

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 26, 2012

In the Matter of SIMMONS-JOHNSON and
MOORE, Minors.

No. 306598
Oakland Circuit Court
Family Division
LC No. 09-766514-NA

Before: K. F. KELLY, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), (b)(iii), (c)(i), (g), (j), (k)(iii), (k)(iv), and (k)(v). We affirm.

The older child, ZSJ, was removed from respondent's custody and placed in foster care in December 2009, after his two-month old sibling suffered serious injuries that resulted in his death. The sibling had several injuries of different ages and had been in the care of several different caregivers, including respondent, during the time period preceding his admission to the hospital in December 2009. The person responsible for the child's injuries was never established. A treatment plan was established to allow respondent to participate in reunification services with respect to ZSJ.

In January 2011, respondent gave birth to CM, who was also removed from respondent's custody. A hearing on a supplemental petition to terminate respondent's parental rights to ZSJ was conducted in April 2011, but the trial court declined to terminate respondent's parental rights because it believed that she was making progress on her treatment plan. However, another supplemental petition to terminate respondent's parental rights to ZSJ was filed in August 2011, based on respondent's continued failure to comply with the requirements of her parent-agency agreement. In September 2011, the trial court conducted a joint hearing on the supplemental petition concerning ZSJ and on an original petition to terminate respondent's parental rights to CM at the initial dispositional hearing. After hearing the evidence, the trial court found that multiple statutory grounds for termination were established by clear and convincing evidence, and that termination of respondent's parental rights to both children was in the children's best interests.

On appeal, respondent first argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence.

A petitioner is required to establish a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). This Court reviews the trial court's factual findings, as well as its ultimate decision whether a statutory ground for termination has been proven, for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

The trial court found that termination of respondent's parental rights was warranted under §§ 19b(3)(b)(ii), (b)(iii), (c)(i), (g), (j), and (k)(iii), (k)(iv), and (k)(v), which permit termination under the following circumstances:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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:

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(iii) A nonparent adult'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 by the nonparent adult 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.

* * *

(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.

* * *

(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.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(iii) Battering, torture, or other severe physical abuse.

(iv) Loss or serious impairment of an organ or limb.

(v) Life threatening injury.

Termination of parental rights need only be supported by a single statutory ground. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

The trial court did not clearly err in relying on § 19b(3)(c)(i) to terminate respondent's parental rights to ZSJ.¹ Respondent was afforded almost two years to comply with a parent-agency agreement to address the issues that led to ZSJ's adjudication. The primary issues in the case were respondent's mental health and substance abuse. She completed an inpatient substance abuse treatment program in May 2011, but thereafter failed to obtain recommended aftercare treatment or appear for drug testing, and she admittedly began using Xanax without a prescription. Thus, respondent had not rectified the conditions that led to ZSJ's removal almost two years earlier and, given her lack of meaningful progress, she was not reasonably likely to do so within a reasonable time considering ZSJ's age, thereby supporting termination under § 19b(3)(c)(i).

Respondent's failure to successfully address her substance abuse and her failure to comply with other aspects of her treatment plan also support the trial court's decision to terminate her parental rights to both children under § 19b(3)(g). See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003) (a parent's failure to comply with a parent-agency agreement is evidence of the parent's failure to provide proper care and custody). Similarly, respondent's failure to address her substance abuse and mental health problems is evidence that the children were reasonably likely to be harmed if returned to her home, thereby supporting termination of her parental rights under § 19b(3)(j).

¹ The trial court erred to the extent that it relied on § 19b(3)(c)(i) as a basis for terminating respondent's parental rights to CM. That subsection only applies where 182 or more days have elapsed since issuance of the initial dispositional order. Because respondent's parental rights to CM were terminated at the initial dispositional hearing, § 19b(3)(c)(i) was not applicable to CM.

Finally, this case began because of serious injuries that the children's sibling suffered while in the custody of either respondent or another caregiver. Those injuries eventually led to the child's death. The evidence showed that the sibling had both old and new injuries and had not been in his father's custody very long before being brought to the hospital. Thus, the evidence supports an inference that the child was harmed while under respondent's care. However, respondent was also involved in a relationship at that time with CM's father, who had access to the sibling, thereby making him a potential person who could have caused the sibling's injuries. Even if respondent did not cause the sibling's injuries, considering the number of injuries and the different ages of the injuries, the evidence supports an inference that, at a minimum, she was aware that the child was being abused and failed to protect him from that abuse. Further, despite the evidence of the child's multiple prior injuries, respondent never sought medical treatment for the child. Given this evidence, the trial court did not clearly err in finding that respondent failed to protect the sibling from injury or abuse and that the other children were reasonably likely to suffer injury or abuse in the foreseeable future if placed in respondent's home, thereby supporting termination under § 19b(3)(b)(ii).

However, because the person responsible for the sibling's injuries was never clearly established, we question whether it was proper for the trial court to rely on §§ 19b(3)(b)(iii), (k)(iii), (k)(iv), or (k)(v) as additional grounds for terminating respondent's parental rights. But because termination need only be supported by a single statutory ground, *In re McIntyre*, 192 Mich App at 50, and there were other grounds to terminate respondent's parental rights to both children, any error in relying on those additional grounds was harmless.

Respondent also argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. Once a statutory ground for termination has been established, the court shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5). The trial court's best interests decision is also reviewed for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

Respondent has not shown clear error in the trial court's evaluation of the children's best interests. CM was removed from respondent's custody shortly after birth and ZSJ had been in foster care for almost two years waiting for respondent to make sufficient progress. The trial court had already given respondent an additional opportunity for reunification when it declined to terminate her parental rights in April 2011. However, respondent thereafter failed to obtain recommended aftercare treatment or appear for drug testing, and she admittedly began using Xanax without a prescription. Respondent had not seen either child since June 2011. According to a psychologist who examined respondent, respondent would require at least another six months to a year of services before reunification could be considered. Considering the length of time the children had been in care and their need for permanence, which respondent would not be able to provide anytime soon, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Amy Ronayne Krause