

STATE OF MICHIGAN
COURT OF APPEALS

In re SPILLERS, Minors.

UNPUBLISHED
December 15, 2015

No. 326020
Oakland Circuit Court
Family Division
LC No. 13-806432-NA

Before: JANSEN, P.J., and CAVANAGH and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her six minor children, now ranging in age from two to 15, based on her failure to participate in and benefit from services to curtail her longtime substance abuse addiction and to avoid domestic violence. Respondent does not challenge the evidentiary support for the statutory grounds underlying the termination decision. Rather, she contends that the circuit court failed to separately consider the best interests of each of her children, and to weigh the eldest child's (NS) relative placement, in determining that termination of her parental rights served the children's best interests. The court adequately analyzed the best interests of the youngest five children and we affirm the court's termination order in that regard. As the court failed to separately assess whether termination was in NS's best interests given his relative placement, we remand for the circuit court to remedy its omission.

I. BACKGROUND

Respondent and the children's father married young and went on to have six children together. Respondent has a long history of abusing marijuana and cocaine, as well as other substances, and her four youngest children tested positive for controlled substances at birth. Respondent and her husband also had a history of domestic violence and following a 2009 domestic violence conviction, the court imposed a no-contact order against the husband. Despite this order, the couple continued their relationship and conceived their two youngest children. The Department of Health and Human Services (DHHS) finally interceded in 2012, one year before respondent's sixth child was born, and provided services in an attempt to maintain the family unit. Despite this assistance, respondent continued to abuse marijuana and cocaine. The family was on the verge of eviction for failure to pay rent and the gas had been turned off, leaving the home without heat. The older children suffered physically and emotionally. Their schools reported a high number of absences and late arrivals, the eldest two children had had sexual contact with each other, and the four elder children exhibited behavioral problems.

All six children were removed from respondent's care upon the youngest child's birth. NS was placed with an older cousin, and then briefly with his grandfather, before returning to his cousin's care. The eldest daughter was placed in a residential facility because of her severe behavioral and emotional problems. The youngest children were placed in four separate foster homes.

During the child protective proceedings, respondent mostly failed to participate in her case service plan. She attended only two parenting classes. Respondent's counseling services were discontinued for failure to attend. Respondent attempted in-patient and out-patient substance abuse counseling, but made no strides toward recovery. One program reported that respondent had no desire to change her lifestyle and that counseling was therefore futile. Out of 152 scheduled drug screens, respondent submitted to only seven, and tested positive for substances each time. She came to parenting time sessions under the influence. The visits did not go well, with the children regressing both before and after. Respondent also never secured stable employment or a suitable home. At one point, respondent resided in a fire-damaged home with a broken front door and broken windows. She contended that she did need employment to provide for the children because her current boyfriend could financially support them. And, by the time of the termination hearing, respondent appeared to be pregnant for a seventh time, although she denied her condition to the court.

After determining that termination was supported by MCL 712A.19b(3)(c)(i) (continued existence of the grounds leading to adjudication), (g) (failure to provide proper care and custody), and (j) (likely harm to the children if returned to the parent's care), the court conducted a hearing to determine if termination was in the children's best interests. At that hearing, respondent indicated that she would be willing to voluntarily release her parental rights to two of her children, including NS, because their placements were so beneficial. Although respondent promised to follow through with services if given the chance, she minimized her substance abuse issues and stated her belief that her use of marijuana had no impact on her parenting abilities. The court considered respondent's poor performance and participation in substance abuse treatment, failure to cooperate in drug testing and repeated positive results, and failure to utilize and benefit from other services in rendering its decision. Ultimately, the court found by a preponderance of the evidence that termination was in the best interests of all the children. This appeal followed.

II. BEST INTERESTS OF THE CHILDREN

"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." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The lower court should weigh all the evidence available to it in determining the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Relevant factors in this consideration 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." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, 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 701, 714; 846 NW2d 61 (2014).

A preponderance of the evidence supported that termination of respondent's parental rights was in her children's best interests. Despite being provided services since March 2012, respondent continued to abuse marijuana, cocaine, and other substances throughout the proceedings. She exhibited a poor attitude in treatment and refused an offer to extend an in-patient program. Respondent failed to attend mental health counseling and parenting classes, never secured suitable housing, and came to parenting time sessions under the influence. As a result of their traumatic upbringing, respondent's older children exhibited severe emotional and behavioral troubles. Given this background and respondent's failure to address her issues, we discern no error in the circuit court's determination that termination of respondent's parental rights was in the best interests of her five younger children.

However, the circuit court did not separately consider the best interests of each child in making its termination decision. In *Olive/Metts*, 297 Mich App at 42, this Court held that the circuit court "has a duty to decide the best interests of each child individually." In *White*, this Court clarified that *Olive/Metts*:

stands for the proposition that, if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children's best interests. It does not stand for the proposition that the trial court errs if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child's best interests. [*White*, 303 Mich App at 715-716 (emphasis in original).]

The *White* Court noted that there were two groups of children in *Olive/Metts* and that the best interests of those groups significantly differed because one was placed with relatives while the other was placed in nonrelative foster care. *Id.* at 715.

Just as in *Olive/Metts*, the children in this case were not all placed in the same home. NS was placed with a relative, while the other five were in nonrelative group or foster home placements. Obviously, respondent's failure to overcome addiction, domestic violence between the parents, and negligent parenting were factors that impacted all the children and rightfully formed the basis for the court's best-interest analysis as to all six children. As noted in *White*, the court was not required to make redundant findings in relation to each child and could summarize these facts as to the group as a whole. However, the court was required to make at least some separate findings in relation to NS given that he, unlike his siblings, was in relative placement. The circuit court failed in this regard and is directed to separately consider NS's best interests on remand.

A child's placement with a relative is factor that generally weighs against a finding that termination of parental rights is in the child's best interests, but it does not preclude termination. *Olive/Metts*, 297 Mich App at 43. However, "[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." *Id.* The

circuit court made no record consideration of the fact that NS was in a relative placement in determining that termination of respondent's parental rights was in NS's best interests. We therefore are compelled to remand to the circuit court to make the requisite findings for our review. On remand, respondent's admissions at the best-interest hearing that NS was better off in his foster home and that she was willing to voluntarily relinquish her parental rights to NS could be cited in support of the court's decision.

We affirm in part and remand for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Elizabeth L. Gleicher

Court of Appeals, State of Michigan

ORDER

In re Spillers, Minors

Docket No. 326020

LC No. 13-806432-NA

Kathleen Jansen
Presiding Judge

Mark J. Cavanagh

Elizabeth L. Gleicher
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 28 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the circuit court must separately consider whether termination of respondent's parental rights is in the best interest of NS and whether NS's relative placement weighs against termination. The proceedings on remand are limited to these issues.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 15 2015

Date

Chief Clerk