STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
September 20, 2012

In the Matter of CRAIG, Minors.

No. 308671
Kent Circuit Court
Family Division
LC No. 10-052152-NA

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

PER CURIAM.

Respondent-appellant mother appeals as of right the trial court order terminating her parental rights under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g) and (j). We affirm in part and remand in part because we are not convinced that termination is in the best interests of all of the children.

The trial court did not err in finding the statutory grounds for termination of respondent-appellant's parental rights were established by clear and convincing evidence. MCR 3.977(K); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Respondent was a long time cocaine abuser, physically abused her teenage son in October 2009, and Kent County Children's Protective Services attempted to implement services in her home beginning in January 2010. Her teenage son was placed in a juvenile detention facility for delinquency and drug use in February 2010, three children were removed from her care in June 2010 pursuant to the initial petition in this case, and respondent's twins born in August 2010 were removed from her at birth. The initial conditions leading to adjudication were respondent's use of cocaine, lack of proper parenting consisting of exposing her children to drug use at tender ages and failing to effectively supervise and discipline her delinquent son, and emotional instability and lack of insight. She denied any parenting deficits or a need to change, and exhibited an inability to regulate her emotions or manage her anger in interactions with others, which prevented her from successfully addressing her substance abuse and parenting issues. These conditions constituted failure to provide proper care of the children. The termination hearing was held more than 182 days after the August 25, 2010 and October 19, 2010 initial dispositions.

Respondent argues the trial court prematurely terminated her parental rights because she demonstrated the ability to remain sober for a lengthy period of time during the proceeding. The evidence showed she tested positive for marijuana, cocaine, or both on numerous occasions between February 2010 and May 2011, including while pregnant with the twins, but adamantly denied using cocaine despite many positive drug screens. Twice-monthly screens between May 24, 2011 and October 2011 were nearly all negative, but were again positive for cocaine in

November 2011. In November 2011, 21 months after intervention services were first offered, respondent finally admitted her cocaine use and expressed a desire to achieve sobriety, and the trial court adjourned the termination hearing for two months. In her subsequent November 9, 2011 substance abuse assessment, respondent reported never remaining clean and sober for any length of time, and her caseworker testified at the termination hearing that respondent had used drugs during her purportedly sober period, although the use was not detected by the infrequent screens. Respondent entered a residential treatment facility on November 18, 2011, but stayed only ten days before being discharged for using cocaine. She did not submit screens to her caseworker in December 2011, and tested positive for cocaine at an intake for another inpatient program one week before the January 17, 2012 termination hearing. Although she submitted clean screens at times, respondent's statement on appeal that she achieved long-term sobriety prior to relapsing on January 10, 2012 is not supported by the evidence, and we find no merit in argument that termination was premature given this lengthy proceeding.

The evidence showed that a primary barrier to respondent's sobriety was denying any need to change, resisting intervention, being untruthful in substance abuse assessments, and being unable to interact positively with those trying to assist her. During the two years she was offered intervention services, respondent failed to complete any individual counseling to address those barriers, either with therapists she chose herself or those to whom she was referred. She completed an Early Recovery group, but used cocaine the entire time and did not mention that use, which the facilitator testified was equivalent to denying it. Respondent's ability to interact positively with her two primary caseworkers improved over time, but even after admitting addiction and a need for help in November 2011, she remained resistant. She was defensive and irritable during her November 9, 2011 substance abuse assessment, and belligerent and disruptive during her short stay in the residential treatment program. The evidence clearly showed respondent failed to address her inability to interact with others, which was necessary before she could make progress toward rehabilitation.

With regard to respondent's ability to parent the children, the evidence showed her children were properly fed and clothed, but she did not effectively discipline them or protect them from drug use and its consequences in her home. The trial court noted respondent had the potential to be a superior parent if she obtained sobriety, but while using drugs lacked emotional stability. Although she completed Effective Black Parenting, Parenting and Sobriety, and a parenting program that she chose, respondent continued to use drugs and while doing so lacked the emotional stability needed to properly parent her children.

Additional conditions respondent was required to rectify were the emotional instability directly linked to her drug use, lack of suitable housing, and lack of employment. The evidence was clear by the time of the termination hearing that respondent did not overcome her addiction and achieve emotional stability, or obtain suitable housing or stable employment. Although housing and employment were lesser considerations in terminating respondent's parental rights, the evidence showed that by March 2011 the caseworker discussed with respondent the requirement that she obtain housing, three hearings were held at which the trial court could assess whether she had done so, and respondent failed to secure housing by the time of the termination hearing.

It is not clear, however, that the trial court correctly found that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The twins were not strongly bonded with respondent because they had never resided with her. The trial court did not clearly err in holding that the twins' best interests would be served by termination of respondent's parental rights.

On the other hand, the evidence showed that the older children were strongly bonded to respondent, and her separation from them caused them tremendous distress. Further, the trial court did not describe what facts specifically led it to find that termination of respondent's parental rights was in the children's best interests, other than a reference to the goal of achieving permanency for the children. However, it is not at all clear in this case that termination will serve the goal of permanency for the older children. The children have been shuttled from placement to placement, with up to 12 moves in a year and a half.

Therefore, although we uphold the finding that the statutory grounds for termination were adequately demonstrated, we remand for the trial court to make further factual findings regarding the best interests of all of the children other than the twins, including whether termination will actually serve the goal of providing the children with stability. We retain jurisdiction.

/s/ Jane M. Markey
/s/ Douglas B. Shapiro
/s/ Amy Ronayne Krause

Court of Appeals, State of Michigan

ORDER

In re Craig Minors

Docket No. 308671

LC No. 10-052152-NA

Jane M. Markey
Presiding Judge

Douglas B. Shapiro

Amy Ronayne Krause
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 trial court shall make further factual findings, regarding whether the best interest of the children, other than the twins, is the best served by termination of their mother's parental rights. These findings shall include whether termination in this case will actually serve the goal of providing the children with stability. The proceedings on remand are limited to this issue.

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 Larry S. Royster, Chief Clerk, on

SEP 20 2012
Date

Chief Clerk