

STATE OF MICHIGAN
COURT OF APPEALS

In re VLIET/JONES, Minors.

UNPUBLISHED
March 17, 2020

No. 348749
Genesee Circuit Court
Family Division
LC No. 16-133436-NA

Before: BOONSTRA, P.J., and RIORDAN and REDFORD, JJ.

PER CURIAM.

Respondent appeals by right the trial court orders terminating her parental rights to her minor children, JV, HV, and DJ, under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist, and parent unable to rectify conditions); (c)(ii) (failure to rectify other conditions); (g) (failure to provide proper care or custody); and (j) (reasonable likelihood child will be harmed if returned to parent).¹ We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In November 2017, JV and HV were removed from respondent’s care after the Department of Health and Human Services (DHHS) filed an ex parte motion for removal, alleging medical and physical neglect of the children and substance abuse issues. Respondent was pregnant with DJ at the time. The next day, DHHS filed a petition for termination of respondent’s parental rights, alleging that JV and HV were found to have untreated skin irritations and infections and appeared to be malnourished. DHHS also alleged that respondent was unable to provide the necessary care for her children and that respondent’s home was an unfit place for them to live; specifically, a Child Protective Services (CPS) investigator observed that the children were “absolutely filthy,” had marijuana in their hair, had unexplained scrapes and scratches, as well as apparent frostbite, and had been drinking moldy formula from bottles. Respondent’s home had no heat, and she admitted to leaving the children with an unrelated person multiple times a day so that she could smoke marijuana. After an adjudication trial, the trial court took jurisdiction over JV and HV. In April 2018, DHHS filed a second petition after DJ was born, alleging that respondent was unable

¹ The parental rights of the children’s putative and legal father were also terminated during the proceedings below, but he is not a party to this appeal.

to care for DJ because of her cognitive impairments, continued substance use, and lack of benefit from services. The trial court took jurisdiction over DJ after another adjudication trial. The children were all placed in non-relative foster care.

At the initial dispositional hearing following JV and HV's removal, respondent testified that she had been diagnosed with schizophrenia and attention-deficit hyperactivity disorder as well as mild mental disability, and, although she had completed the eleventh grade of high school, had limited ability to read and write. The trial court ordered that respondent comply with and benefit from a case service plan, complete a psychological evaluation and substance abuse evaluation, participate in mental health services and substance abuse treatment, complete random drug screens, participate in and benefit from parenting classes, parenting time, services with a parenting coach, and infant mental health services, obtain and maintain suitable housing and income, and maintain contact with DHHS. After the initial dispositional hearing regarding DJ, the trial court ordered that respondent comply with and benefit from the existing case service plan.

Over the course of the proceedings, DHHS attempted to engage respondent in services. DHHS referred respondent for a psychological evaluation, parenting classes, and a literacy program; however, respondent failed to engage in the services. DHHS also attempted to maintain contact with respondent throughout the pendency of the case; however, such efforts were mostly unsuccessful. The trial court suspended respondent's parenting time in June 2018 due to lack of compliance with her treatment plan, and granted DHHS the authority to arrange supervised visits if respondent began to comply with her plan. Respondent failed to attend review hearings in July and October 2018, and DHHS employees testified that she had made no progress toward completing her service plan and that she frequently could not be located or contacted by phone. Respondent had no contact with her children after April 2018.

In January 2019, due to respondent's failure to complete and benefit from services, DHHS filed a supplemental petition seeking termination of respondent's parental rights. At the termination hearing, multiple caseworkers testified that respondent had not engaged in services or benefited from any services and that the conditions that led to adjudication remained unchanged. Respondent's counsel argued that termination was inappropriate because DHHS had failed to provide accommodations to the case service plan as required under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* The court concluded that DHHS had made reasonable efforts at reunification considering respondent's disability. The court found statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist, and parent unable to rectify conditions); (c)(ii) (failure to rectify other conditions); (g) (failure to provide proper care or custody); and (j) (reasonable likelihood child will be harmed if returned to parent), determined that termination was in the best interests of the children,² and terminated respondent's parental rights.

This appeal followed.

II. REASONABLE EFFORTS

² Respondent does not challenge the trial court's finding that termination was in the children's best interests.

Respondent argues that DHHS did not make reasonable efforts at reunification because it failed to accommodate her disability as required under the ADA. We disagree.

This Court reviews for clear error a trial court’s factual findings following a termination hearing. A finding is clearly erroneous if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. However, this Court . . . reviews de novo whether the trial court properly selected, interpreted, and applied a statute. [*In re Gonzales/Martinez*, 310 Mich App 426, 430-431; 871 NW2d 868 (2015) (quotation marks, citations, and brackets omitted; ellipsis in original).]

“[T]he Department has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights.” *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). “[E]fforts at reunification cannot be reasonable under the Probate Code if the Department has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA.” *Id.* at 86. Nevertheless, “[w]hile the [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). In that regard, this Court has held that “a parent, whether disabled or not, must demonstrate that she can meet [the children’s] basic needs before they will be returned to her care.” *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). Further, “[i]f a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent.” *Id.* (quotation marks and citation omitted).

The trial court concluded that DHHS had made reasonable efforts to reunify respondent with the children considering her disability. We agree. The trial court found that DHHS had made reasonable efforts to contact respondent and engage her in services. The court observed that respondent had not maintained contact with DHHS, and that DHHS had a difficult time contacting respondent. The court also noted that respondent had successfully completed some services previously, such as a “Families First” class, and that she understood she had some responsibilities of engaging with DHHS.

These findings are not clearly erroneous. *Gonzales/Martinez*, 310 Mich App at 430-431. The record supports the trial court’s conclusion that DHHS attempted to accommodate respondent and to refer her for services consistent with the trial court’s orders. However, respondent failed to maintain contact with DHHS to obtain and participate in court-ordered services. DHHS had difficulty maintaining contact with respondent for a substantial portion of the proceedings—from May 2018 until the April 2019 termination hearing—and it was unsuccessful in multiple attempts to contact respondent by telephone and by visiting respondent’s known address.

The record shows that DHHS attempted to schedule appointments and arrange transportation for respondent, but that respondent often could not be located when it was time for the appointments to occur. For example, DHHS made referrals for a psychological evaluation and parenting classes; however, the services were not completed because respondent failed to appear and the service providers were unable to contact respondent. Additionally, respondent was referred to the Literacy Foundation for services, but she did not complete those services. She also responded in the negative when DHHS asked her if she needed assistance with transportation to

her psychological evaluation; yet respondent did not attend the evaluation. On several occasions when DHHS was able to contact respondent, she stated that relatives could assist her with transportation; yet this assistance never seemed to occur. Respondent testified at the termination hearing that she could have asked her mother to take her to DHHS. Further, respondent testified at the termination hearing that she had made some appointments with service providers on her own, and claimed that she had independently scheduled and attended a mental health evaluation; yet she did not provide the results of any such evaluation to the trial court.

In sum, the record shows that DHHS did not fail to accommodate respondent's disability, but rather, that respondent failed to take advantage of the services offered by DHHS. *Frey*, 297 Mich App at 248. Additionally, respondent has not shown that additional services would have prompted her to participate and develop the ability to meet her children's basic needs. *Terry*, 240 Mich App at 28. The trial court did not err by finding that DHHS had made reasonable efforts toward reunification considering respondent's disability. *Hicks/Brown*, 500 Mich at 85.

III. STATUTORY GROUNDS FOR TERMINATION

Respondent also argues that the trial court erred by finding that statutory grounds for termination had been proven by clear and convincing evidence. We disagree.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). If this Court concludes that the trial court did not clearly err by finding one statutory ground for termination, this Court need not address any additional grounds. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

We conclude that the trial court did not err by concluding that the statutory grounds found in MCL 712A.19b(3)(c)(i) were proven by clear and convincing evidence. MCL 712A.19b(3)(c)(i) provides that the trial court may terminate parental rights where 182 or more days have elapsed since the issuance of an initial dispositional order and "[t]he 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." Termination of parental rights is proper under MCL 712A.19b(3)(c)(i) where "the totality of the evidence amply supports that [the respondent] had not accomplished any meaningful change in the conditions" that led to the adjudication, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), and would not be able to rectify those conditions within a reasonable time, MCL 712A.19b(3)(c)(i). The determination of what is a reasonable time includes both how long it will take for the parent to improve conditions and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991).

The conditions that led to adjudication included physical and medical neglect, cognitive impairments and unaddressed mental health issues, substance abuse issues, lack of income, and improper housing. The trial court ordered respondent to complete a treatment plan designed to address those barriers, which included a psychological evaluation; substance abuse evaluation; and participating in and benefiting from parenting classes, parenting time, services with a parenting coach, and infant mental health services. The court also ordered respondent to obtain and maintain

suitable housing, undergo random drug screens, participate in mental health services, maintain contact with DHHS, and obtain and maintain a legal source of income.

Respondent substantially failed to complete or comply with any of the court-ordered services. Respondent did not complete a psychological evaluation that was scheduled for her, and, although she claimed to have independently completed an evaluation, she did not provide the results of any such evaluation to the court; further, she testified that the evaluation had indicated her need for medication and therapy, which she had made no efforts to obtain. Respondent participated only in one drug screen, which was positive for THC, and she did not participate in substance abuse treatment. Respondent also did not participate in DHHS's recommended parenting classes, although she did complete a "Families First" class. Further, respondent substantially failed to maintain contact with DHHS and she admitted that she had contacted DHHS only four or five times throughout the pendency of the case.

The record shows that respondent did not obtain or maintain stable housing during the case, and respondent testified she had been homeless at times during the proceedings and had been "struggling" since April 2018. At the time of termination, respondent had not interacted with her children in over six months. JV and HV had been in foster care for approximately 14 months, and DJ had been in care for approximately nine months. Further, a caseworker testified that respondent did not appropriately interact with her children during supervised parenting time. The record supports the trial court's conclusion that respondent did not accomplish any meaningful change in the conditions that led to adjudication. *Williams*, 286 Mich App at 272.

The record also supports the trial court's finding that there was no reasonable likelihood that respondent would rectify her mental health issues, substance-abuse issues, housing instability and parenting barriers in the foreseeable future. "[T]he Legislature did not intend that children be left indefinitely in foster care[.]" *Dahms*, 187 Mich App at 647. See *Williams*, 286 Mich App at 272-273 ("The circuit court correctly determined that the two years [the child] already had spent in foster care, her entire life, constituted too long a period to await the mere possibility of a radical change in respondent mother's life."). There was no indication that respondent would rectify her issues within a reasonable time given the length of time already provided and the lack of progress.

The trial court did not clearly err by finding that the grounds for termination found in MCL 712A.19b(3)(c)(i) had been proven by clear and convincing evidence. *VanDalen*, 293 Mich App at 139. This same evidence also provided support for its finding that the grounds found in MCL 712A.19b(3)(g) and (j). See *In re White*, 303 Mich App 701; 710-711, 846 NW2d 61 (2014) ("A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody. . . . [A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home").

Affirmed.

/s/ Mark T. Boonstra
/s/ Michael J. Riordan
/s/ James Robert Redford