

STATE OF MICHIGAN
COURT OF APPEALS

In re L. L. ROBERTSON LONG, Minor.

UNPUBLISHED
July 21, 2015

No. 325592
Oakland Circuit Court
Family Division
LC No. 14-823229-NA

Before: WILDER, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(i), (j), (l), and (m).¹ We affirm.

I

The minor child was removed from respondent’s care in August 2014 when she was three weeks old following a birth match notification indicating that respondent’s first child had died from medical neglect and respondent’s rights to three other children were previously terminated. Shortly thereafter, a petition was filed to terminate the parental rights of respondent and the child’s father.² With regard to respondent, the petition alleged that it was contrary to the welfare of the child to remain in respondent’s care because respondent was responsible for the medical neglect that resulted in the death of her daughter and because respondent’s rights to three other children were previously terminated. The petition also alleged that respondent failed to complete services under, and failed to benefit from, a prior parent-agency agreement (“PAA”), failed to rectify conditions that previously resulted in her other children being removed from her care, and failed to maintain stable housing and employment.

¹ We note that there is a discrepancy in the statutory bases for termination in the lower court record. Although the petition for termination and the trial court’s statements on the record indicate that MCL 712A.19b(m) was a statutory basis for termination, the trial court’s order does not include this subsection. Nonetheless, in light of the conclusions in this opinion, we find this discrepancy inconsequential.

² Ultimately, the father’s rights were not terminated, and the child was placed with the father.

At a preliminary hearing on August 27, 2014, the trial court heard testimony from a Children's Protective Services ("CPS") investigator regarding the circumstances that led to the termination of respondent's rights to her other children, including concerns of medical neglect with regard to one of her sons following the death of her daughter, and respondent's previous failure to complete services and comply with a PAA in earlier child protective proceedings. The investigator testified that she was concerned for the safety of the minor child in light of the fact that respondent did not have stable housing, was currently unemployed, and had been unable to demonstrate that she was capable of caring for her children in light of her failure to complete the previous PAA. At the end of the hearing, the trial court assumed jurisdiction over the child pursuant to MCL 712A.2(b)(2) and authorized the petition, concluding that the evidence presented regarding the medical neglect of respondent's other children and respondent's previous terminations provided a basis for the trial court to exercise jurisdiction over the child on the basis of anticipatory neglect.

A bench trial was held on October 24, 2014, during which the trial court heard testimony from the CPS investigator and respondent. The investigator testified that she did not believe that the child was in "immediate danger of harm" based on the conditions in which she found the child. Instead, she explained that the child was removed due to respondent's unstable housing, lack of employment, and past record of removals and terminations. Respondent testified regarding her recent employment, the stability of her housing, and her ability to care for the child. With regard to her previous failure to complete services and comply with the PAA, respondent explained that she was young at the time and believed that the state was unable to take away her children, acknowledging that she made choices that she should not have made and that she should have been more cooperative. She also testified that she visited the child every Tuesday, never missing a visit, and did not have a drug problem. In addition to the testimony, the trial court admitted certified copies of the June 27, 2013 order terminating respondent's rights to her sons, the June 27, 2013 opinion issued by Judge Mary Ellen Brennan in the prior termination case, and the December 5, 2013 order terminating respondent's rights to her daughter.³

Following the testimony, the trial court found that it could exercise jurisdiction over the instant case on the basis of anticipatory neglect, noting that one of respondent's children died in her care and that respondent's "home or environment is unfit by reason of neglect because she never actually cooperated with the services that were provided." The trial court also concluded that a statutory basis for termination existed under MCL 712A.19b(3)(i), (j), (l), and (m) based on its findings regarding respondent's prior terminations, the unsuccessful efforts to rehabilitate respondent in the past, and respondent's failure to cooperate with prior rehabilitation attempts, which indicated that there was a reasonable likelihood that the child would be harmed if she was returned to respondent's care. However, the trial court did not find that a statutory basis for termination existed under MCL 712A.19b(3)(g), concluding that respondent had not failed to provide proper care or custody for this particular child.

³ The record indicates that respondent's rights to her daughter were voluntarily terminated.

Before it made a ruling with regard to respondent's parenting time, the trial court heard statements from a foster care supervisor and case worker from Fostering Futures regarding respondent's visits with the child. Both mentioned that respondent had improved and interacted well with the child, but they also noted a concern related to respondent's tendency to overfeed the child in order to soothe her, although respondent had accepted criticism regarding this practice. The supervisor also indicated that respondent had missed some visits and arrived late to visits.

On December 8, 2014, the trial court held the best-interest hearing. The trial court heard testimony from respondent regarding her prenatal and postnatal care of the child, the housing and transportation that she received from her grandparents, her current employment, her visits with the child, and her ability to care for the child. Respondent acknowledged that she had not taken any parenting classes since the child was born. Before hearing the parties' arguments, the court specifically instructed the parties to read the opinion of Judge Brennan regarding the termination of respondent's parental rights to her sons. The trial court found that termination of respondent's parental rights was in the best interest of the child in this case, noting the findings in Judge Brennan's opinion, which described "the services that [were] given to [respondent] from 2011 to 2013," found that "not only did [respondent] not complete the services, but she fought the services," and held that the termination of respondent's parental rights to her sons was in the best interest of the children. The trial court also noted that at the time of the best-interest hearing, which was only a year and a half after respondent's rights to her sons were involuntarily terminated, it found no evidence in the record demonstrating a significant change in respondent's parenting skills.

II

Respondent first contends that the trial court erred in assuming jurisdiction over the child under MCL 712A.2(b) because the statute requires an assumption of jurisdiction to be based on the current conditions of a child's home or environment. In support of her argument that there must be a *present* risk of harm, respondent relies on the use of the word "is" in MCL 712A.2(b)(2) and the language of other statutes and court rules applicable to child protective proceedings. As such, respondent asserts that the trial court's assumption of jurisdiction was precluded by the fact that the CPS investigator concluded that the home was suitable and the child's physical needs were being met, and that the trial court erroneously relied on the doctrine of anticipatory neglect. We disagree.

To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists. *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001). Jurisdiction must be established by a preponderance of the evidence. MCR 5.972(C)(1)^[4]; *Ryan v Ryan*, 260 Mich App 315, 342; 677 NW2d 899

⁴ Effective May 1, 2003, MCR 5.972 became MCR 3.972(C)(1) which now provides, "Except as otherwise provided in these rules, the rules of evidence for a civil proceeding and the standard of proof by a preponderance of evidence apply at the trial, notwithstanding that the petition contains a request to terminate parental rights."

(2004); *In re Snyder*, 223 Mich App 85, 88; 566 NW2d 18 (1997). We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact[.] *In re S R*, 229 Mich App 310, 314, 581 NW2d 291 (1998). [*In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004) (footnote added).]

Additionally, “[t]his Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A factual finding is clearly erroneous if this Court is definitely and firmly convinced that a mistake has been made. *Id.* at 709-710. Likewise, a trial court's determination regarding the existence of statutory grounds for termination is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152, 782 NW2d 747 (2010).

In this case, the trial court exercised jurisdiction pursuant to MCL 712A.2(b)(2), which provides:

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

* * *

(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.

Contrary to respondent's claim, it has long been held that a trial court may assume jurisdiction on the basis of anticipatory neglect. *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011); *In re Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1977). It is well recognized that a parent's treatment of one child is probative of how that parent is likely to treat another child, *In re A H*, 245 Mich App 77, 84; 627 NW2d 33 (2001), and “[a] child may come within the jurisdiction of the court solely on the basis of a parent's treatment of another child,” *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 468 Mich 1037 (2010). “Abuse or neglect of the second child is not a prerequisite for jurisdiction of that child and application of the doctrine of anticipatory neglect.” *Id.* Thus, the relevant case law, by which we are bound, MCR 7.215(C)(2), clearly indicates that the trial court need not find that a child is *currently* abused or neglected in order to assume jurisdiction over the child. Additionally, given the evidence in the record indicating that one of respondent's children previously died following medical neglect, that respondent's rights to three of her children were terminated, and that respondent failed to complete services and comply with a PAA related to the child protective proceedings involving her other children, respondent has failed to show that the

trial court clearly erred in exercising jurisdiction over the minor child based on the doctrine of anticipatory neglect.⁵

Respondent also contends that the court should not have considered whether there was a statutory basis for termination under MCL 712A.19b(3)(b)(i),⁶ (j), and (m) because there was never a basis for the trial court to assume jurisdiction over the child. However, given our conclusion that the trial court properly assumed jurisdiction over the child, we reject respondent's claim.

To the extent that respondent asserts that the trial court erred in finding a statutory basis for termination, we deem this issue abandoned because respondent failed to explain or rationalize the merits of this argument in her brief on appeal or cite any authority in support of this argument. See *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.") Nevertheless, only one statutory ground under MCL 712A.19b(3) is required to terminate parental rights. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). The trial court's order identifies MCL 712A.19b(3)(l) as a statutory basis for termination, which applies if "[t]he parent's rights to another child were terminated as a result of proceedings under [MCL 712A.2(b)] of this chapter or a similar law of another state." MCL 712A.19b(3)(l) "only applies to a prior involuntary termination under the Michigan juvenile code or a similar law of another state." *In re Jones*, 286 Mich App 126, 128; 777 NW2d 728 (2009). The certified orders entered into the record and the testimony at trial clearly indicate that respondent's rights to two of her children were involuntarily terminated after respondent failed to complete services and comply with the terms of a PAA. Thus, the trial court did not clearly err in finding, by clear and convincing evidence, that a statutory basis existed for the termination of respondent's parental rights. *In re White*, 303 Mich App at 709-710.

III

Next, respondent contends that the trial court clearly erred in finding that termination of her parental rights was in the best interests of the child. We disagree.

⁵ We note that respondent's reliance on *In re LaFrance*, 306 Mich App 713, 732; 858 NW2d 143 (2014), is misplaced. Respondent contests the trial court's assumption of jurisdiction over the child under MCL 712A.2(b)(2), which concerns a trial court's "[j]urisdiction in proceedings concerning a juvenile under 18 years of age found within the county" (emphasis added), whereas the rule stated in *In re LaFrance* applies to a statutory basis for termination of parental rights. *In re LaFrance*, 306 Mich App at 732 ("Termination of parental rights requires 'both a failure and an inability to provide proper care and custody,' which in turn requires more than 'speculative opinions . . . regarding what *might* happen in the future.'").

⁶ Contrary to respondent's brief on appeal, the trial court did not terminate her parental rights under MCL 712A.19b(3)(b)(i).

Pursuant to MCL 712A.19b(5),

[t]he trial court must order the parent's rights terminated if the [petitioner] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests. We review for clear error the trial court's determination regarding the children's best interests. [*In re White*, 303 Mich App at 713 (footnotes omitted).]

In deciding a child's best interests, a court may consider the child's bond to her parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *Id.*; *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "The trial court may also consider . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714.

On appeal, respondent argues that because she visited the child three times per week, maintained employment since October 2014, lived in "a home where she had lived as an infant," did not abuse drugs, and based on the statements of the Fostering Futures supervisor and case worker, had improved her parenting skills since her rights to her other children were terminated, termination of her parental rights was not in the best interests of the child. We disagree. Both Fostering Future case workers identified concerns with the manner in which respondent attempted to soothe the child by overfeeding her, and the Fostering Futures supervisor noted that respondent had missed visits and arrived late to visits. Additionally, although respondent testified that she had "bond[ed] . . . very well" with the child, it was not evident that respondent had established a relationship with the child, as the child was removed from respondent's care less than one month after birth and was only four months old at the time of the best-interests hearing. See *In re Jones*, 286 Mich App at 129-130.

Furthermore, consistent with the trial court's reasoning, a parent's treatment of one child is probative of how that parent is likely to treat another child. *In re A H*, 245 Mich App at 84; *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). As the trial court concluded, it is not apparent from the record that respondent's parenting abilities had significantly improved since her rights to the other children were terminated or that she was prepared to care for the child. Notably, respondent's rights to two children were involuntary terminated only a year and a half before the best-interests hearing, and respondent's rights to another child were voluntarily terminated one year prior to the hearing. In light of respondent's extensive, and relatively recent, history of noncompliance with, and resistance to, the court-ordered services related to more than one PAA (as described in detail in Judge Brennan's previous opinion and order); respondent's own testimony at the best interest hearing acknowledging that she had not taken any additional parenting classes since the rights to her last child were terminated; and the absence of evidence in the record demonstrating considerable improvement in her parenting ability since her rights to the other children were terminated, respondent's history demonstrates that it is likely that the child would face a significant risk of harm if she was returned to respondent. Thus, the trial court did not clearly err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.

Respondent also argues that, because the child was going to be placed with her father, the trial court should have considered relative placement as a factor weighing against termination and should not have terminated respondent's parental rights. Generally, a child's placement with a relative weighs against termination and is "an explicit factor to consider in determining whether termination [is] in [a child's] best interests." *In re Mason*, 486 Mich at 164, citing MCL 712A.19a(6)(a); see also *In re Olive/Metts*, 297 Mich App at 43. If the court fails to explicitly address placement with a relative, the record is inadequate to make a best-interest determination, and reversal is required. *In re Olive/Metts*, 297 Mich App at 43. However, a child's parent is not a "relative" for purposes of MCL 712A.19a:

(j) "Relative" means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. [MCL 712A.13a(1)(j).]

Therefore, because the child was not placed with a "relative," the trial court was not required to consider the issue of relative placement in determining whether termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Douglas B. Shapiro
/s/ Amy Ronayne Krause