STATE OF MICHIGAN

COURT OF APPEALS

In re KIMBALL/HARDEN, Minors.

UNPUBLISHED
September 17, 2020

Nos. 350933; 350934
Wayne Circuit Court
Family Division
LC No. 18-000014-NA

Before: LETICA, P.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father, D. Kimball, Jr., and respondent-mother, B. Skinner-Harden, appeal as of right the trial court's order terminating their parental rights to the minor children, KLK and KDH, under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). We affirm.

I. STATUTORY GROUNDS

Respondent-father argues that the trial court erred by finding that there were statutory grounds to terminate his parental rights. We disagree. This Court reviews a trial court's finding whether a statutory ground for termination has been proven by clear and convincing evidence for clear error. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake was made. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

A trial court must terminate a parent's parental rights if it finds that a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court terminated respondent-father's parental rights under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), which provide:

> (3) 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:
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> * * *

(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.

(*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(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.

* * *

(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.

Regarding § 19b(3)(c)(*i*), the condition that led to the adjudication with respect to respondent-father was his lack of suitable housing. Specifically, respondent-father was homeless at the time the children were taken into custody in January 2018. Although respondent-father had a home at the time of the statutory-grounds hearing in July 2019, the home was deemed unsuitable for the children. Thus, the condition that led to the adjudication—a lack of suitable housing—remained after 182 or more days had elapsed since issuance of the initial dispositional order. Given that respondent-father had more than 18 months after the children were taken into custody to obtain suitable housing, it was reasonable to find that this condition would not be rectified within a reasonable time given the young ages of the children. Therefore, the trial court did not clearly err by finding that this ground for termination was proven by clear and convincing evidence.

With regard to § 19b(3)(c)(*ii*), the trial court found that the other condition was respondent-father's domestic violence. The trial court found that respondent-father was given a reasonable amount of time to rectify this condition, yet failed to address it and there was no reasonable likelihood that he would rectify his domestic violence issues within a reasonable time considering the children's ages. The trial court did not clearly err. Respondent-father repeatedly denied ever committing any acts of domestic violence against respondent-mother, but the trial court found respondent-father not credible. This Court defers to the trial court's credibility determinations. *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014). Moreover, this was not just a pure credibility contest between respondent-mother and respondent-father.

Respondent-father's denials were belied by the record, which included evidence of his conviction of domestic violence, where he pleaded guilty to having committed domestic violence—second offense. Respondent-father's denials, i.e., his refusal to even admit he has a problem, are evidence that he has not rectified his issues with domestic violence and that there was no reasonable likelihood that the issues would be rectified within a reasonable time considering the young ages of the children.

A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide proper care and custody, satisfying § 19b(3)(g). *In re White*, 303 Mich App at 710. Likewise, a parent's failure to comply with the terms and conditions of a service plan is evidence that the children will be harmed if returned to the home of the parent, satisfying § 19b(3)(j). *Id*. As previously discussed, although respondent-father was provided with therapy to help address his domestic violence, he did not fully participate in or benefit from those services. First, as of the July 2019 statutory-grounds hearing, respondent-father had not attended his therapy sessions since January 2019. Second, in addition to respondent-father's denials of having ever committed domestic violence against respondent-mother, respondent-mother testified that within the previous few months of that July hearing, she had to call the police multiple times because she felt that she was going to be attacked or assaulted by respondent-father. The evidence that respondent-father failed to participate in and benefit from the provided services further supports the existence of statutory grounds under §§ 19b(3)(g) and (j).

Respondent-mother argues that the trial court's order terminating her parental rights must be reversed because the court never "specifically state[d] on what grounds it based its decision." This claim is not supported by the record. We note that respondent-mother does not argue that there was insufficient evidence to support any particular statutory ground for termination. Instead, her sole argument is that reversal is necessary as a matter of law because the trial court did not explicitly mention the statutory grounds on which it relied to terminate her parental rights. Again, we disagree.

At the statutory-grounds hearing, the trial court stated that grounds existed for termination "as argued by the [DHHS]." Thus, the court expressly adopted the arguments and grounds relied on by DHHS. Moreover, in its written order, the trial court stated, "the Court finds that DHHS has established grounds for termination of parental rights of both parents under MCL 712A.19b(3)(c)(i)(ii), (g) and (j)." Thus, any claim that the trial court failed to identify the statutory grounds under which it terminated respondent-mother's parental rights is without merit.[1]

[1] Moreover, this Court recently held that a trial court's failure to specify the grounds on which it relied to terminate parental rights does not require automatic reversal. In *In re Baham*, ___ Mich App ___; ___ NW2d ___ (2020) (Docket No. 349595) (lead opinion by M.J., KELLY, J.); slip op at 8, the trial court did not specifically identify any statutory ground as a basis for its decision, nor did it quote from any statutory provision. Although this Court noted that "articulation of the statutory grounds and the facts the court found to support them would have greatly aided this Court's review," the Court nonetheless held that this was not a reason to reverse because, with the findings the trial court had made, coupled with the grounds on which DHHS sought termination,

II. BEST INTERESTS

Respondent-father and respondent-mother both argue that the trial court erred by finding that termination of their respective parental rights was in the children's best interests. We disagree.

This Court reviews a trial court's best-interest decision for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Once a trial court has found that there are statutory grounds to terminate parental rights under MCL 712A.19b(3), the court must terminate the parent's parental rights if it is in the child's best interests. MCL 712A.19b(5); *In re White*, 303 Mich App at 713. The court has a duty to determine the best interests of each child individually. *In re Olive/Metts*, 297 Mich App at 42. In making these best-interest determinations, "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." *Id*. at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, 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. "[T]he preponderance of the evidence standard applies to the best-interest determination." *In re Moss*, 301 Mich App at 83.

The trial court did not clearly err by finding that termination of respondent-father's parental rights was in the children's best interests. The trial court stressed that although respondent-father had been offered services for 20 months, he still had not benefited from those services. Mainly, respondent-father's substance abuse had not been addressed, as evidenced by his consistent failure to participate in screenings and his recent positive screen for cocaine and hydrocodone. Further, as already discussed, respondent-father's domestic violence had not been adequately addressed. The children needed stability and permanence, and the court was not required to wait any longer to see whether respondent-father *might* start to address his issues. Given the lack of progress on respondent-father's behalf after 20 months, the trial court did not clearly err by finding that it was in the children's best interests to terminate respondent-father's parental rights.

The trial court also did not clearly err by finding that termination of respondent-mother's parental rights was in the children's best interests. The trial court recognized that respondent-mother loved her children. The court further stated that it was satisfied with respondent-mother's housing and income. However, the court was greatly troubled by the fact that respondent-mother had suffered consistent abuse from respondent-father yet, still as of recently, had been planning with him and visiting the children with him. The court found that it was not in the best interests of the children to wait indefinitely for respondent-mother to fully realize and appreciate the danger the situation posed and separate herself from respondent-father. The court did not clearly err by finding that the children's need for stability, permanence, and safety outweighed the other

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the findings were adequate to enable appellate review. *Id*. at ___; slip op at 8-11; *id*. (MARKEY, P.J., concurring and dissenting in part) at ___; slip op at 3-5; *id*. (GLEICHER, J. concurring and dissenting in part) at ___; slip op at 6-8. The Court therefore viewed the trial court's ruling in the context of the arguments raised by DHHS, which included reliance on §§ 19b(3)(h) and (j).

considerations in favor of respondent-mother. See *In re White*, 303 Mich App at 713 ("The trial court should weigh all the evidence available to determine the children's best interests.").

Both respondent-mother and respondent-father rely on the fact that there was a bond between them and the children. While the existence of a bond between a parent and child can be a relevant factor, it is one of many factors for a court to consider and is not dispositive. See *id*. at 713-714. The trial court did not clearly err by finding that the existence of any bond was outweighed by other serious factors, such as respondent-father's failure to address his domestic violence and substance-abuse issues, and respondent-mother's failure to fully realize and appreciate the danger the situation with respondent-father posed and separate herself from him.

III. REASONABLE EFFORTS

Respondent-mother next argues that petitioner failed to make reasonable efforts to rectify the conditions that led to the trial court taking jurisdiction over the children. We disagree.

This issue is not preserved because mother did not make any objection to any services when the trial court adopted the service plan. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Consequently, our review of this unpreserved issue is for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). "[W]hen a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); see also *In re Frey*, 297 Mich App at 247. The failure to provide such services can render termination premature. See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Respondent-mother's claim that DHHS provided no services to her is not supported by the record.

At the initial disposition, the court adopted the recommended services for respondent-mother, including a psychological evaluation, individual therapy, parenting classes, and participation in a parent-partner program. There is nothing in the record to show that these services were not offered to respondent-mother. On the contrary, the record shows that these services were offered, but respondent-mother did not consistently participate in these services. Three months after adjudication, it was reported that the therapist terminated respondent-mother's therapy sessions because of threats made by respondent-mother. After that, respondent-mother started seeing a different therapist, but it was reported that as of the April 2019 hearing, respondent-mother had not been regularly seeing the therapist. Respondent-mother was also offered parenting classes. She was initially terminated from the classes because of a failure to attend. After another referral, she eventually completed the classes in September 2019—two months after the court found that statutory grounds existed to terminate her rights. It is understood that while petitioner has a duty to provide reasonable efforts for reunification, "there exists a commensurate responsibility on the part of respondents to participate int the services that are offered." *In re Frey*, 297 Mich App at 248. Thus, while respondent-mother was supplied services to facilitate reunification, she did not exhibit any diligence in participating in those services.

Additionally, respondent-mother's claim that the trial court never specifically found that reasonable efforts had been made is without merit. As indicated in its various dispositional orders,

however, the trial court repeatedly and expressly found that reasonable efforts had been made on behalf of DHHS. Thus, respondent-mother has failed to show the existence of any plain error.

Affirmed.

/s/ Anica Letica
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher