

STATE OF MICHIGAN
COURT OF APPEALS

In re A. MCCLURE, Minor.

UNPUBLISHED
March 17, 2020

No. 350363
Muskegon Circuit Court
Family Division
LC No. 2018-002640-NA

Before: MURRAY, C.J., and METER and K. F. KELLY, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court’s termination of her parental rights to her minor child, AM, under MCL 712A.19b(3)(c)(i) and (g). We affirm.

I. BACKGROUND

AM was removed from respondent-mother’s care less than one month after AM’s birth. At birth, AM tested positive for marijuana, despite respondent-mother not having a medical-marijuana card. Respondent-mother reported to Child Protective Services (CPS) that she used illicit substances while with father; respondent-mother left father’s home during the pregnancy because it was an unsafe environment for a child and she was homeless and unemployed. CPS tried to implement a safety plan for AM, but respondent-mother refused to participate in the services offered—particularly drug screening—would not provide housing information, and disappeared for a week with the child. As a result of these failures, the trial court assumed jurisdiction over AM, but allowed AM to reside in the maternal grandmother’s home with respondent-mother. The trial court ordered that respondent-father have no contact with the residence.

Petitioner set respondent-mother up with a case-service plan, but, over the next 362 days, respondent-mother’s compliance with this plan was lackluster. AM was removed from respondent-mother’s care after respondent-mother allowed unsupervised contact between respondent-father and AM and respondent-mother left the maternal grandmother’s house to first reestablish a residence with respondent-father and then with friends. The maternal grandmother remained the child’s caregiver throughout this case, but was unwilling to facilitate a relationship with respondent-mother and was unwilling to adopt the child. By the end of the case, AM’s fictive

kin had shown an interest in adopting AM and was actively establishing a bond with her through lengthy visits.

Throughout this case, respondent-mother tested positive on numerous occasions for both cocaine and marijuana. At one point in the proceedings, respondent-mother indicated that her roommate used cocaine and left it out on the kitchen counter; she claimed that the cocaine had contaminated food she ate. Regarding marijuana use, during the pendency of this case, our state voted to legalize recreational marijuana; respondent-mother saw no issue with using marijuana. Respondent-mother failed to appear for several screenings.

Concerning housing, as mentioned previously, respondent-mother eventually established housing with roommates, although respondent-mother's housing tended to be transient as she moved from residence to residence. Petitioner was never able to verify that any of respondent-mother's residences were appropriate for AM. Petitioner provided respondent-mother with housing services, but respondent-mother largely failed to follow through on the referrals. Respondent-mother was gainfully employed at times during this case, but was unable to establish consistent, full-time employment. It appears that at least one potential employer did not hire respondent-mother because she could not pass a drug test.

Respondent-mother was largely inconsistent in complying with Family Engagement Therapy and a parent-mentor program. Ultimately, she was terminated from the parent-mentor program. At one point, a new referral was offered to respondent-mother, but she declined, stating that she did not need the services. Respondent-mother was eventually provided with a second mentor, but was again terminated from the program for noncompliance. Respondent-mother attended parenting time but would voluntarily choose to leave after an hour to an hour and a half; in comparison, the fictive kin spent upwards of five hours with the child per visit and had been taking AM on weekends. Respondent-mother would occasionally schedule parenting time but fail to show up. At the sessions respondent-mother did attend, respondent-mother attended to her phone more than the child and would not enthusiastically engage the child in play or instruction. Respondent-mother was referred to counseling, but did not follow through on the referral. Respondent-mother did not present with mental-health concerns at the outset of the case, but her mental health became an issue as the case proceeded. Although respondent-mother indicated that she had ended her relationship with respondent-father, the two were seen together on a few occasions.

Ultimately, the trial court found statutory grounds to terminate respondent-mother's parental rights under MCL 712A.19b(3)(c)(i) and (g). The trial court concluded that termination of respondent-mother's parental rights was in AM's best interests so that AM could seek stability through adoption with the fictive kin.¹ This appeal followed.

¹ The trial court also terminated respondent-father's parental rights to AM; respondent-father, however, is not a party to this appeal.

II. ANALYSIS

Respondent-mother challenges both the trial court's statutory-grounds and best-interest determinations. "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). Once a ground for termination is established, the trial court must order termination of parental rights if it finds that termination is in the child's best interests. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "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 BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

A. STATUTORY GROUNDS

As noted previously, the trial court terminated respondent-mother's parental rights to AM under MCL 712A.19b(3)(c)(i) and (g), which provide that the trial court may terminate a respondent's parental rights upon a finding by clear and convincing evidence if:

(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 . . . :

(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.

or:

(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.

AM was brought under the trial court's jurisdiction because of respondent-mother's homelessness, unemployment, and substance use. 362 days later, respondent-mother had taken some steps to address her homelessness and unemployment. Respondent-mother was employed, but had been unsuccessful at holding a steady job and had been unable to procure full-time employment. Respondent-mother had housing, but this housing was not steady. More importantly, respondent-mother admitted at one point in the proceedings that her roommate was using cocaine, apparently leaving the cocaine in the common areas of the residence. Regarding substance abuse, respondent-mother tested positive for cocaine several times during the pendency of this case and consistently tested positive for marijuana; she missed several screenings and at least one employer refused to hire her because she could not pass a drug test.

Respondent-mother was offered numerous services, but failed to consistently apply herself to her treatment program or benefit from the services. She was twice terminated from her parent-mentor program, largely failed to utilize housing assistance, was inconsistent with therapy, and did not engage fully in parenting time. Respondent-mother had difficulty providing truthful information to petitioner, stating that she had ended her relationship with respondent-father while she was otherwise seen with him.

On this record, we agree with the trial court that statutory grounds existed to terminate respondent-mother's parental rights under subsections (c)(i) and (j). After 362 days, respondent had failed to adequately address her substance-abuse, housing, and employment issues such that there could be a legitimate belief that AM could be returned to a safe, appropriate home with respondent-mother within any reasonable time. Despite being offered services, respondent-mother failed to actively and adequately engage her treatment plan so as to address the issues preventing her reunification with the child. See *In re White*, 303 Mich App 701, 710; 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."). Accordingly, we are unable to find error in the trial court's statutory-grounds findings.

Respondent-mother argues that the trial court's findings were a result of petitioner's failure to follow its internal procedures. According to respondent-mother, petitioner failed to provide family team meetings (FTMs) for the last six to seven months of her case; respondent-mother avers that these FTMs could have focused respondent-mother's and the service providers' efforts on her progress and remaining needs, allowing for respondent-mother's programs to be tailored accordingly. Absent exceptions not present here, petitioner is required to make reasonable efforts to reunify families and to rectify the conditions that led to the initial removal. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). Absence of reasonable efforts at reunification may render termination premature. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

On cross-examination, caseworker VanHall testified that there were only two FTMs that occurred on July 9, 2018 and December 18, 2018. VanHall testified that, per the DHHS policy, FTMs are to be held every reporting period, and one is supposed to occur whenever the DHHS is looking at a permanency goal change. VanHall noted that there had not been any FTMs with mother while there was discussion about changing mother's permanency goal. Mother argues that this case is similar to *In re Rood*, 483 Mich 73; 767 NW2d 587 (2009), because the failure to provide FTMs prevented the trial court from making the determination that she could not remedy the circumstances that made her currently unable to provide for care and custody. We disagree. In *Rood*, our Supreme Court reversed a termination when petitioner failed almost completely to engage a nonparticipating parent. *Id.* at 122. In *Rood*, petitioner failed to comply with state and federal notice requirements by sending notice of hearings to an incorrect address, although the respondent provided a correct address. *Id.* at 76. Petitioner consistently reported to the trial court that the respondent was unwilling to participate in the service plan, but failed to do its due diligence to inquire of respondent whether this was true. *Id.* at 108-109. On the basis of the service error and petitioner's failure to assess and engage the allegedly nonparticipating parent, our Supreme Court concluded that the "respondent's rights were . . . terminated directly and indirectly because of his uninformed lack of participation" and reversed the termination. *Id.* at 122.

Despite respondent-mother's argument, we are not presented with a case in which respondent-mother's rights were terminated because of an uninformed lack of participation. Although petitioner's apparent failure to follow its own policy regarding FTMs is troubling, petitioner otherwise actively engaged respondent-mother on her service plan. Petitioner submitted several referrals on respondent-mother's behalf and there is no concern that respondent-mother was unaware of what was being asked of her under the service plan. Similarly, there is no concern that open lines of communication did not exist between respondent-mother, petitioner, and the service providers, as there is no concern that respondent-mother was unaware of any court proceedings. To the extent that regular FTMs during the last few months of this case would have resulted in better service-provision, we note that this is hardly grounds to reverse the termination when respondent-mother has actively failed to engage those services. In other words, the termination was not a result of the quality of services offered; rather, it was a result of respondent-mother's failure to dedicate herself to the service plan and, through it, her daughter.

Respondent-mother also argues that the trial court erred by relying heavily on her use of marijuana which frustrated her ability to focus on other aspects of her reunification efforts. Respondent-mother argues that, because recreational marijuana was legalized during the pendency of this case, her marijuana use did not impact her ability to reunite with her child. We disagree. First, we note that respondent-mother's substance issues were not limited to marijuana; she also tested positive for cocaine several times during this case. Second, even though marijuana was legalized during this case, it appears that marijuana use *did* impact respondent-mother's ability to reunite with AM given that she was denied at least one job because she could not pass a drug test, although we acknowledge that it is unclear whether the failed drug test was because of marijuana or cocaine use. Third, and most importantly, respondent-mother's marijuana use was hardly the only reason the trial court terminated her parental rights. As noted already, respondent-mother also failed to adequately comply with several portions of her service plan. Therefore, in this case the trial court properly concluded that marijuana impacted respondent-mother's ability to reunite with her child. See *In re Richardson*, ___ Mich App ___, ___ NW2d ___ (2019) (Docket Nos. 346903 and 340904); slip op at 14 (noting that use of a substance does not warrant termination unless the use has a demonstrable effect on the child). In any event, even if respondent-mother's marijuana use were overlooked, respondent-mother's failure to comply with the other elements of her service plan adequately supports the trial court's statutory-grounds findings.

B. BEST INTERESTS

Next, respondent-mother argues that the trial court erred by finding that termination was in AM's best interests. Respondent-mother argues that the child was in a relative placement, and that, because the fictive kin was willing to continue respondent-mother's contact with the child, the child's permanency was no more lacking before termination than it was after termination. We disagree.

While we acknowledge that a child's placement with a relative weighs against termination, *In re Olive/Metts*, 297 Mich App at 43, we must note that relative placement does not give a parent an unlimited time to engage her services before termination. Where, as here, a respondent fails to adequately engage her service plan, has unresolved substance issues, and has no apparent plan or desire to secure adequate employment and housing necessary to provide for the child, we are unable to see how continuing the parental rights would be in the child's interests. Although the

fictive kin was apparently willing to continue respondent-mother's contact with the child after termination, we are unable to conclude that this act of civility is evidence of any impermanency. Before termination, AM resided with a grandmother who was not willing to care for her long-term, visited with a mother who did not actively engage her or consistently show for parenting time, and spent time with the preadoptive family on certain weekends and during lengthy visits. After termination, AM would be put on a path to adoption by a family willing to provide every day for her. That this caregiver graciously offered to continue the parental relationship indicates a commitment to AMs life-long needs that respondent-mother was unwilling or unable to provide. In short, we agree with the trial court that termination was in AM's best needs so that she could move forward with a caregiver willing and able to provide for her.

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Kirsten Frank Kelly