STATE OF MICHIGAN

COURT OF APPEALS

In re D. N. DAILEY, Minor.

UNPUBLISHED
May 18, 2023

Nos. 363163; 363164
Wayne Circuit Court
Family Division
LC No. 2019-000790-NA

Before: LETICA, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother and respondent-father appeal as of right the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). Respondents both argue that the trial court erred in terminating their parental rights because petitioner, the Department of Health and Human Services ("DHHS"), failed to make reasonable efforts toward reunification. In addition, respondent-father argues that the trial court erred when it found that termination of his parental rights was in the child's best interests. For the reasons set forth below, we affirm in both appeals.

I. FACTUAL BACKGROUND

Respondents met and began their relationship in 2016 while residents of half-way houses following their respective incarcerations. Both have lengthy substance abuse histories. Respondent-mother admitted that she has abused drugs, on and off, for more than 10 years. Respondent-father served the last six months of his criminal sentence in an inpatient rehabilitation program. Regarding their substance use, both claimed that they became addicted to prescribed pain medication. Both shared a similar story of becoming addicted to prescribed medication and then turning to street drugs after they could no longer obtain their pain medication by prescription. Their drug of choice included heroin.

In March 2019, respondent-mother gave birth to the minor child. At the time, both she and the child tested positive for opiates and morphine. The child experienced severe withdrawal symptoms after his birth. He remained hospitalized for almost three weeks while he was administered morphine to control his withdrawal symptoms. During the Children's Protective Services ("CPS") investigation that followed, respondent-mother admitted that she used heroin

before and during her pregnancy. CPS requested that respondent-father be drug tested as well. His March 2019 screen was positive for fentanyl and norfentanyl.

In April 2019, CPS requested that respondents submit to another drug screen. Both again tested positive for opiates, heroin metabolites, morphine, and fentanyl. During a family team meeting, a safety plan was developed in anticipation of the child's discharge from the hospital. Shortly thereafter, the child was placed in the care of his maternal grandmother, where he would remain throughout this case.

In April 2019, DHHS filed a petition requesting that the trial court assume jurisdiction over the child. Respondents entered pleas of admission in which they admitted that the child was born with drugs in his system, that they continued to abuse heroin, and that their continued drug use impaired their ability to care for the child. The trial court accepted the pleas and found statutory grounds to assume jurisdiction over the child. During the dispositional hearing that followed, respondents were ordered to comply with a treatment plan designed to address their substance abuse issues and improve their parenting skills.

During the six months that followed the May 2019 adjudication, respondents regularly attended substance abuse therapy, visited the child every day in the home of his maternal grandmother, participated in the care of the child during this parenting time, and contributed financially to the child's care. However, respondents also continued to consistently test positive for heroin, fentanyl, and morphine. In November 2019, the permanency plan was changed from reunification to adoption. Consistent with this change, in January 2020, DHHS filed a supplemental petition seeking termination of respondents' parental rights.

At a hearing on March 4, 2020, both respondents entered pleas of admission and stipulated that statutory grounds existed to support termination of their parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j). Respondents both admitted that they continued to abuse heroin, fentanyl, and morphine. Respondent-mother also admitted to using cocaine. Respondents admitted that their drug use impaired their ability to parent the child. The trial court accepted their pleas, considered the parties' stipulations, and found clear and convincing evidence to terminate respondents' parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j). The matter was scheduled for a contested best-interests hearing in May 2020, but the hearing was delayed approximately two years because of the COVID-19 pandemic and respondents' requests for an in-person hearing. Eventually, the best-interests hearing commenced in March 2022 and concluded in July 2022. At that time, the trial court found that termination of respondents' parental rights was in the child's best interests. These appeals followed.

II. ANALYSIS

A. REASONABLE EFFORTS

Respondents argue that DHHS failed to make reasonable efforts toward reunification, which precluded the trial court from terminating their parental rights. We disagree.

At the outset, we note that both respondents have waived any argument related to the adequacy of the services offered and the existence of statutory grounds to terminate their parental rights. Challenges to the adequacy and reasonableness of the case service plan relate to the

sufficiency of the evidence in support of a statutory ground for termination. See *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). In the trial court, both respondents entered pleas of admission and stipulated that statutory grounds existed to support termination of their parental rights. They then elected only to proceed to a contested hearing regarding the child's best interests. Neither respondent claims any irregularity with the plea process, nor have they sought to withdraw their pleas. Accordingly, through their unchallenged pleas, respondents have waived any claim of error related to the reasonableness of DHHS's efforts toward reunification or the existence of statutory grounds for termination of their parental rights. See *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

Even if it were appropriate to consider the issue, respondents' claim that DHHS failed to make reasonable efforts toward reunification is not supported by the record. Reasonable efforts to reunify the child and family must be made in all cases except those involving the circumstances delineated in MCL 712A.19a(2), which are not applicable here. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Respondents assert that they required intensive treatment to adequately address their serious substance abuse issues. According to respondents, the trial court wasted two years referring them for various insufficient services when it should have referred them to an intensive inpatient rehabilitation program.

The record does not support respondents' position that two years elapsed before inpatient treatment was contemplated. Indeed, the record demonstrates that, at the outset, both respondents were offered, but refused, more intensive services that could have assisted in their efforts to overcome their addictions to heroin and fentanyl.

DHHS filed the petition for temporary custody in March 2019. At the beginning, it was readily apparent that respondents' drug addiction was the most significant barrier to reunification. Both respondents admitted an addiction history dating back at least 10 years. Additionally, several years earlier, both respondents had actually participated in inpatient programs. Initially, respondents were granted the opportunity to have their case moved to the specialized "baby court" docket, which offered an opportunity for more frequent review hearings at shorter intervals, more centralized services, and assistance through the Infant Mental Health program. By June 2019, respondents' need for inpatient drug rehabilitation services was recognized and discussed between the trial court and the parties. Both respondents immediately expressed reluctance, indeed they refused, to participate in inpatient treatment. Respondent-father was anxious about losing his employment and respondent-mother was concerned that after her earlier incarceration, she could not tolerate being "locked up" in inpatient treatment.

In August 2019, respondent-mother apparently entered an inpatient program, but she left after only 26 hours. Respondent-mother was unable to attend an October 7, 2019 review hearing because she allegedly had entered an inpatient detoxification program the night before. Respondent-mother also left this program early. At a March 4, 2020 hearing at which respondents entered pleas of admission to the statutory grounds for termination, respondent-mother testified that she had been admitted to three inpatient treatment programs, but left all three early. At this same hearing, respondent-father acknowledged that his treatment plan required that he participate in inpatient treatment, if requested. He further testified that he entered one program, but left after six days.

The need for inpatient treatment was frequently discussed with respondents during the two years that elapsed while they awaited their requested in-person best-interests hearing. At the review hearing in July 2020, the trial court reminded respondents that inpatient treatment was available. At the January 7, 2021 review hearing, counsel for petitioner noted that respondents had denied continued drug use, but she still questioned whether respondents were in need of an order for inpatient treatment in light of their positive screens. In response, respondent-mother indicated: "I feel like doing the outpatient has been good for me. I really have not used, but I don't know why the screens are where they are." At the April 14, 2021 review hearing, counsel for petitioner again questioned whether respondents required more intensive services in light of the fact that screens continued to be positive for multiple substances. Respondents' reactions were varied. At times, they represented that they were considering or looking into inpatient treatment. Other times, they indicated that they preferred outpatient therapy.

On March 9, 2022, at the conclusion of the initial best-interests hearing, the trial court continued the matter to allow both respondents the opportunity to participate in inpatient treatment. During the six weeks that followed, a caseworker investigated inpatient programs and found respondents' efforts lacking. Each facility required that respondents participate in an admission process, but the respondents were uncooperative. Testimony showed that respondent-father was unwilling to participate in an inpatient program that did not utilize methadone. Respondent-mother claimed that she had insurance issues, but a caseworker clarified that there only was one program that would not accept respondent-mother's insurance; all the others did. In any event, the caseworker then provided respondent-mother with contact information to assist her in securing inpatient treatment covered by her insurance. The caseworker also spoke with respondents' individual therapist who, based on her interaction with her clients, was left with the impression that respondents were unwilling to participate in inpatient treatment. During this grace period provided by the court, respondents continued to regularly test positive for heroin and fentanyl.

When the hearing resumed on April 28, 2022, respondents had yet to enter an inpatient program, despite DHHS's efforts to assist them in securing treatment. Nonetheless, the trial court again granted respondents more time to address their addiction to heroin and fentanyl. Indeed, the best-interests hearing was continued for another three more months. At the July 20, 2022 hearing, drug screens were admitted that demonstrated that both respondents continued to test positive for fentanyl. Respondent-mother still had not enrolled in an inpatient program. Respondent-father did not attend the hearing, but his attorney reported receiving a text message from his client the night before indicating that respondent-father was "on his way to rehab." However, there was no evidence that respondent-father was actually admitted to any inpatient program.

This matter was before the trial court for more than three years. Despite respondents' representations to the contrary, the record confirms that, from the beginning, and on several occasions thereafter, respondents were offered but refused the opportunity to participate in inpatient treatment. Then, when it appeared that respondents were on the precipice of having their parental rights terminated, the trial court, not once but twice, refused to do so and granted respondents even more time to address their serious substance abuse issues. Indeed, they were specifically granted more time to permit them to enter inpatient treatment. Given this record, we reject respondents' suggestion that reasonable efforts were not made toward reunification.

B. BEST INTERESTS

Respondent-father also argues that the trial court erred by finding that termination of his parental rights was in the child's best interests. After reviewing the record, we conclude that the trial court did not err in this regard.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of the parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The trial court may consider several factors when deciding if termination of parental rights is in a 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*, 297 Mich App 35, 42; 823 NW2d 144 (2012) (internal citations omitted). The trial court may also consider psychological evaluations, the child's age, continued involvement in domestic violence, and a parent's history. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). "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). In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). Whether termination of parental rights is in a child's best interests must be proven by a preponderance of the evidence. *Id.* at 90. This Court reviews for clear error a trial court's finding that termination of parental rights is in a child's best interests. *In re Jones*, 286 Mich App at 129.

A preponderance of the evidence supports the trial court's finding that termination of respondents' parental rights was in the child's best interests. It is readily apparent that the child would be at risk in respondents' unsupervised care. Both respondents had a longstanding history of substance abuse. They were addicted to heroin and fentanyl. Both received substance abuse counseling from an individual therapist and a drug counselor. They also participated in medication-based therapy through a methadone clinic. Despite these efforts, respondents were unwilling or unable to overcome their drug addictions. Moreover, the trial court reiterated and respondents understood that the use of fentanyl, in particular, carried with it the risk of death. Further, respondent-father admitted engaging in risky behavior when he confessed to buying heroin off the streets with the understanding that it was likely laced with fentanyl. The child would clearly be at risk of harm if left in respondents' care.

Respondent-father argues that he had a strong bond with the child. Indeed, the evidence established that respondent-father consistently visited the child, assisted in his care during parenting time, and contributed financially to his needs. The caseworker further confirmed that a parental bond existed. While a bond may have existed, there was sufficient evidence for the trial court to conclude that this factor did not outweigh the child's need for a safe and stable home that was free from drug abuse and individuals with unresolved substance abuse issues. Given the child's young age, it was critical that he be placed with someone who could provide adequate care and supervision.

The trial court also considered the child's need for permanency, finality, and stability. At the time of termination, the matter had been pending for more than three years. The child had resided with the maternal grandmother essentially since birth. The maternal grandmother had also expressed a willingness to adopt the child. When considering the best-interests factors, a court may consider the advantages of a foster home over the parent's home and the possibility of

adoption. See *In re Olive/Metts*, 297 Mich App at 41-42. It is clearly apparent that the child was placed in a stable home where he was progressing and that this progress could continue because this caregiver, his maternal grandmother, was willing to provide permanency for him. By contrast, neither respondent was in a position to provide the child with stability and permanence.

Respondent-father argues that the trial court failed to appropriately consider and weigh the fact that the child was in relative placement. We disagree. The trial court acknowledged that the child's placement with his maternal grandmother weighed against termination. However, it continued on to properly balance relative placement with other relevant factors. The trial court noted the child's young age, his need for permanency, stability, and finality, and the length of time the child had been in care—more than three years. It also considered the risk to the child in respondents' care considering their addiction to fentanyl. Ultimately, the trial court concluded that termination of parental rights was in the child's best interests. Although placement with a relative weighs against termination, and such a placement must be considered, a trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests. *Id*. at 43. In this case, the trial court properly balanced relevant factors, and it did not clearly err by finding that termination of respondent-father's parental rights was in the child's best interests despite that he was placed with a relative.

Finally, respondent-father argues that the trial court's best-interests determination was flawed because the court failed to consider a guardianship as an alternative to termination of his parental rights. Again, we disagree. In this regard, we note that during respondent-father's testimony, he requested that his own mother be appointed guardian over the maternal grandmother who had cared for the child his entire life. However, there was no evidence that the paternal grandmother was willing to be the child's guardian. Further, the appointment of a guardian is typically done in an effort to avoid the initiation of termination proceedings. See *In re TK*, 306 Mich App 698, 705; 859 NW2d 208 (2014). "[T]he appointment of a guardian is only appropriate after the court has made a finding that the child cannot be safely returned to the home, yet initiating termination of parental rights is clearly not in the child's best interests." *Id.* at 707. But under any circumstance, a trial court may only appoint a guardian if "it is in the child's best interests to appoint a guardian." *Id*. (citations omitted). The trial court clearly contemplated the possibility of a guardianship. Indeed, while it was giving respondents additional time to participate in an inpatient program, it instructed the parties to explore a guardianship. However, when the best-interests hearing resumed, the trial court ultimately rejected the possibility of a guardianship because it found more compelling the child's needs for stability, permanence, and finality. The child was only three years old at the time of termination, the case had been pending for three years, and respondents had not made any progress in overcoming their longstanding substance abuse issues or demonstrated any sincere willingness to do so. The trial court found that the child needed more permanency than what a guardianship would offer.

Respondent-father suggests that the trial court's finding that respondents could have continued supervised contact with the child after the termination of their parental rights is evidence that a guardianship was more appropriate. We disagree. The trial court did indicate both at the July 2022 hearing and in its written order that respondents could have supervised contact with the child, but it made clear that this would be under the maternal grandmother's discretion. The trial court's comments do not suggest that a guardianship would have been more appropriate, but rather that respondents should not have any control over decisions related to the child's best interests and

well-being. The trial court did not clearly err when it found that the child's need for permanence and finality outweighed respondents' suggestion of a guardianship as an alternative to termination.

III. CONCLUSION

There were no errors warranting relief. We affirm.

/s/ Anica Letica
/s/ Stephen L. Borrello
/s/ Michael J. Riordan