

STATE OF MICHIGAN
COURT OF APPEALS

In re N. A. DEANES, Minor.

UNPUBLISHED
July 21, 2015

No. 325594
Oakland Circuit Court
Family Division
LC No. 13-813688-NA

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

PER CURIAM.

Respondent appeals the trial court's termination of her parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons stated below, we affirm the trial court's termination of respondent's parental rights, but reverse and remand for further proceedings to properly determine the child's best interests.

I. FACTS AND PROCEDURAL HISTORY

The Department of Human Services (DHS) petitioned the Oakland Circuit Court to take temporary custody of ND in October 2013, because respondent's live-in boyfriend was abusing respondent, and holding her and ND captive in his apartment. DHS initially placed ND with her great-grandmother, but ND eventually went to live with her great-aunt because her great-grandmother had health problems.

Over the next year, DHS offered respondent an extensive array of services, including parenting classes, counseling and therapy, and social programs to assist her in finding suitable housing and employment. Though respondent availed herself of the parenting classes, she often missed visitation times (and was often late to the visitations she attended) and failed to participate in the other services offered to her by DHS. She also failed to secure a job¹ an appropriate residence, and did not maintain regular contact with DHS. Most disturbingly, she continued to maintain a relationship with her abusive boyfriend, despite obvious signs of serious and ongoing physical abuse at his hands.

¹ Respondent worked at a McDonald's location for a period of time, but was fired for tardiness and poor attendance.

Because of respondent's inability to change her dangerous behavior, DHS asked the trial court to terminate respondent's parental rights to ND in November 2014. Respondent did not attend the hearing because she was "out of town" for unspecified reasons. After it heard testimony from a social worker and doctor who had worked with respondent, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist); MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (children will likely be harmed if returned to parent's care). Thereafter, the trial court determined that termination of respondent's parental rights was in ND's best interests. Respondent appealed the decision in January 2015.

II. STANDARD OF REVIEW

A trial court's "factual findings and ultimate determinations on the statutory grounds for termination" are reviewed for clear error,² as is its determination that termination is in the child's best interests. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

III. ANALYSIS

A. STATUTORY GROUNDS FOR TERMINATION

In relevant part, MCL 712A.19b(3) permits a court to terminate a respondent's parental rights when it finds the existence, "by clear and convincing evidence, [of] 1 or more of the following":

(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.

* * *

² *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014).

(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.

“Only one statutory ground for termination need be established” to terminate a respondent’s parental rights. *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012). “While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Contrary to respondent’s contentions, the trial court properly terminated respondent’s parental rights under each of these statutory sections. As noted, DHS initially took custody of ND because of respondent’s abusive relationship with her live-in boyfriend. The boyfriend committed acts of domestic violence against respondent—and, at times, did so in front of ND. He also forced respondent and ND to remain inside his apartment throughout the day. Despite his continued physical and emotional abuse—and the fact that his behavior was a precipitating cause for the removal of her child—respondent remained in a relationship with this boyfriend throughout the proceedings. Accordingly, the trial court correctly held that: (1) the conditions that led to the adjudication continued to exist; and (2) respondent’s living arrangements with a violent man put ND at risk of physical and emotional harm. See MCL 712A.19b(3)(c)(i) and (j).

Moreover, the trial court also accurately found that respondent lacked the ability to “provide proper care or custody for” ND pursuant to MCL 712A.19b(3)(g). Respondent failed to attend the counseling and therapy sessions offered to her by DHS, which might have convinced her to end the dangerous relationship with her boyfriend and begin an independent life. And, despite the state’s efforts to assist her in obtaining both a job and an apartment, she failed to follow up on the opportunities afforded to her by this assistance, and did not maintain a steady income or secure a residence separate from her abusive boyfriend. *Frey*, 297 Mich App at 248. Respondent also evinced little interest in regaining custody of her child: she did not attend either the termination or best interests hearing, missed many visitation times, and did not remain in contact with DHS. The trial court therefore properly terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), and its holding on this subject is affirmed.

B. BEST INTERESTS DETERMINATION

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *Olive/Metts*, 297 Mich App at 40. “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). Generally, “[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.” *Olive/Metts*, 297 Mich App at 43, citing *In re Mason*, 486 Mich 142, 163-165; 782 NW2d 747 (2010).

Here, the trial court correctly noted that respondent could not provide ND with a safe or stable home environment, because of her mental-health issues, joblessness, and continued relationship with her abusive boyfriend. The court also observed that respondent’s bond with

ND diminished over time, as respondent did not attend visitation sessions. While these are valid and important factors that demonstrate termination of respondent's parental rights is in ND's best interests, the trial court failed to "explicitly address whether termination is appropriate in light of" ND's placement with her great-aunt.³ *Olive/Metts*, 297 Mich App at 43.

Accordingly, the factual record is "inadequate to make a best-interest determination," and we remand for proceedings in which the trial court will consider ND's placement with her great-aunt in its determination of her best interests. *Id.* In all other respects, the holding and findings of the trial court are affirmed.

Affirmed in part and reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

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

³ MCL 712A.13a, which defines "relative" for purposes of MCL 712A.19a, the statute that governs permanency planning hearings, includes "great-aunt" in its definition.