

STATE OF MICHIGAN
COURT OF APPEALS

In re J. A. ROWE, Minor.

UNPUBLISHED
October 22, 2020

No. 353029
Muskegon Circuit Court
Family Division
LC No. 18-004666-NA

Before: LETICA, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's termination of her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (failure to rectify conditions that led to adjudication); (c)(ii) (failure to rectify other conditions); and (j) (reasonable likelihood that child will be harmed if returned to parent). We affirm.

Child Protective Services (CPS) received complaints that respondent failed to provide proper care and custody for the child and physically neglected her. The Department of Health and Human Services (DHHS) petitioned the trial court to authorize the petition and take jurisdiction over the child on grounds that respondent lacked housing, stayed at a house where a registered sex offender lived, failed to properly care for the child's needs, and that under respondent's supervision the child wore dirty clothes and soiled diapers. Petitioner also alleged that concerns existed regarding respondent's ability to properly care for the child and respondent's denial that she required mental health treatment. Petitioner further alleged that an incident occurred in which respondent pushed the child into a chair at a doctor's office and told the child that no one wanted her. Respondent offered a plea of admission that she lived in a home with a registered sex offender who was involved in an ongoing CPS investigation. Respondent also admitted that she lived in that residence because she had no alternative housing. The trial court accepted respondent's plea upon finding that a factual basis existed to support the plea and statutory grounds existed to exercise jurisdiction.

Respondent's caseworker presented her multiple opportunities to engage in services to address the conditions that led to the removal of the child but respondent refused and failed to participate in them. Respondent refused to participate in substance abuse assessments, psychological evaluations, and individual counseling to address substance abuse, mental health

and domestic violence issues. Respondent was offered but refused parenting mentoring services. She refused to work with a parent educator, and declined housing assistance, transportation assistance, case management, parenting time, and Americans with Disabilities Act (ADA) accommodations.

The trial court conducted numerous hearings and a termination trial which resulted in the termination of respondent's parental rights to the child. The trial court found that, despite petitioner's efforts to provide numerous services, concerns regarding respondent's mental health, suspected substance abuse, parenting skills, domestic relationships, and housing continued to exist. The trial court also found that respondent failed to comply with and benefit from the case service plan and that the child would be harmed if returned to respondent's care. The trial court determined that petitioner established statutory grounds for termination by clear and convincing evidence and that a preponderance of the evidence established that termination of respondent's parental rights served the child's best interests. Respondent now appeals.

Respondent argues that petitioner failed to make reasonable efforts to reunite her with the child by not tailoring services to accommodate respondent's special needs. We disagree.

A respondent should raise a claim that the DHHS violated the ADA, 42 USC 12101 *et seq.*, by failing to make reasonable accommodations to its case service plan when the DHHS adopts the plan or soon thereafter. See *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). In this case, respondent did not object or claim that the DHHS violated the ADA when the DHHS adopted the case service plan, and respondent did not directly assert that the DHHS violated the ADA at any time during the child protective proceedings. Therefore, the issue is unpreserved. See *In re Terry*, 240 Mich App at 26; see also *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012).

We review for clear error a trial court's findings of fact in termination proceedings, including whether the DHHS made reasonable efforts to provide respondent services aimed at reunification. *In re Fried*, 266 Mich App 535, 541-543; 702 NW2d 192 (2005). We review unpreserved issues for "plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (quotation marks and citation omitted). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App at 9.

The DHHS must make reasonable modifications when necessary to avoid discrimination on the basis of a disability unless doing so fundamentally alters the service provided. *In re Hicks/Brown*, 500 Mich 79, 86; 893 NW2d 637 (2017). The parent should be given a reasonable time to make changes and benefit from services before termination of parental rights. *In re Mason*, 486 Mich 142, 159; 782 NW2d 747 (2010). Although 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 at 248. The respondent must demonstrate that the services provided were sufficiently beneficial. *Id.*

Respondent argues that she required reasonable accommodations for unspecified disabilities but fails to indicate which services would accommodate her disabilities. The record reflects that petitioner acknowledged during the pendency of the proceedings that respondent had intellectual impairments despite respondent's denial of any mental health issues. Respondent felt threatened when the caseworkers suggested that she participate in a psychological evaluation and respondent refused to provide information to enable a full psychological evaluation and analysis. Petitioner reported that respondent had a history of emotional instability, became angry quickly, and acted defensively when the caseworkers offered her help. Dr. Joseph Auffrey concluded after a psychological evaluation that respondent had "sub par functioning," including mild deficiency in verbal skills and early elementary reading skills and that respondent likely had a mood disorder.

The record supports the trial court's finding that petitioner provided respondent with services in an effort to reunify her with the child. Petitioner offered respondent numerous services including individual counseling, funding for counseling, parent mentoring, a parent educator, a referral for a fetal alcohol spectrum disorder support group, a substance abuse assessment, two psychological evaluations, housing assistance, transportation assistance, case management, and parenting time. Petitioner also provided respondent with reasonable modifications to accommodate her impairments, including reading and explaining the parent-agency treatment plan to respondent, providing respondent with a brief summary of the parent-agency treatment plan, explaining the expectations and relevant dates to respondent, discussing respondent's parent-agency treatment plan with her social worker and her attorney, requesting a female counselor for respondent, and extending respondent's parent-mentor services.

Evidence, however, establishes that respondent failed to avail herself of the services and reasonable accommodations made for her impairments. Respondent resisted participation in counseling and, although she eventually indicated that she would *attend* counseling sessions with a female counselor, respondent indicated that she would not speak or actually participate in the sessions. When Dr. Auffrey performed respondent's psychological evaluation, respondent acted hostilely and provided minimal responses. In so doing, respondent prevented Dr. Auffrey from being able to provide a complete analysis of respondent's mental, emotional, and intellectual concerns. Respondent failed to participate in or benefit from services that were available to assess and address respondent's impairments. See *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014) ("Not only must respondent cooperate and participate in the services, she must benefit from them."). Further, respondent did not indicate any services or accommodations that would have made reunification more likely. No evidence establishes that the DHHS or respondent's caseworkers denied respondent any services that were available to a parent with intellectual or emotional disabilities. See *In re Terry*, 240 Mich App at 27.

The record reflects that the trial court considered whether petitioner made reasonable efforts for reunification by modifying its services to accommodate respondent's impairments. It appropriately articulated on the record findings of fact supported by record evidence regarding petitioner's reasonable efforts and accommodations made to enable respondent to benefit from the services provided. Respondent, however, acted uncooperatively and refused the efforts repeatedly made over 16 months to assist her. Respondent's caseworker and parent mentor made every effort to help respondent but she refused the offered assistance. The record indicates that the DHHS provided respondent suitable accommodations and numerous opportunities to engage in services that could have helped respondent. Nevertheless, she refused to cooperate and failed to benefit

from the services and accommodations offered. Accordingly, we find no merit to respondent's argument that the DHHS failed to accommodate her disabilities. Therefore, she has failed and cannot establish that plain error occurred that affected her substantial rights.

Termination is proper under MCL 712A.19b(3)(c)(i) when the totality of the evidence supports that the parent has 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). In this case, the record reflects that respondent failed to accomplish the necessary life changes to enable her to provide proper care and custody of the child. Although respondent obtained housing, she failed to participate in services to enable her to overcome her mental health issues and she failed to develop parenting skills to permit reunification with the child. Therefore, the trial court did not err by finding that clear and convincing evidence established statutory grounds under MCL 712A.19b(3)(c)(i) for terminating respondent's parental rights. More than 182 days had elapsed since the initial disposition and the conditions that led to adjudication continued to exist, and no reasonable likelihood existed that the conditions would be rectified within a reasonable time considering the child's age.

Respondent also argues that termination of her parental rights did not serve the child's best interests. We disagree.

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. MCL 712A.19b(5); MCR 3.977(E)(4). A trial court must find by a preponderance of the evidence that termination serves the best interests of the child before it may terminate parental rights. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error the trial court's determination that termination of respondent's parental rights served the child's best interests. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). We give deference to the "trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). We also defer to the trial court's special opportunity to judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

When considering best interests, the trial court must focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider several factors including the child's bond to the parent, the parent's parenting ability, and the child's needs for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court may also consider how long the child lived in the present home and the likelihood that the child "could be returned to [the] parent's home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 248-249. In *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014) (quotation marks and citation omitted), this Court summarized:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the 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 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.

Further, the child's safety and well-being, including the risk of harm the child might face if returned to the parent's care, constitute factors relevant to a best-interest determination. *In re VanDalen*, 293 Mich App at 142.

A preponderance of the evidence in this case supports the trial court's decision that termination of respondent's parental rights served the child's best interests. The record reflects that the trial court considered all of the evidence in the record and the applicable factors for its best-interest decision. Review of the entire record establishes that a preponderance of the evidence weighed in favor of finding that termination of respondent's parental rights served the child's best interests. The record reflects that the child had a bond with respondent but as time passed that bond diminished. The record also indicates that respondent lacked parenting skills. Although she participated in parenting time sessions, the record indicates that she failed to focus on the child's needs, sometimes respondent became emotionally escalated, and at times she talked in the child's presence about inappropriate matters. After parenting time sessions, evidence established that respondent's conduct negatively impacted the child. Respondent's inappropriate behaviors resulted in the suspension of her parenting time. Respondent never participated in programming to learn parenting skills. The child's caseworker testified that the child's behavior improved significantly after the suspension of respondent's parenting time. The child no longer displayed tantrums or acted out aggressively. Further, she improved significantly and moved from a special education classroom to general education. The child's caseworker also testified that the child had developed a bond with her foster parents and the other children in the foster home. The caseworker concluded that the child needed stability and permanency and that termination of respondent's parental rights served the child's best interests. Evidence also established that the foster family indicated interest in adopting the child if respondent's parental rights were terminated.

The trial court considered the evidence and found that the child needed stability and permanency and her needs were being well met by the foster family, a potential adoptive family. The trial court found that the child had developed a real bond with her foster parents. The trial court correctly found that respondent failed to participate and benefit from her service plan. Based upon all of the evidence presented, the trial court correctly concluded that termination of respondent's parental rights served the child's best interests. A preponderance of evidence supported the trial court's decision. Therefore, it did not err by terminating respondent's parental rights.

Affirmed.

/s/ Anica Letica

/s/ Kirsten Frank Kelly

/s/ James Robert Redford