

STATE OF MICHIGAN
COURT OF APPEALS

In re SWEET/JACOBS/SCOTT, Minors.

UNPUBLISHED
September 10, 2020

No. 352234
St. Clair Circuit Court
Family Division
LC No. 18-000272-NA

Before: JANSEN, P.J., and K.F. KELLY and CAMERON, JJ.

PER CURIAM.

Respondent-mother appeals the trial court’s order terminating her parental rights to the minor children, RS, TJ, SS, and XS. The trial court terminated respondent’s parental rights to RS, TJ, and SS under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that the children will be harmed if returned to the home). The trial court terminated respondent’s parental rights to XS under MCL 712A.19b(3)(g) and (j). We affirm.

I. BACKGROUND

This matter began in August 2018 when the Department of Health and Human Services (“DHHS”) filed a petition. The petition alleged that respondent and her husband were essentially homeless and had lost many of RS, TJ, and SS’s belongings.¹ The petition also alleged that respondent’s husband was abusing illegal substances and that neither respondent nor her husband had a source of income. Finally, the petition alleged that respondent was medically neglecting RS, who had rheumatoid arthritis. The petition requested that the trial court remove the elder children from respondent’s care and custody and exercise jurisdiction over the elder children. After a preliminary hearing was held, the petition was authorized and the elder children were removed from respondent’s custody.

¹ XS was not yet born at the time the petition was filed. We will refer to RS, TJ, and SS as the “elder children.”

After respondent entered a plea of admission to some of the allegations in the petition, the trial court exercised jurisdiction over the elder children and entered an initial order of disposition. It was later discovered that respondent was pregnant with XS. After respondent tested positive for methamphetamines and amphetamines, she entered in-patient substance abuse treatment on October 22, 2018. However, on November 13, 2018, respondent left the facility against medical advice. In the weeks that followed, respondent did not attend all of her visitations with the elder children, did not obtain stable employment or housing, and did not make progress on her treatment plan. Respondent also continued to test positive for methamphetamines and amphetamines.

On December 27, 2018, respondent returned to inpatient treatment and gave birth to XS the following month. XS was initially removed from respondent's custody, but he was later returned to respondent's custody at the inpatient treatment facility. During the time that respondent was at the treatment facility, she was unable to fully comply with the treatment plan and missed several visitations with the elder children. However, respondent was participating in therapy and parenting classes and was testing negative for substances. On May 16, 2019, respondent left inpatient treatment against medical advice. After it was discovered that respondent did not have stable housing or employment and was not appearing for drug screenings, child protective proceedings were initiated with respect to XS. On May 17, 2019, the trial court removed XS from respondent's custody. Respondent later entered a plea of admission regarding XS for purposes of the trial court's exercise of jurisdiction.

At an August 2019 permanency planning hearing, it was reported that respondent did not have stable housing, was unemployed, and was not attending counseling or other services to address her substance abuse and mental health issues. Additionally, respondent had tested positive for methamphetamines, amphetamines, and marijuana and had failed to attend multiple drug screenings during the reporting period. The trial court instructed DHHS to file a supplemental petition to terminate respondent's parental rights to the children because respondent had made little progress toward reunification. DHHS did so, and a termination hearing was held on November 20, 2019. At the conclusion of the hearing, the trial court terminated respondent's parental rights to the children. Respondent now appeals.

II. STATUTORY GROUNDS

Respondent argues that the trial court clearly erred by finding clear and convincing evidence supporting the three statutory grounds cited in support of termination. We find no clear error warranting reversal.

“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). We review for clear error the trial court's decision whether grounds for termination have been proven by clear and convincing evidence. *In re Medina*, 317 Mich App 219, 226; 894 NW2d 653 (2016). “A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made,” with the reviewing court “defer[ring] to the special ability of the trial court to judge the credibility of witnesses.” *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014) (citation omitted).

We conclude that the trial court did not clearly err by finding that grounds for terminating respondent's parental rights to the minor children were established under MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) authorizes termination under the following circumstances:

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.

In this case, respondent was unable to provide proper care and custody to the elder children when they were taken into care in August 2018 because she was unemployed and was essentially homeless. Specifically, respondent and the elder children moved from one person's house to another and the house from which the elder children were removed was described as "deplorable." In addition, respondent was not ensuring that RS's rheumatoid arthritis was properly treated. When XS was taken into care in May 2019, respondent continued to be without stable housing and employment and had unresolved substance abuse issues.

Respondent never resolved her unemployment issue. During the course of the proceeding, respondent only provided DHHS with two pay stubs: one in September 2018 and one in June 2019. Thus, although respondent was able to obtain employment, there was no evidence that respondent was able or willing to maintain a job longer than a single pay period. Furthermore, respondent never maintained suitable, independent housing. The only time that respondent maintained housing was when she was receiving inpatient treatment. Respondent left treatment against medical advice despite the fact that the program would have assisted her with obtaining housing had she successfully completed treatment. Although respondent was referred to multiple agencies to assist her with obtaining housing, respondent never followed through with the referrals.

Additionally, at the beginning of the proceeding, respondent tested positive for methamphetamines and amphetamines. Respondent entered treatment in October 2018, but she subsequently left treatment against medical advice. After leaving treatment, respondent continued to abuse illegal substances despite being aware that she was pregnant with XS. Although respondent returned to inpatient treatment in December 2018, she left against medical advice in May 2019. Respondent, who had XS in her care at the time, did not have an outpatient treatment plan in place when she left the treatment facility. After she began to miss drug screenings, XS was removed from her care. Even so, respondent failed to participate in counseling despite receiving referrals from DHHS. Additionally, on July 22, 2019 and August 19, 2019, respondent tested positive for methamphetamines and amphetamines. After August 19, 2019, respondent did not submit to any more drug screenings. At the time of the termination hearing, respondent was not receiving services for her substance abuse.

Although respondent completed a parenting class and supportive visitation services during the proceeding, she never demonstrated that she was able to independently parent the children and her visitations with the elder children were always supervised. Respondent was sometimes "unprepared" for visitations, and she relied on others to assist her with the children. Although DHHS approved some of the visitations to occur in the community, they had to be returned to the DHHS facility after respondent brought an "unapproved" male to visitations. While respondent's preparation improved after the termination petition was filed, it was noted that respondent asked

RS inappropriate and “harassing” questions about her placement. At the time of the termination hearing, there were still concerns about respondent’s ability to parent the children independently, as she would sometimes become overwhelmed and frustrated with them. Thus, the record establishes that respondent was unable to provide proper care and custody at the time of termination.

Furthermore, there is no evidence that respondent would have been able to provide proper care and custody within a reasonable time given the ages of the minor children. Respondent demonstrated poor judgment and a lack of commitment to her sobriety and to regaining custody of the minor children during the proceeding. Given the lack of evidence that respondent could maintain her sobriety, stable housing, and employment, it is unlikely that she would do so within a reasonable time. At the time of termination, RS was five years old, TJ was three years old, SS was 21 months old, and XS was nine months old. The elder children had been in care for 14 months, and XS had been in care for a majority of his life. The children required consistency and permanency, and RS required a caregiver who would ensure that her medical issues were being monitored and treated. Thus, the trial court’s finding that termination of respondent’s parental rights was proper pursuant to MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). Because we have concluded that at least one ground for termination existed, we need not specifically consider the additional grounds upon which the trial court based its decision. *Id.* at 461.

In reaching this conclusion, we reject respondent’s argument that DHHS failed to make reasonable efforts towards reunification. Because this issue is unpreserved, *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), our review is limited to plain error affecting respondent’s substantial rights, *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). An error generally will not affect substantial rights if it did not affect the outcome of the proceedings. *Id.* at 9.

As part of the case service plan, respondent was required to attend supervised visitations with the children, to obtain a legal source of income, to obtain suitable housing, to complete and benefit from parenting classes, to complete a psychological evaluation, and to complete a substance abuse assessment. Respondent was also required to follow the recommendations of the psychological and substance abuse assessments and to submit to random drug screens. Although respondent completed a psychological evaluation in April 2019, she failed to follow through with the recommendation that she attend counseling to address her anxiety and past trauma. At the time of the November 2019 termination hearing, respondent had been placed on a “do not return” list with the service provider because of her failure to attend scheduled intake appointments.

Respondent also completed a substance abuse evaluation in December 2018 and entered inpatient treatment twice during the proceeding. However, respondent left treatment against medical advice and without a treatment plan. After leaving inpatient treatment, respondent did not participate in substance abuse treatment even though it was offered to her. Additionally, respondent failed to submit to drug screenings throughout the proceeding, and she tested positive for methamphetamines, amphetamines, and marijuana after she left treatment. Testimony at the termination hearing supports that respondent failed to take advantage of assistance that was offered to her with respect to locating appropriate housing. Respondent participated in and completed parenting classes and engaged in parenting support services. For the most part, however,

respondent did not benefit from those services and would fail to keep caseworkers apprised of her contact information. The foster care worker who was responsible for the case for a majority of the proceeding believed that respondent demonstrated manipulative tendencies. Thus, given that respondent failed to uphold her “commensurate responsibility” to engage in and benefit from the services offered by DHHS, see *Frey*, 297 Mich App at 248, we are not persuaded that she would have fared better if DHHS had offered other services to her, see *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). We conclude that the trial court did not commit plain error affecting respondent’s substantial rights when it determined that DHHS made reasonable efforts to promote reunification.

III. BEST INTERESTS

Respondent also argues that the trial court erred by finding that termination of her parental rights was in the children’s best interests. We disagree.

“The trial court must order the parent’s rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). We review the trial court’s best-interest determination for clear error. *Id.*

“In making its best-interest determination, the trial court may consider the whole record, including evidence introduced by any party.” *In re Medina*, 317 Mich App at 237 (quotation marks and citation omitted).

[T]he court should consider a wide variety of factors that may include 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. The trial court may also consider . . . the children’s well-being while in care, and the possibility of adoption.” [*In re White*, 303 Mich App at 713-714 (quotation marks and citation omitted).]

In support of her argument that the trial court clearly erred by concluding that termination of her parental rights was in the children’s best interests, respondent cites the parent-child bond that existed in this case. However, this Court focuses on *the children*—not the parents—when reviewing best interests, *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000), and we conclude that the record herein supports that the minor children did not share a healthy bond with respondent.

The record supports that respondent was at times inconsistent with attending visitations and was often unprepared and put her needs above those of the children. Indeed, XS was removed from respondent’s care after she left inpatient treatment against medical advice and despite not having employment, stable housing, or a treatment plan. Respondent continued to use illegal substances after XS was removed from her care and, because respondent brought an “unapproved” male to visitation with the children, the visitations had to be held in a more restrictive environment for a period of time. Respondent blamed others for the children being taken into care, and there is no indication that she understood the impact of her substance abuse on the children. Despite being

offered services, respondent failed to develop the ability to care for all of the minor children at once without becoming overwhelmed and frustrated. There were times when RS seemed to be upset after visitations, and it was noted that respondent asked RS inappropriate questions about her placement. Furthermore, the record supports that respondent's bond with TJ, SS, and XS was minimal given their young ages and the amount of time that they had spent in care. Thus, although the record supports that respondent shared a bond with the minor children, the record also supports that the bond was not healthy for the children. See *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2002), overruled on other grounds by *In re Sanders*, 495 Mich 394 (2014) (holding that the fact that there was a "serious dispute" on the record concerning whether the respondent had "a healthy bond" with her children supported that termination of her parental rights was in the children's best interests).

Additionally, the parent-child bond is only one factor for the trial court to consider. See *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). As discussed above, respondent failed to comply with her case service plan. Despite multiple opportunities to remedy the barriers to reunification, respondent did not participate in all of the services she was offered and, for those services that she did participate in, she failed to demonstrate any benefit from doing so. Although the elder children had been in care for over 14 months and XS had been in care for most of his life, respondent demonstrated an inability to provide stability and permanency to the children. Meanwhile, the children were doing well in their pre-adoptive placements, where they had the opportunity to achieve permanency and stability. Importantly, RS's rheumatoid arthritis and behavioral issues were being properly treated, and she had improved significantly during her time in care. For these reasons, we conclude that the trial court did not clearly err by finding that termination of respondent's parental rights to the minor children was in the children's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Thomas C. Cameron