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STATE OF MICHIGAN

COURT OF APPEALS

In re K. M. MURPHY-GREER, Minor.

UNPUBLISHED

January 15, 2019

No. 344737

Wayne Circuit Court

Family Division

LC No. 10-498043-NA

Before: GLEICHER, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her son, KMG, after an extended period of services based on her continuing substance abuse issues and the prior terminations of her parental rights to two other children. Respondent contends that the Department of Health and Human Services (DHHS) did not make reasonable efforts to reunite her with KMG and that insufficient evidence supported the termination decision. We affirm.

I. BACKGROUND

Respondent has given birth to seven children, none of whom have remained in her care for any appreciable length of time. Respondent's older children were removed from her care as follows: CM (dob 1/22/01) was placed with his father at birth, SG (dob 1/29/05) remained in respondent's care until 2010 when he was placed with paternal relatives, and MB1 (dob 12/31/07) was placed with her father at birth. Respondent's history with Child Protective Services (CPS) dates back to 2010, shortly after she gave birth to twins (CG1 and CG2) with cocaine and marijuana in their systems. The DHHS provided two years of services to treat respondent's substance abuse issues to no avail. The court ultimately terminated respondent's parental rights to the twins on November 12, 2012. The court did not terminate the rights of the twins' father until April 10, 2015, however.

KMG, the child subject to these proceedings, was born on April 26, 2015, and shares the same father as the twins. Respondent brought KMG home for the hospital and cared for him for two weeks. Then, pursuant to a voluntary safety plan, respondent surrendered the baby to relatives. KMG's father was imprisoned at the time. On June 29, the DHHS filed a petition to terminate both parents' rights to KMG. However, a CPS caseworker recommended returning KMG to respondent's care because she was then participating in home-based services, had

suitable housing, and appeared to be substance-free. The court agreed and KMG remained in respondent's care until she tested positive for cocaine on December 1, 2015.

The court took jurisdiction over KMG based on admissions by the respondent in March 2016. One month later, respondent submitted to an evaluation by the Clinic for Child Study. The evaluator recommended that respondent enter a residential drug treatment program. If respondent did not demonstrate progress in recovery, the evaluator recommended termination of her parental rights. The DHHS ultimately changed its position and decided to work toward reunification of mother and child instead of pursuing termination. Over the next several months, respondent participated in therapy and substance abuse counseling and attended supervised parenting time sessions. Respondent did not consistently submit to random screens and sometimes tested positive for marijuana or cocaine.

Respondent then became pregnant with her seventh child, MB2, with the father of MB1. On July 29, 2017, during that pregnancy, respondent tested positive for cocaine. Respondent was early terminated from substance abuse therapy shortly thereafter for lack of cooperation and missed appointments. On September 19, 2017, respondent entered an inpatient drug treatment program, but had to be discharged on October 2 because of pregnancy complications. She then participated in an outpatient program that provided substance abuse treatment and individual counseling. However, respondent still did not regularly submit to drug screens. And MB2 was born six weeks early, tested positive for cocaine, and experienced withdrawal symptoms. MB2 was placed with MB1 in their father's and paternal grandmother's care.

The DHHS filed a petition seeking termination of respondent's parental rights to MB2 on January 10, 2018. The DHHS followed up with a supplemental petition to terminate respondent's rights to KMG on February 21. At the termination hearing related to KMG, the caseworker noted that respondent had tested positive for cocaine twice since MB2's birth, but denied using drugs. Instead she claimed to have tested positive because she had intercourse with a cocaine user. Respondent also theorized that someone tampered with her results. To her credit, respondent was employed, had suitable housing, and had recently attended an intake appointment for individual therapy at Team Mental Health.

Ultimately, the court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (i), and (j). By the time of termination, KMG had been in care for a continuous 29 months. Respondent now appeals.

II. REASONABLE EFFORTS

Initially, respondent contends that the DHHS failed to make reasonable efforts to reunify her family. Specifically, respondent contends that her requests for referrals for individual therapy to treat her depression went ignored.¹

¹ Notably, respondent does not argue that she was entitled to accommodated services under the Americans with Disabilities Act, 42 USC 12101 *et seq.*

Absent extenuating circumstances, the DHHS must make reasonable efforts toward reunification before a court may contemplate termination of a parent's rights. MCL 712A.19a(2). "The adequacy of the [DHHS]'s efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). However, a respondent has a commensurate responsibility to cooperate and participate in the services, and also to demonstrate benefit. *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014).

Respondent represents in her appellate brief that psychological evaluations were not conducted and subsequent referrals were not made to address her mental health issues. This is simply untrue. On May 9, 2016, respondent was evaluated by psychiatrist Kai Anderson at the Clinic for Child Study. Respondent reported that she was already participating in substance abuse treatment, individual therapy, and parenting classes. Respondent indicated that she was "screened for depression" and was receiving counseling through Team Mental Health. Respondent claimed that her depression was getting better. Ultimately, Dr. Anderson recommended that respondent participate in a residential substance abuse treatment program, and that she be allowed to participate in services and plan for her child. Dr. Anderson did not identify any factors that would impede respondent's ability to participate in services.

In November 2016, the DHHS referred respondent to Assured Family Services, which provided her with in-home weekly therapy. The sessions were one to two hours long. Respondent's therapist reported that she showed progress in addressing her depression. Respondent underwent a psychological evaluation on January 5, 2017. Psychologist Denise Wallace recommended that respondent participate in individual psychotherapy, parenting classes, and outpatient substance abuse treatment. Consistent with these recommendations, respondent was referred to and participated in services through Infant Mental Health once a week. Moreover, respondent's home-based therapeutic services continued well into 2017.

The caseworker testified at the termination hearing that respondent had received referrals for individual therapy and that she participated in those services. Indeed, when respondent asked the caseworker for individual therapy in 2018, respondent was already receiving counseling services that had both substance abuse and individual therapy components. Notwithstanding that respondent was already receiving individual therapy, the caseworker initiated the process for an additional therapy referral.

While respondent faults the DHHS for not making even more referrals, the record demonstrates that the services were provided but respondent simply failed to benefit. Given the length of time respondent participated in services with little to no benefit, she cannot demonstrate that she would have turned a corner with additional individual therapy. Accordingly, we discern no ground to remand for additional services.

III. STATUTORY GROUNDS

Respondent further challenges the evidentiary support for the statutory grounds cited by the circuit court in its termination decision. Pursuant to MCL 712A.19b(3), a circuit court "may

terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven by the DHHS. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). When termination is sought in a supplemental petition, the court's decision must be based on legally admissible evidence. *In re DMK*, 289 Mich App 246, 258; 796 NW2d 129 (2010). We review for clear error a circuit court's factual finding that a statutory termination ground has been established. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The circuit court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (i), and (j), which at the time provided:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The 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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.^[2]

The condition that led to adjudication—respondent's substance abuse—continued through 29 months of services while KMG was in care and approximately seven months of services while KMG remained in her home, and had not been rectified by the time of the termination hearing. Respondent had received an additional two years of substance-abuse related services from 2010-2012 to no avail. Despite these extensive services, respondent tested positive for cocaine 11 times during these proceedings, and missed 37 drug screens. Respondent continued to abuse cocaine after becoming pregnant with MB2, and that child suffered withdrawal after birth. Not only had respondent not rectified this condition, there was ample evidence that she would not be able to rectify the condition within a reasonable time. KMG had already lingered in foster care for nearly 2½ years. Respondent had not curbed her addiction to cocaine despite receiving services since 2010, and made excuses for her positive test results. Accordingly, termination was supported under factor (c)(i).

Evidence of respondent's drug abuse further supported termination under factors (g) and (j). Respondent attempted to provide proper care and custody for KMG from April through December 2015. However, her drug use made this impossible. Respondent once ceded custody of KMG for his safety and the DHHS ultimately removed the child from respondent's care to keep him safe. Given respondent's inability to benefit from extensive and lengthy substance abuse treatment, the court did not err in determining that respondent would be unable to provide proper care and custody for KMG within a reasonable time and that KMG would be in danger of harm if returned to respondent's home.

Termination was clearly supported under factor (i). The circuit court had previously terminated respondent's parental rights to CG1 and CG2 on serious neglect grounds due to her substantial substance abuse and concomitant inability to safely tend to the three children then in

² MCL 712A.19b(3)(g) and (i) were amended by 2018 PA 58, effective June 12, 2018. As amended, these sections now provide:

(g) The parent, although, in the court's discretion, financially able to do so, 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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent has failed to rectify the conditions that led to the prior termination of parental rights.

her care.³ The circuit court need find only one statutory ground to support termination; here, the clear and convincing evidence supported four.

Finding no error in the circuit court's analysis, we affirm.

/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien

³ Respondent does not challenge the court's finding under MCL 712A.19b(5) that termination of her parental rights was in KMG's best interests.