SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
COURT OF APPEALS

IN THE MATTER OF
GL, D.O.B. 02/14/2013,
ZM, D.O.B. 07/02/2015,
ZL, D.O.B 05/22/2016
APP-19-04

Decided August 7, 2020

BEFORE: CORBIERE, DIETZ, FELEPPA, JUMP and WICHTMAN, Appellate Judges.

ORDER AFFIRMING TRIBAL COURT DECISION

Wichtman on behalf of the Court, who is joined by the other Appellate Judges Corbiere, Dietz, Feleppa and Jump.

This appeal arises from an *Order Terminating Respondent Mother's Parental Rights* entered by the Sault Ste. Marie Tribe of Chippewa Indians Tribal Court ("Tribal Court") on November 7, 2019. Trial on the termination petition commenced on July 29, 2019 and continued July 30 and July 31, 2019 in Sault Ste. Marie, Michigan. *Id.* The Tribal Court accommodated additional motion practice between July 30, 2019 and September 18, 2019 and then concluded the trial in Manistique, Michigan on August 16, 2019 and October 10, 2019, respectively. *Id.* On November 7, 2019, the Tribal Court entered an *Order Terminating Respondent Mother's Parental Rights* to minor children GL, D.O.B. 02/04/13; ZM, D.O. B 7/02/15; and ZL, D.O.B 5/22/16.

For the reasons spelled out below, the Tribal Court's November 7, 2019 *Order Terminating Respondent Mother's Parental Rights* is affirmed.

Facts and Procedural History

The procedural history of this case dates to October 27, 2016 and is thoroughly described in the November 7, 2019 *Order Terminating Respondent Mother's Parental Rights*. In pertinent part, Appellant "admitted that her drug abuse/addiction interfered with her ability to meet her parental responsibility and/or caused harm or threatened harm to her children." (December 5, 2016, *Order of Adjudication (as to Respondent Mother*)). After a determination that Appellant's children were Children in Need of Care as defined by STC§ 30.311(9) in December 2016, and between December 2016 and March 2019, Appellant exposed at least one of her minor child(ren)

to illegal substances resulting in a positive drug test of minor child GL, continued to abuse illegal substances (even while pregnant with a child not at issue in this matter), gave birth to a child who tested positive for opiates, missed a dozen parenting time visits, and the ones she did keep – per the testimony of the caseworkers – were laden with concerns about her inability to consistently meet her children's emotional needs during supervised parenting time. Further, Appellant Mother held sporadic employment, displayed signs of being unable to manage her household expenses, was arrested for retail fraud and possession of marijuana and associated with known criminals despite the requirements of her parent/agency agreement and the provision of a myriad of services through Anishnaabek Community and Family Services ("ACFS"), the Hannahville Indian Community, Women's New Hope, Great Lakes Recovery, the Salvation Army and other organizations/programs. (July 29, Hrng. Tr. p. 10, 11, 14, 16-36). After no less than seven (7) Permanency Planning hearings held by the Tribal Court, on March 29, 2019, ACFS filed a *Petition to Terminate Parental Rights Re: Krista Medwayosh* which was subsequently amended on April 2, 2019. After the filing of the *Amended Petition to Terminate Parental Rights Re: Krista Medwayosh*, in June 2019, Appellant suffered two (2) drug overdoses from crystal methamphetamine and heroin. (July 29, 2019 Hrng. Tr. p. 99; August 16, 2019 Hrng. Tr. pp. 15-17). While testifying at the termination trial, Appellant admitted to more than one suicide attempt by intentional drug overdose and her testimony is replete with evidence of prolonged drug abuse. (*Id.* at p. 20-48). On October 11, 2019, the Tribal Court entered an *Order to Submit New Evidence* after an October 10, 2019 hearing in which the Tribal Court received testimony regarding an incident involving several known drug users with criminal backgrounds, a large amount of illegal substances and cash at Appellant's home in which Appellant was arrested on felony charges for maintaining a drug house. (Oct. 10, 2019 Hrng, Tr. p. 10 and *generally*).

On November 7, 2019, the Tribal Court issued its Order Terminating Respondent Mother's Parental Rights to her to minor children GL, D.O.B. 02/04/13; ZM, D.O. B 7/02/15; and ZL, D.O.B 5/22/16. On November 25, 2019, Respondent Mother timely filed an appeal of the Tribal Court's November 7, 2019 *Order Terminating Respondent Mother's Parental Rights*. (November 25, 2019, *Notice of Appeal*). Respondent Mother (hereinafter "Appellant") was appointed legal counsel and a formal *Notice of Appeal* was filed on Appellant's behalf on December 19, 2019. (December 19, 2019, *Notice of Appeal*). In the Appellant's initial Notice of Appeal, Appellant requested a court-appointed attorney "to prove [her] dedication and [her] love to her children…." (November 25, 2019, *Notice of Appeal*). After this Court granted her request for a court-appointed attorney to represent her on appeal, in the December 19, 2019 *Notice of Appeal*, Appellant argues "that there was insufficient evidence to terminate her parental rights" and that there were "procedural errors and errors of law that prejudiced the rights of the Appellant." (November 15, 2019, *Notice of Appeal*).

Appellant, Appellee and the minor children's Guardian Ad Litem timely filed briefs with this Court in accordance with the Scheduling Order issued on January 30, 2020. (*Notice of*

Briefing Schedule). Oral Argument in this matter was heard by this Court on March 6, 2020. Neither Appellant Mother nor her counsel were present for oral argument and instead informed this Court that they rested on their brief, Appellee ACFS was present and represented by counsel.

Jurisdiction

Pursuant to STC § 82.109, this Court possesses exclusive jurisdiction to review the decisions of the Tribal Court. An appeal is properly before this Court if it is a final decision of the Tribal Court. STC § 82.111 or an order affecting a substantial right and which determines the action and prevents a judgment from which an appeal might be made.

Standard of Review

Child protective proceedings fall within the jurisdiction of the Tribal Court. See STC Chapter 30; *In the Matter of JK*, APP-06-02, p.5 (January 9, 2009). Matters on appeal involving a conclusion of law are reviewed is *de novo*. STC § 82.124(5). All other questions on the appeal of the termination of a parent's rights are decided at the high clearly erroneous standard. STC §30.512 "A matter which is within the discretion of the Tribal Court shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority; applied the appropriate legal standard to the facts; and did not abuse its discretion." *In the Matter of JK*, APP-06-02, p.5 (January 9, 2009). A matter committed to the discretion of the Tribal Court shall not be subject to the judgment of the Court of Appeals. STC § 82.124 (8). In matters involving a finding of fact by the trial court, "this Court will only overturn the trial court's findings on this point if it is left with a definite and firm conviction that the trial court erred…." *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians*, APP-08-02, 3 (August 4, 2008).

Discussion

On more than one occasion this Court has recognized the importance of parental rights and the gravity of termination of the same on the parent/child relationship and the Tribal community. "Parents' have a significant interest in the companionship, care; custody and management of their children." *In the Matter of SD and JD*, APP 06-04, 5 (January 9, 2009). "[T]ermination of parental rights is to only be used as a last resort." *In Re JB,* APP 09-03, 4 (May 25, 2010). "Tribal Code speaks about the importance of reunification of families whenever possible." *In the Matter of AS and RR, APP* 12-01/02 (October 12, 2012). "[T]he gravity and finality of termination of parental rights should require certainty regarding the factors in the law to be considered regardless of the outcome of the analysis." *In Re: ASG and EG,* APP-17-01 and APP 17-02 (October 27, 2017). See also STC § 30.501.

On appeal, the Appellant Mother "adopts" the procedural history set forth in the Tribal Court's November 7, 2019 *Order Terminating Respondent Mother's Parental Rights,* does not challenge the statutory grounds on which the Tribal Court terminated the Appellant Mother's Parental Rights but rather tailors her argument to "exclusively" challenge "the [Tribal] Court's

decision" related to findings of fact made during the best interest step of the termination analysis. At the Trial Court, best interests need to be shown by only a preponderance of evidence.

Appellant argues that the Tribal Court failed to consider evidence such as the Appellant's consistent participation in parenting time and the length of time she maintained her current residence in making its termination determination. (*Appellant's Brief*, p.2-3). Appellant further argues that the Tribal Court failed to consider alternatives to termination or the impact of termination on the spiritual and cultural development of the children and implores this Court to "implement he spirit of [this court's] opinion [in *In Re: ASG & EG*, APP-17-01, APP 17-02 dated October 27, 2017] and reverse the [Tribal] Court's decision. (*Id.* at 4-5). Appellee ACFS "adopts [the] procedural history [set forth in the Tribal Court's November 7, 2019 *Order Terminating Respondent Mother's Parental Rights*] and supports both the Tribal Court's statutory findings and the "best interest" determination. (*Appellee's Response to Appellant's Appeal*, p. 1 dated February 13, 2020). Appellee argues that when making the "best interest determination, the [Tribal] Court followed the guidance from *In Re TCD* and analyzed the best interest factors set forth in LTTB and GTB, which are similar to the factors codified in Michigan statutes." (*Id.* at p. 1-2). The Appellee counters that the Appellant's successes were properly acknowledged but also points out that "thirty-one (31) months passed and the respondent mother never demonstrated enough progress to allow [sic] the [Tribal] Court to order unsupervised visits. (*Order Terminating Respondent Mother's Parental Rights*, p.12). The Appellee also argues that during those visits the Appellant "struggled to show affection to her children and…struggled to meet her children's emotional needs." *(Id.)* Further Appellee argues that a requirement to weigh "both the presence of a parent-child bond and the parent's capacity and disposition to meet the children's emotional needs shows that the presence of a bond alone it not enough." (*Appellee's Response to Appellant's Appeal*, p. 3). The Appellee argues that while Appellant did maintain a residence throughout the pendency of the case "she struggle to maintain her utilities and showed no appreciable length of employment" that would allow her to meet the needs of he children on a full time basis. (*Id.*) Appellee further argues that the Tribal Court's findings regarding the Appellant's substance abuse history, to which the Tribal Court devoted an entire four (4) pages of its order, "demonstrates an inability to maintain recovery or make consistent progress despite her numerous attempts." (*Id.* at p. 4). In addition, Appellee argues that despite the Appellant's argument to the contrary, the Tribal Court did not fail to consider the "spiritual and cultural development of the children" and that specific findings of the Tribal Court reflect that the children were placed with Sault Tribe families and that they maintain their connection to the Tribe. (*Id.* p.6). Finally, the Appellee argues that one need only look to the case history and the thirty-one (31) months of ACFS and Tribal Court efforts to reunify the Appellant with her children to see that alternatives to termination were explored. *(Id.* p. 7).

As noted in *In Re: RW*, APP-19-02 (January 31, 2020), in enacting the Child Welfare Code, the Sault Tribe Board of Directors took great measures to secure the rights of parents, custodians, and guardians. STC § 30.102. And, as explained in *In Re TCD* and set forth in STC

§ 30.503, a two-step analysis is required before parental rights can be terminated: (1) the fact-finding step; and (2) the best interest step. *In Re TCD*, p. 2, APP-13-02 (July 10, 2014). Much like *In Re TCD*, the fact-finding step is not at issue in the present matter – on appeal both the Appellant and the Appellee agree that the statutory requirements for termination have been met. The Tribal Court found three (3) separate statutory bases existed as follows:

1. STC § 30.504(3) Unrectified Conditions: The parent was a respondent in a proceeding brought under this chapter, twelve (12) or more months have elapsed since the issuance of an initial disposition order or removal of the child, and the Tribal Court, by clear and convincing evidence, finds either of the following:

   (a) The conditions that led the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child; or

   (b) Other conditions exist that cause the child to be a child-in-need-of-care. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

2. STC § 30.504(4) Failure to Provide Proper Care: The parent, without regards 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 age of the child.

3. STC § 30.504(9) Length of Time in Foster Care: When a child has been in care for fifteen (15) of the most recent twenty-two (22) months.

The Tribal Court took great care in applying the evidence presented at the five (5) day termination trial to make the statutory findings. As the Appellee notes in their brief, this matter reached this point only after the children had been in care for more than 31 months. Appellant did not contest the findings on appeal.

We next turn to the Appellant's argument that clear error exists during the best interest determination phase. This Court notes that almost five (5) full pages of the November 7, 2019 *Order Terminating Respondent Mother's Parental Rights* was devoted to examining and determining the best interests of the children based upon the evidence presented at trial and the 31 months of reviews. As has been previously addressed by this Court, the Sault Tribe Code "does not specifically set forth factors for the Court to consider when determining the best interest of children." (*Id.* p 12; *See also In Re TCD*, APP-13-20 (January 14, 2014). The Tribal

Court acknowledges that "the overall tenor of Chapter 30, specifically 30.102 and 30.501, is that the unity of the family should be preserved whenever possible." (*1d.*) The Court also notes that "maintaining the family unit is the…position the Court must start from." *(Id.*) From that starting position, the record reflects that the Tribal Court worked through a series of relevant factors borrowed from the laws of the Little Traverse Bay Bands of Odawa Indians and the Grand Traverse Band of Ottawa and Chippewa Indians as well as guidance issued by the Michigan State Court Administrator's Office as well as the recommendation of the Child Welfare Committee. The Tribal Court applied the evidence to the factors to determine that ACFS "has satisfied their burden proving that termination of [the Appellant's parental] rights is in the best interest of the children. In matters involving a finding of fact by the trial court, "this Court will only overturn the trial court's findings on this point if it is left with a definite and firm conviction that the trial court erred…." *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians,* APP-08-02, 3 (August 4, 2008). Such a definite and firm conviction does not exist here and the Appellant's brief failed to convince us otherwise, especially when a majority of the Appellant's arguments are mere concessions to the findings of the Tribal Court, argument ommissions and half-hearted disagreements with the findings of fact in others. Just as acknowledged by the Tribal Court, this Court is left with no doubt that the Appellant loves her children very much; however, the record is clear that in 31 months, despite services at her disposal, she had made little progress regarding her heart-wrenching substance abuse addiction and failed to create an environment that would allow reunification with her children. A mere disagreement with the findings of fact made by the Tribal Court is not an error of law that would allow this Court to overturn the decision of the Tribal Court. The Tribal Court identified and weighed the best interest factors, factors that it has relied on several times before, applied the facts to those factors and decided the outcome of this case. As this Court has previously indicated, it is not this Court's proper function to delineate the factors to be used by the Tribal Court but has merely noted that due to "the gravity and finality of termination of parental rights [the Tribal Code] should require certainty regarding the factors in the law to be considered" to ensure proper application of STC CH. 30. APP-17-01 and APP 17-02. However, that has yet to come to fruition and the Tribal Court is free to determine the and weigh the best interest factors as well as their application when deciding matters of termination of parental rights.

The Appellant's argument that alternatives to termination were not explored is equally non-persuasive. In fact, if the record is any indication, the length of time the children have been in care as well as the myriad of services and resources exhausted in order to preserve this family unit with little to no success due to the Appellant's substance abuse indicates to this Court that the Tribal Court and ACFS went to great lengths to not reach the ultimate result of termination.

Based on the record, we find no clear error committed by the Tribal Court when it ordered the termination of Appellant Mother's parental rights

ORDER

This Court hereby AFFIRMS the Tribal Court's November 7, 2019 *Order Terminating Respondent Mother's Parental Rights.*

IT IS SO ORDERED.