medical needs, and RW was with his aunt and his older brother LG. Conflicting evidence existed regarding whether respondent had a bond with LW, and there was no evidence at all that she had a bond with RW. See *In re White*, 303 Mich App at 713.

Respondent experienced continuing—or perhaps escalating—substance-abuse and mental-health issues, as noted above. See *In re AH*, 245 Mich App at 89. Finally, respondent was noncompliant with her treatment plan, failed to attend all of her scheduled weekly visits with LW, and only saw RW when Austin brought him to church or to some of LW’s scheduled visits. See *In re White*, 303 Mich App at 714. Arrayed against all of those factors, the facts that DHHS had not yet found a permanent adoptive home for LW and that Warrick still retained his parental rights to RW were of minor significance. Accordingly, the trial court did not clearly err in finding that terminating respondent’s parental rights was in the best interests of both children. *In re Moss*, 301 Mich App at 90; *In re Hudson*, 294 Mich App at 264.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Jane E. Markey
/s/ Michael J. Kelly