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STATE OF MICHIGAN

COURT OF APPEALS

In re O. K. SALES-MCCRAY, Minor.

UNPUBLISHED
July 2, 2020

No. 350545
Wayne Circuit Court
Family Division
LC No. 16-522893-NA

Before: GADOLA, P.J., and STEPHENS and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of the right the trial court's order terminating her parental rights to her child, OSM. Respondent's rights were terminated under MCL 712A.19b(3)(h) (the parent is imprisoned in excess of two years), (i) (parental rights to one or more of the child's siblings have been terminated), and (j) (reasonable likelihood that child will be harmed if returned to the home of the parent). We affirm.

I. BACKGROUND

In May 2018, petitioner received a complaint that respondent was homeless with a young child. In June 2018, petitioner received a second complaint that respondent was incarcerated and OSM was left without supervision. Petitioner learned respondent was arrested for discharging a firearm and shooting another family member in the presence of OSM, who was five-months-old at the time. Petitioner filed a petition for permanent custody alleging both abandonment of the infant and not having a fit home for the child. At a preliminary hearing on the petition, a Department of Health and Human Services (DHHS) worker testified that respondent had a Child Protective Services (CPS) history including two prior parental rights terminations. OSM had a rash on his face, arms, and legs that was later diagnosed as a bacterial skin infection. Respondent was incarcerated and awaiting trial for the shooting incident. OSM's father was unknown. The child was placed with a maternal uncle. OSM's older sister expressed an interest in adopting OSM, however she did not have a home at the time. The court authorized the filing of the petition and adopted the permanency plan of adoption.

At an August 2018 pretrial hearing, petitioner reported that the maternal uncle had requested OSM be removed from his care and the child was placed in a licensed foster home. At a March 2019 pretrial hearing, the DHHS worker testified that respondent was convicted of assault

with intent to do great bodily harm less than murder, felony firearm, and felonious assault, and sentenced to six years' imprisonment. In April 2019, a combined adjudication and disposition hearing was held on the permanent custody petition. Respondent appeared by speakerphone from prison. Respondent admitted she had a criminal history, CPS history, mental illness history, and was currently incarcerated. Respondent testified that after she was evicted in 2018, she felt like she was "spiraling." Respondent testified she took OSM to the doctor for his eczema and the doctor prescribed Cortisone cream. Respondent was unaware that OSM had a skin infection. Despite not having seen OSM for nine months, respondent testified that she and OSM had a "beautiful bond." OSM's foster parent was willing to plan long-term for OSM and to maintain contact with OSM's other biological family if it was in the child's best interests. Respondent's oldest daughter testified that while she was not previously able to care for OSM, at the time of the hearing, she was working, had a home, and wished to plan long-term for the child.

The court found that it had jurisdiction over OSM under MCL 712A.2b(1) and (2) on the bases of there being a substantial risk of harm to return OSM to respondent's care, medical neglect, an unfit home, and criminality. The court found statutory grounds for termination of respondent's parental rights under MCL 712A.19b(3)(g), noting that OSM had spent two-thirds of his life away from respondent, and was bonded with his foster family. In addition, the court found under MCL 712A.19b(3)(h), that OSM would be deprived of a stable home for a period exceeding two years while respondent was imprisoned. The court further found that termination of respondent's parental rights was in OSM's best interests because OSM needed permanency and respondent's ability to care for OSM at any point in the near future was "really impossible."

II. BEST INTERESTS

Respondent does not dispute the statutory grounds for termination on appeal; rather, she only argues that the trial court erred in determining that termination was in OSM's best interests.

A. STANDARD OF REVIEW

After a statutory ground has been established, "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). "A trial court's factual findings are reviewed for clear error . . . ." *In re TK*, 306 Mich App 698, 709; 859 NW2d 208 (2014). "A trial court's decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Olive/Metts Minors*, 297 Mich App at 41 (quotation marks and citation omitted).

B. ANALYSIS

Respondent argues that the trial court clearly erred in determining that termination of respondent's parental rights was in the best interests of OSM because she had a strong bond with the child and because she had a plan for him to stay with her oldest daughter while she was incarcerated.

In reviewing a determination of the best interests of the child, this Court "focus[es] on the child rather than the parent." *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). "The trial court should weigh all the evidence available to determine the children's best interests."

In re White, 303 Mich App 701, 713; 846 NW2d 61 (2014). A trial court may consider a number of factors in determining whether termination of parental rights is in the child's best interests, including: 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 Minors*, 297 Mich App at 41-42. In addition, 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 at 714.

Respondent first argues that it was not in OSM's best interests to terminate her parental rights because she and OSM had a "beautiful bond". The court noted that OSM was at a point in his development where bonding was critical and at the time of termination, he had spent more time in foster care than he had with respondent. Indeed, the child entered care at five months of age and was in care for approximately nine months at the time of termination. While this Court does not question the existence of a bond between respondent and OSM during his first five months of life, there was no interaction from that point forward. Therefore, we cannot find that the trial court erred in finding that OSM lacked a significant bond with respondent and was instead bonded to his foster family. OSM's foster family was willing to adopt him, and meet his needs including special medical needs, such as breathing treatments and application of prescription topical cream. The foster family was also willing to maintain the connections OSM had with his biological family. These facts supported termination of respondent's parental rights being in OSM's best interests.

Respondent next argues that her parental rights to OSM should not have been terminated because respondent's oldest daughter was willing to plan long-term for the child. Respondent argues that OSM's potential placement with his older sister should have weighed more heavily against termination. "Indeed, a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), ..." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). However, relative placement is but one factor, and in this case, not dispositive. OSM was initially placed with a maternal uncle, but was removed because of personal and financial reasons on the uncle's part. At the time of OSM's removal, petitioner first considered his sister, but she was not yet eligible to take care of OSM as she did not have a job or adequate housing. In the meantime, OSM became bonded to his foster family. This Court appreciates the effort OSM's sister went through to gain housing and income. However, the determination of the best interests of a child "focus[es] on the child rather than the parent." *In re Schadler*, 315 Mich App at 411. The court did not err in finding that OSM's need for permanency and stability outweighed relative placement in this case.

For these reasons, this Court is not left with a definite and firm conviction that the trial court made a mistake in determining that termination of respondent's parental rights was in OSM's best interests.

Affirmed.

/s/ Michael F. Gadola
/s/ Cynthia Diane Stephens
/s/ Douglas B. Shapiro