

STATE OF MICHIGAN
COURT OF APPEALS

In re Smart, Minors.

UNPUBLISHED
May 10, 2016

Nos. 329413 & 329414
Wayne Circuit Court
Family Division
LC No. 97-360976-NA

Before: BOONSTRA, P.J., and METER and BECKERING, JJ.

PER CURIAM.

In Docket No. 329413, respondent father (“father”) appeals as of right from an August 28, 2015, order terminating his parental rights to three children, ranging in age from 3 to 11, under MCL 712A.19b(3)(g) (relating to proper care or custody), (j) (relating to risk of harm), and (n)(ii) (relating to a violation of a criminal statute involving force). In Docket No. 329414, respondent mother (“mother”) appeals as of right from the same order, which terminated her parental rights to the children under MCL 712A.19b(3)(g), (i) (relating to prior terminations and attempts to rehabilitate), (j), and (l) (relating to prior terminations).¹ We affirm.

In January 2015, petitioner filed an original petition for permanent custody, naming both mother and father as respondents and raising numerous allegations of domestic violence, including an incident in which father gave mother “a black eye, swollen and bleeding lips, and multiple bruises to her face.” Petitioner further alleged the following: Mother left the children in the care of father for approximately two weeks while she stayed in a shelter. One of the domestic violence incidents required surgery, and mother admitted that the children were present for some of the domestic violence incidents. After father was arrested for one of the incidents, he failed to provide information regarding the whereabouts of the children, and the children were in the home alone before being discovered by police. Both mother and father have a substantiated history with Child Protective Services (CPS) from 2007, related to physical neglect. In addition, mother’s rights to five other children were terminated in 2001 because she failed to complete treatment related to domestic violence. Father has a criminal history.

¹ We note that subsection *l* has recently been ruled unconstitutional by this Court. See *In re Gach*, ___ Mich App ___; ___ NW2d ___ (2016) (Docket No. 328714). However, mother does not challenge the statutory grounds for termination and, at any rate, we find that other subsections properly apply.

Both respondents waived a hearing on probable cause and the case proceeded to a termination bench trial. The children were placed with the paternal grandmother.

At trial, which began on April 16, 2015, mother admitted that she had not completed ordered services in her earlier termination case and that, as a result, her rights to five children had been terminated in 2001. She stated that this termination involved domestic violence with a man other than father and admitted that after staying in a shelter for a time, she returned to this man. She also testified about numerous incidents of domestic violence against her by father in 2014, including an incident in which he “strangled” her while the children were home. She stated that she lived in a domestic violence shelter for a month. She stated that she was concerned about getting herself away from father but was not concerned about getting the children away from father because he loved them. She returned to the home after living in the domestic violence shelter. The youngest child was present during an incident of domestic violence in which father punched and hit her such that her spleen was fractured and she needed surgery.

Mother admitted that initially she lied and told relevant persons that her sister had caused her injuries. She stated that she did not plan to return to living with father.

Father testified that he was currently incarcerated for assault with intent to do great bodily harm less than murder as a result of the assault that caused mother’s spleen damage. He admitted to the assault and admitted to other assaults against mother, including one involving strangulation. Father admitted to lying to the police about hurting mother and also admitted that the children were left alone on November 9, 2014, and that he lied about this to the police. Father admitted to an additional strangulation incident against mother in 2004 and to other assaults throughout the years. He stated that he wanted to live together again with mother and the children, as a family. He (as well as mother) admitted to speaking on the telephone with each other, even though a no-contact order was in place.

CPS worker Brandi Cunningham testified that she observed mother’s black eye in October 2014. She stated that she attempted several times to contact father but could not reach him. She stated that after the “spleen” incident, which mother initially attributed to her sister, a safety plan was established for the children and they were placed with the paternal grandmother. Cunningham finally contacted father and he denied the incident involving the black eye. Father failed to explain why he had not responded to Cunningham’s earlier attempts to contact him.

Cunningham stated that mother could not explain why she returned to the home after leaving the domestic violence shelter. Cunningham stated that the children “could be harmed or mentally harmed” due to the severe abuse occurring in the home. She testified that it was in the children’s best interests to terminate mother’s parental rights because of mother’s “past history of domestic violence[;] she didn’t benefit from treatment and there’s a reason to believe that the same pattern will occur again.” She stated that it was in the children’s best interests to terminate father’s parental rights because “of the severity of the injuries that he caused” to mother. Cunningham stated that the paternal grandmother said she would be willing to “plan for the children long term.”

The court mentioned father's actions, the impact on the children from witnessing the results of them, the fact that father's actions resulted in mother leaving the home and leaving the children without mother, and the fact that mother returned to the dangerous situation. With regard to mother, the court found grounds to terminate under MCL 712A.19b(3)(g), (i), (j) and (l). With regard to father, the court found grounds to terminate under MCL 712A.19b(3)(g), (j), and (n)(ii).

At a best-interests hearing on August 14, 2015, mother stated that she "learned to stay away from [father] to protect my children." Moments later, however, she stated that she would be willing to be in a relationship with father if the judge "okayed" it because she still loved him. She stated that there were no requirements "or change or anything that [she was] requiring of [father]" because "he's probably changed when he was locked up"

Father testified that he was getting domestic violence counseling. He admitted that his mother (the children's grandmother) stated that he had anger problems and that he is not allowed into her home. Father stated that he would like to have a "civil relationship" with mother.

The court noted that mother had not yet "taken control of [her] life" and was being passive and just wanted to go along with whatever the court ordered. The court mentioned father's difficulty with relationships. The court stated:

there's actually research that says that [the children] having to witness the parents that they love assaulting each other and harming each other[,] that that's worse than somebody actually hitting them. Because there's nothing—because they're helpless [H]aving to watch your mother or your father . . . be sent to the hospital and not being able to do anything about it, . . . that's tough. That is damaging to the children.

The court further noted that the oldest child had "asked her grandmother to promise that she and her brother could stay with their grandparents." The court properly acknowledged that in some cases placement with a relative can weigh against termination, but it found that in this case termination was in the children's best interests.

To terminate parental rights, a trial court must find that a statutory ground for termination in MCL 712A.19b has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). After a trial court has found a statutory ground for termination, 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[.]" MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). A trial court's factual findings in terminating parental rights, including a finding that a ground for termination has been established and that termination is in a child's best interests, are reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App at 83.

Mother does not challenge the existence of a statutory ground for termination but argues solely that termination was not in the best interests of the children. Factors to be considered in evaluating best interests 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." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Mother states that "[d]espite the testimony that . . . mother is somewhat ambivalent about ending her relationship with . . . father, . . . she is going to counseling and with more time will move on with her life because she clearly will put the children's best interest ahead of [father]." Mother states that the children could remain safe with relatives while mother works on her issues.

We find no clear error with regard to the court's determination that termination of mother's parental rights was in the children's best interests. Mother was very passive in her testimony, stating first that she had learned to stay away from father to protect the children but later stating that she loved father and would be willing to be in a relationship with him if the court were to allow for it. Mother had failed in the past to rectify issues related to domestic violence with another man. The domestic violence she incurred at the hands of father was extremely serious, yet she stated that father did not need to make any changes because he had "probably" changed while incarcerated. The children were in a stable placement and wished to remain there. Given the extreme turmoil in the home, mother's passivity, and the children's current placement, the trial court did not err in finding termination to be in the children's best interests.

Father argues that the evidence did not support a statutory ground for termination. We disagree. MCL 712A.19b(3)(g) states that termination is warranted if "[t]he 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." It cannot be seriously argued that physically assaulting his children's mother, with one of the children in the room and to the point where spleen surgery was required, constituted proper care or custody. In addition, father admitted to a years-long history of assault against mother. His assaults resulted in mother's being absent from the home and moving to a shelter. Father also left the children alone in the home. Father did fail to provide proper care or custody and, given his history, there was no reasonable expectation that he would provide proper care and custody within a reasonable time. Because only one statutory ground for termination must be established to justify termination, *In re Trejo Minors*, 462 Mich at 360, and we affirm termination under subsection (g), we need not address the additional subsections relied on by the court.

Father also argues that the trial court erred in finding that termination of his parental rights was in the best interests of the children. We disagree. The domestic violence father inflicted upon mother was extremely severe. Father admitted to a history of domestic violence. Father caused mother to have to leave the home because of the violence. He created a very unhealthy environment for the children, and they were in a stable placement. We find no basis for reversal.

Both cases are affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Jane M. Beckering