

STATE OF MICHIGAN
COURT OF APPEALS

In re BEAKER/WEEKS, Minors.

UNPUBLISHED
December 9, 2014

Nos. 321103/321104
Wayne Circuit Court
Family Division
LC No. 12-509363-NA

Before: JANSEN, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

In this consolidated appeal, the mother of the three minor children, Q. Gabrys,¹ and the father of the youngest minor child, D. Weeks, appeal as of right the trial court's order terminating their parental rights.² We affirm.

The minor children were removed from the custody of Gabrys and Weeks on August 13, 2012, after the oldest child was observed with a red hand-shaped mark on her cheek after being in the care of Weeks, the middle child was seen with drug paraphernalia that originated from the home, and the three minor children witnessed Gabrys and Weeks engage in domestic violence.

I. TERMINATION OF GABRYS'S PARENTAL RIGHTS

Gabrys first argues that termination of her parental rights to her minor children was improper because reasonable efforts to reunify her with her children, which should have included providing treatment services throughout the process, were not made. We disagree.

"Generally, reasonable efforts must be made to reunite the parent and children unless certain aggravating circumstances exist."³ However, the Department of Human Services ("the

¹ Gabrys was the mother's married name, but she is now divorced. In the lower court record, her maiden name, Heidish, is used almost exclusively.

² MCL 712A.19b(3)(a)(ii) (the child's parent has deserted the child for 91 or more days), (c)(i) (the conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), (j) (reasonable likelihood that the child will be harmed if returned to the parent's home). Termination under MCL 712A.19b(3)(a)(ii) only applies to Weeks.

³ *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013).

Department”) “ ‘is not required to provide reunification services when termination of parental rights is the agency’s goal.’ ”⁴ The record demonstrates that although there were issues on two occasions with referrals and re-referrals for services by the Department, before termination was sought, Gabrys adequately received referrals for domestic violence, anger management, and parenting classes, as well as couples and individual therapy. Additionally, substance abuse counseling, including drug and alcohol screens were ordered and offered to her. Moreover, Gabrys was permitted supervised parenting time. Thus, the record demonstrates that Gabrys’s argument must fail.

Gabrys next argues that the trial court erred when it found that clear and convincing evidence existed to terminate her parental rights. We disagree.

“ ‘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.’ ”⁵ We review the trial “court’s decision that clear and convincing evidence supported a ground for termination” for clear error.⁶ “The trial court’s factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.”⁷

Gabrys’s parental rights were terminated after the trial court found:

(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.

* * *

⁴ *Id.* at 91 (citation omitted).

⁵ *In re Laster*, 303 Mich App 485, 491; 845 NW2d 540 (2013) (citation omitted).

⁶ *In re Dearmon*, 303 Mich App 684, 699; 847 NW2d 514 (2014).

⁷ *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 635; 853 NW2d 459 (2014) (citation and quotations omitted).

(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.^[8]

In order to be reunified with her children, Gabrys was ordered to participate in domestic violence and parenting classes, couples therapy with Weeks, individual therapy for her mental health issues, and substance abuse counseling, including undergoing drug and alcohol screens. Gabrys was also permitted supervised parenting time. Gabrys was further ordered to maintain suitable housing, secure a legal source of income, and attend all court hearings. Gabrys, however, was early terminated twice from her home-based substance abuse counseling for non-participation. Gabrys was also early terminated from her domestic violence, as well as individual and couples, counseling. Gabrys completed parenting classes, and eventually began to attend substance abuse, individual, domestic violence, and anger management counseling, but it is unclear if any of those therapies were completed. Gabrys also continued to have an issue with substance abuse as she failed to regularly submit to weekly random drug and alcohol screens, tested positive for opiates on numerous occasions (as recently as October 2013), and failed to provide the Department with a prescription for such medication. Furthermore, she only sporadically visited her children and did not provide financial support for them; all of which support that she did not benefit from services. Gabrys also failed to attend the termination hearing, purportedly because she did not provide the Department or her attorney with a valid address. As such, the trial court did not clearly err in finding that there was clear and convincing evidence that Gabrys's parental rights should be terminated.⁹

Gabrys further argues that the trial court erroneously found that termination of her parental rights was in her children's best interests. Gabrys also asserts that the trial court failed to consider that the minor children were placed with relatives in determining their best interests. We disagree.

"After a trial court has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence 'that termination of parental rights is in the child's best interests [.]' "¹⁰ A trial court's determination that termination is in the child's best interests is also reviewed for clear error.¹¹ "In deciding whether termination is in the child's best interests, the court may consider 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

⁸ MCL 712A.19b(3).

⁹ *Brown/Kindle/Muhammad*, 305 Mich App at 635; MCL 712A.19b(3)(c)(i), (g), (j). Whether 182 or more days had elapsed since the issuance of an initial dispositional order is not an issue on appeal.

¹⁰ *In re Johnson*, 305 Mich App 328, 335; 852 NW2d 224 (2014) (citation omitted; alteration in original).

¹¹ *Dearmon*, 303 Mich App at 699.

home.”¹² “[T]he fact that the children are in the care of a relative at the time of the termination hearing is an ‘explicit factor to consider in determining whether termination was in the children’s best interests’ ” that “ ‘weighs against termination.’ ”¹³ Thus, “[a] trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal.”¹⁴

In the instant case, the trial court explicitly acknowledged the children’s placement with relatives at the termination hearing. The trial court found that at the children’s “ages and with the time they have spent with relative caregivers, their interests are best served through an adoption rather than a guardianship.” The trial court further noted that “[t]his is not the type of case where guardianship works out very well.” Thus, the claim by Gabrys that the trial court failed to consider relative placement in determining the children’s best interests is false.

Additionally, the record evidence supports that termination of Gabrys’s parental rights was in the children’s best interests. The evidence showed that the children were only slightly bonded to their mother. Gabrys had an ongoing issue with substance abuse, failed to demonstrate that she had adequate housing for her children, and while she was employed, did not provide any financial support for them. At the time of the termination hearing, the children had been placed with relatives for approximately 20 months and were in need of permanency and stability. The relatives desired to adopt the children, and the children showed a significant bond to them. Therefore, the trial court did not clearly err in finding that termination of Gabrys’s parental rights was in the children’s best interests.¹⁵

II. TERMINATION OF WEEKS’S PARENTAL RIGHTS

Weeks argues that the trial court erred when it found that clear and convincing evidence existed to terminate his parental rights. We disagree.

Weeks’s parental rights were terminated after the trial court found that he deserted his child for 91 or more days and did not seek custody of the child during that time,¹⁶ the conditions that led to adjudication continued to exist,¹⁷ Weeks failed to provide proper care and custody for his child,¹⁸ and there was a reasonable likelihood that the child would be harmed if returned to

¹² *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

¹³ *Id.* at 43 (citations omitted).

¹⁴ *Id.*

¹⁵ *Id.* at 41-42.

¹⁶ MCL 712A.19b(3)(a)(ii).

¹⁷ MCL 712A.19b(3)(c)(i).

¹⁸ MCL 712A.19b(3)(g).

Weeks's care.¹⁹ In order to be reunified with his child, Weeks was ordered and referred to participate in couples therapy, domestic violence classes, parenting education, and substance abuse counseling, including submission to drug and alcohol screens. Weeks was permitted supervised visitation with his child, and was further ordered to maintain suitable housing, secure a legal source of income, and attend all court hearings. Initially, Weeks did not participate in substance abuse counseling and was early terminated for non-participation. Weeks was also early terminated from his domestic violence and couples counseling. Eventually, Weeks began to attend substance abuse, individual, domestic violence, and anger management counseling. While he completed parenting classes, he did not complete domestic violence courses. Additionally, substance abuse was an ongoing problem for Weeks, as he never consistently submitted to drug screens, and when he did, he tested positive for opiates without having a prescription for such medication. He was hospitalized for substance abuse issues and for threatening suicide one month before the termination hearing. Weeks's housing situation and employment also could not be verified at the time of the termination hearing due to his lack of contact with the Department. In fact, he did not attend the termination hearing seemingly because of his failure to provide the Department or his attorney with a valid address. Moreover, throughout the proceedings Weeks, at most, saw his child intermittently, and at the time of the termination hearing he had not seen his child in more than 91 days. He also had not sent his child any gifts or items of acknowledgement; all of which support that he did not benefit from services. Accordingly, there was no clear error by the trial court in finding that clear and convincing evidence supported that Weeks's parental rights should be terminated.²⁰

Weeks also argues that the trial court erroneously found that termination of his parental rights was in his child's best interests. We disagree.

Weeks continued to have a problem with substance abuse. Additionally, there was no observed bond between the child and his father due to Weeks's absence. Weeks also had not demonstrated adequate housing or a legal source of income. Moreover, the child exhibited a significant bond to his foster parents, and needed permanency and stability. As such, there was no clear error by the trial court in finding that termination of Weeks's parental rights was in the child's best interests.²¹

Affirmed.

/s/ Kathleen Jansen
/s/ Michael J. Talbot
/s/ Deborah A. Servitto

¹⁹ MCL 712A.19b(3)(j).

²⁰ *Brown/Kindle/Muhammad*, 305 Mich App at 635; MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j).

²¹ *Olive/Metts*, 297 Mich App at 41-42.