STATE OF MICHIGAN

COURT OF APPEALS

In re I. WHEELER, Minor.

UNPUBLISHED
May 21, 2020

No. 350939
Kent Circuit Court
Family Division
LC No. 18-051564-NA

Before: TUKEL, P.J., and MARKEY and GADOLA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor child, IW, pursuant to MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist), MCL 712A.19b(3)(c)(*ii*) (failure to rectify additional conditions after adjudication), and MCL 712A.19b(3)(j) (reasonable likelihood that child will be harmed if returned to parent). Finding no error, we affirm.

I. FACTS

Petitioner, the Department of Health and Human Services (DHHS), submitted to the trial court a complaint and request to place IW in temporary custody on June 13, 2018, just over one month after her birth.[1] DHHS alleged that respondent used marijuana during her pregnancy and that IW was born positive for marijuana. Furthermore, IW's pediatrician diagnosed her with failure to thrive one month after her birth because she was not gaining the appropriate amount of weight. The pediatrician gave respondent a special bottle nipple to feed IW, but respondent threw it away because it was blue and IW was a girl. The pediatrician instructed respondent to chart IW's feedings, yet respondent refused to do so. Respondent stated that the pediatrician was making her overfeed IW.

DHHS also alleged that respondent was offered Maternal Infant Health and Early On services on multiple occasions throughout her pregnancy and after giving birth, but respondent

[1] The trial court found that IW's father was unknown and could not be identified, subsequently terminating any unknown and putative father's parental rights.

refused to accept a referral. Respondent was also allowing her boyfriend, a registered sex offender, to do IW's night feedings because respondent needed "her beauty sleep." Children's Protective Services advised respondent that her boyfriend was not to be alone with the baby, but respondent initially refused to follow the safety plan.

Moreover, respondent had a long history of being involved in relationships with men who were registered sex offenders, even after respondent was sexually assaulted by two of them. DHHS alleged that respondent was refusing to follow the safety plans designed to keep IW safe and to aid in her weight gain. Regarding IW's failure to thrive diagnosis and treatment, respondent stated that she did not feed the baby as recommended because "it was not convenient" for her. DHHS also alleged that respondent reported that she was "too busy" to journal IW's feeding as the doctor requested. The trial court removed IW from respondent's care on June 13, 2018.

On October 25, 2018, IW was placed in a nonrelative, licensed foster home, where she continued to be placed throughout the proceedings. Respondent was offered a plethora of services designed to accommodate her special needs through the termination hearing in September 2019. However, the trial court ultimately entered an order terminating respondent's parental rights. The trial court found that DHHS made reasonable efforts to preserve and unify the family, but that the efforts were unsuccessful. The trial court determined by clear and convincing evidence that 182 or more days had elapsed since the issuance of the original dispositional order, and that the conditions that led to the adjudication continued to exist. The trial court also found that there was a reasonable likelihood that the child would be harmed if returned to respondent's care. Therefore, the trial court determined that petitioner proved the statutory bases for termination pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (j) by clear and convincing evidence. Additionally, the trial court determined that termination of respondent's parental rights was in the best interests of IW.

II. ANALYSIS

A. REASONABLE EFFORTS

Respondent first argues that the trial court erred in finding that DHHS provided reasonable accommodations for her demonstrated cognitive deficits. We disagree.

This Court reviews for clear error a trial court's decision regarding reasonable efforts. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). A finding is clearly erroneous if this Court "is left with a definite and firm conviction that a mistake has been made." *In re Medina*, 317 Mich App 219, 227; 894 NW2d 653 (2016) (quotation marks and citation omitted). "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App at 541, citing *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

"Reasonable efforts to reunify the child and family must be made in all cases . . . ." MCL 712A.19a(2);[2] *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); unless certain exceptions not applicable here apply. The DHHS's reasonable efforts must include, among other things,

[2] The statute provides some exceptions, but none apply here. See MCL 712A.19a(2).

services "to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child." *In re Rood*, 483 Mich 73, 104; 763 NW2d 587 (2009) (quotation marks and citation omitted). "If reunification is the permanency planning goal, the court must consider whether efforts by the supervising agency to reunify a family are reasonable." *Id*. at 98 (quotation marks and citation omitted). "While 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).

The Americans with Disabilities Act requires that the DHHS must make "reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless . . . the modifications would fundamentally alter . . . the service" provided. *In re Hicks/Brown*, 500 Mich 79, 86; 893 NW2d 637 (2017). Once the DHHS is made aware of an individual's disability, it has an affirmative duty to provide services accommodating that disability. *Id*. at 87. The trial court must consider the special efforts and modification of services as reasonably necessary to accommodate a parent's disability and whether those efforts comply with the statutory obligations to accommodate the disability in order to properly terminate a parent's parental rights. *Id*. at 90.

In this case, respondent was afforded a meaningful and adequate opportunity to reunify with IW though participation in a plethora of services reasonably accommodating her disability. See *In re Mason*, 486 Mich at 152; see also *In re Hicks/Brown*, 500 Mich at 86. Despite that these services and accommodations were offered, respondent failed either to participate or demonstrate that she sufficiently benefited from the services provided. See *In re Frey*, 297 Mich App at 248. The record reflects that DHHS and service providers knew of respondent's disability from the beginning of the case. From the beginning, respondent was offered various services, designed and tailored to her specific needs, via repeating instructions in easy to understand language, visual handouts, one-on-one meetings, visual demonstrations, and phone call and text message reminders of appointments. However, respondent failed to participate in or complete certain requirements of her treatment plan.

The trial court appointed a lawyer-guardian ad litem (L-GAL) to represent respondent from the beginning of the case. DHHS caseworkers heeded the L-GAL's recommendations, in addition to their own efforts and ideas, in implementing the appropriate services and properly communicating with respondent because of her special needs, even before they received respondent's psychological examination in December 2018. The record reflects that the DHHS and all IW's and respondent's service providers knew of respondent's cognitive deficits and made special efforts to arrange for her understanding. DHHS offered respondent an abundance of services, including parenting time, family team meetings, weekly or biweekly meetings with the caseworkers, text message and telephone reminders of appointments, transportation help, parenting classes, a peer mentor, counseling, sexual abuse services, healthy relationship counseling, and feedback from IW's therapists and doctors tailored to aid respondent's level of cognitive capacity. DHHS also created a special binder, specifically designed with the input of the L-GAL and the psychological evaluation's recommendations.

However, respondent continued to refuse to participate in some services that were offered and recommended to her, failed to utilize the binder created for her, demonstrated that she did not understand IW's needs, and continued to take the stance that she knew better what IW needed than IW's doctors and therapists because she was IW's mother. Respondent refused to participate in individual counseling in the beginning of the case in summer 2018. Respondent then chose to participate in individual counseling when re-referred in April 2019 and now argues on appeal that she was not given enough time to benefit from the counseling. We find no merit to respondent's argument. Respondent also refused services for IW and failed to attend IW's medical and therapy appointments. Respondent continued to state that she knew how to parent better than IW's service providers.

The trial court considered the special accommodations that the DHHS and service providers offered respondent and found that they were reasonable. See *In re Hicks/Brown*, 500 Mich at 90. The trial court noted that the DHHS went above and beyond what might have been expected of them to make reasonable efforts with respondent, considering her disability. However, the trial court found that, over the 15 months of the proceedings, respondent did not demonstrate benefit from her services, despite the record evidence extensively reflecting the accommodations provided for her cognitive deficits. It was not until the threat of termination that respondent had begun to take services, orders, and her treatment plan more seriously. However, even at that time, respondent failed to demonstrate benefit from services and continued to be unable to demonstrate an understanding of IW's needs or the barriers to reunification.

The trial court noted that the testimony reflected that the services offered to respondent were tailored to her specific needs. Supportive Visitation "did a specific evaluation so that they could present information to [mother] in a way that would be sensitive to her cognitive abilities." The trial court noted that respondent did not benefit from Supportive Visitation even while she was in it. Furthermore, respondent initially participated in Early Childhood Attachment but then declined to continue. Despite being offered a plethora of services, the court noted that mother more than once stated that she could parent IW better than the service providers could and that the service providers were rushing the child. Respondent also had difficulty attending and did not attend all of IW's medical and therapy appointments. Additionally, respondent had difficulty following the parenting recommendations of the service providers "from the very beginning of this case. She failed to notice cues from [IW] when she's hungry, needs to be changed, or wants to play." The court noted that the record reflected that respondent continued to fail to read IW's cues and was not able to follow her feeding chart at the time of the termination trial. The trial court found that the record demonstrated that respondent "has made limited progress in her parenting skills despite the accommodations made to address her disabilities." The trial court stated that one of the biggest concerns of DHHS and of the court was that respondent "has denied from the beginning of this case and throughout recent times, that [IW] has any special needs. . . . It's a complete lack of insight into [IW]'s special needs." Therefore, the trial court found that parenting skills remained a barrier for respondent, despite DHHS making reasonable efforts to address the barriers. The trial court found that DHHS and other service providers afforded respondent "sufficient accommodations to address her cognitive and developmental delays."

In conclusion, respondent was provided extensive services and the caseworkers were aware of her intellectual limitations from the beginning of the case. Caseworkers repeated instructions to respondent multiple times, explained things to her at a level commensurate with her ability to

understand, and reminded her when and how to complete tasks. Respondent received services tailored to address her personal and parenting problems in light of her developmental disability. The record reflected that DHHS had no other services available that would address her deficiencies and allow her to reunify with IW. Respondent's contention that she needed even more assistance from DHHS to properly care for IW provides additional support for the trial court's decision that DHHS provided reasonable efforts because there was no more assistance that could be provided. See *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). Respondent failed to demonstrate that she could provide for IW's basic needs, despite the reasonable efforts made by DHHS, and the record demonstrates she could not meet her minimum parental responsibilities. See *id*. Accordingly, the trial court found that reasonable efforts were made to preserve and reunify the family to make it possible for the child to safely return to respondent's care and that those efforts were unsuccessful. We find no clear error in the trial court's determination that the DHHS made reasonable efforts to reunify respondent with IW. See MCL 712A.19a(2); see also *In re Fried*, 266 Mich App at 542-543.

B. STATUTORY BASIS

Respondent next argues that the trial court erred by finding statutory grounds to terminate her parental rights. We conclude that the trial court did not clearly err by finding statutory grounds for termination existed.

"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). The trial court's termination decisions are reviewed for clear error. MCR 3.977(K); *In re VanDalen*, 293 Mich App at 139. "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 (2012) (quotation marks and citation omitted).

In this case, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (j). However, if we conclude that the trial court did not clearly err in determining that one statutory ground for termination existed, we need not address the additional grounds for termination. See *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).[3]

The trial court did not clearly err by determining that there was clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(c)(*i*). Termination of parental rights is proper under this statutory subsection when "the totality of the evidence amply supports that [the respondent] had not accomplished any meaningful change in the conditions" that led to the trial court taking jurisdiction over the child, *In re Williams*, 286 Mich

[3] Although we do not address the additional grounds in full, we do note that, having reviewed the record, there was also clear and convincing evidence to support termination under MCL 712A.19(c)(*ii*) and (j), and the trial court did not clearly err by terminating on those additional grounds.

App 253, 272; 779 NW2d 286 (2009), and "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age," MCL 712A.19b(3)(c)(*i*).

In this case, the trial court entered the initial disposition order in July 2018. The trial court terminated respondent's parental rights in September 2019. Therefore, "182 or more days" had "elapsed since the issuance of an initial disposition order." See MCL 712A.19b(3)(c). The trial court found that termination was proper under Subsection (3)(c)(*i*) because respondent failed to rectify her parenting issues. The trial court concluded that there was no reasonable likelihood that the conditions would be rectified in a reasonable amount of time considering the age of IW.

In more than 14 months since IW's removal, respondent failed to accomplish any meaningful change in the conditions that led to the trial court taking jurisdiction over IW. See *Williams*, 286 Mich App at 272. The principal condition that led to the adjudication was the same as existed at the time of the termination trial. In this case, the initial conditions that led to the adjudication were mother's drug use, IW's diagnosis of failure to thrive, and respondent's dangerous relationships with individuals on the sex offender registry. The trial court noted that respondent's substance abuse barrier was rectified but that respondent continued to struggle to understand IW's special needs or feeding issues, which led to the diagnosis of failure to thrive, and respondent continued to engage in relationships with sex offenders. Specifically, on the basis of witness testimony, the trial court found that respondent denied that IW had any special needs, respondent denied that she needed assistance in rectifying her lack of parenting skills because she "knew how to parent IW" better than the service providers, and respondent continued to defend her relationships with known sex offenders.

The trial court record supported that, at the time of termination, a condition or conditions that led to adjudication continued to exist, despite the reasonable efforts of DHHS to reunify respondent and IW. Given these circumstances, the trial court did not clearly err by determining that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the minor child's age, and that termination was proper under MCL 712A.19b(3)(c)(*i*). See *In re Trejo*, 462 Mich 341, 359-360; 612 NW2d 407 (2000).

C. BEST INTERESTS

Respondent also argues that termination of her parental rights was not in the best interests of IW. We conclude that the trial court did not clearly err by determining by a preponderance of the evidence that termination of respondent's parental rights was in the best interests of IW.

A trial court must find by a preponderance of the evidence that termination is in the child's best interests before it can terminate parental rights. *In re Moss*, 301 Mich App at 90. 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 parental rights. *Id*. at 88, citing MCL 712A.19b(5). The trial court's termination determinations are reviewed for clear error. MCR 3.977(K); *In re VanDalen*, 293 Mich App at 139. "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 at 80 (quotation marks and citation omitted).

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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 at 87. The court may consider "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 Minors*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. At this stage, the interest of the child in a stable home is superior to any interest of the parent. *In re Medina*, 317 Mich App 219, 237; 894 NW2d 653 (2016).

In determining the best interests of IW, the trial court found that respondent's parenting ability "certainly has serious deficits" and that respondent did not appear to have any understanding of IW's special needs. The trial court found that respondent showed her lack of understanding by ignoring doctors' and service providers' recommendations, and continuing to believe that there was nothing wrong with her parenting because respondent thought she knew what was best for IW. The trial court also noted respondent's engagement in "questionable relationships." Despite respondent's contention otherwise, there was evidence to establish that she continued in questionable relationships, namely, her grandfather's testimony that there was an inappropriate individual on the sex offender registry living with respondent. The trial court noted respondent's counselor's statement that respondent was "making progress in this area," yet respondent had not demonstrated that progress to the caseworkers because she continued to "defend someone on the sex offender list rather than understanding that she should be avoiding those relationships." The trial court held that respondent's lack of parenting skills weighed in favor of termination.

Furthermore, regarding a bond with the child, the trial court acknowledged that respondent loved IW, but it noted the concerns that IW pulled back from respondent during parenting time and medical appointments and pulled toward the foster mom when she needed something. Furthermore, the trial court noted that, on the basis of the evidence, respondent "certainly" did not "consistently" pick up on IW's cues. In conclusion, the trial court found "that any bond that [IW] has with her mother is rather tentative" because "[IW] does not seem to reach for her mother for comfort," a factor that favors termination.

The trial court also found IW's need for permanency, stability, and finality weighed in favor of termination. The trial court noted that IW was very young, had been in care for 15 of her 16 months of life—"basically, her entire life so far"—and had significant developmental and cognitive delays that made permanency, stability, and finality even more critical for her. The trial court found that this factor weighed in favor of termination. Furthermore, the trial court addressed the advantages of the foster home over respondent's home. IW was in a licensed foster home that ensured that she attended her weekly parenting time, all physical, occupational, and speech therapy appointments, medical appointments, and addressed her other needs. The trial court found that the foster parents believed that IW was delayed and that she needed all those services. In contrast,

respondent did not. The foster parents also actively participated in IW's appointments, "unlike [mother]."

The trial court concluded that termination was in IW's best interests because of, among other things, respondent's lack of benefit from the service plan and her failure to protect IW. Additionally, the trial court noted respondent's "inconsistent attendance with parenting time throughout this case until July and August of this year—eight weeks ago." In contrast, the record indicated that IW was progressing under the care of her foster family, which was meeting all her needs.

In light of the foregoing, we hold that there was not clear error in the trial court's conclusion that termination of respondent's parental rights was in the best interests of IW. See MCL 712A.19b(5); *In re VanDalen*, 293 Mich App at 139.

Affirmed.

/s/ Jonathan Tukel
/s/ Jane E. Markey
/s/ Michael F. Gadola