

STATE OF MICHIGAN
COURT OF APPEALS

In re MURPHY, Minors.

UNPUBLISHED
November 12, 2020

No. 352935
Wayne Circuit Court
Family Division
LC No. 18-000002-NA

Before: O’BRIEN, P.J., AND BECKERING AND CAMERON, JJ.

PER CURIAM.

Respondent-father appeals the trial court’s order terminating his parental rights to his minor children, CM and KM, under MCL 712A.19b(3)(a)(ii) (desertion for 91 days or more), (c)(i) (conditions that led to the adjudication continue to exist), (c)(ii) (failure to rectify other conditions), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood the children will be harmed if returned to the parent’s home).¹ We affirm.

I. BACKGROUND

This matter began on December 31, 2017, when the Department of Health and Human Services (“DHHS”) filed a petition. The petition alleged that, in December 2017, the minor children’s mother² was accused of inflicting “severe head trauma” on her three-month-old nephew while he was in her care in Indiana. After the incident, respondent brought the minor children to Michigan, where Child Protective Services (“CPS”) was informed of the allegations in Indiana. The petition alleged that, when CPS attempted to check on the children’s well-being, respondent was uncooperative and appeared to be under the influence of an unknown substance. Respondent refused to submit to a drug screening. The petition further alleged that respondent appeared to be “easily agitated” and that he was “aggressive with CPS, yelling and threatening CPS to leave his

¹ The order references MCL 712A.19b(3)(c)(iii), which does not exist. However, upon review of the trial court’s detailed findings of fact, it is clear that the trial court found that termination was proper under MCL 712A.19b(3)(c)(i) and (c)(ii).

² While the parental rights of the children’s mother were terminated, she is not a party to this appeal.

property.” The petition additionally alleged that respondent was “a felon in possession of a gun” and that neighbors had reported that he “shoots guns in the backyard of the home.” The petition requested that the trial court remove the children from respondent’s care and custody and exercise jurisdiction over the children. On that same day, an ex parte order to take the children into temporary protective custody was issued. The petition was later authorized, and respondent was granted supervised parenting time.

At an April 12, 2018 hearing, respondent admitted to abusing illegal substances at the end of 2017 and admitted that he had tested positive for cocaine on January 5, 2018. Respondent also admitted that he was convicted of aggravated battery in September 2012. Thereafter, the trial court exercised jurisdiction over the children and ordered that reasonable efforts toward reunification would be made with respect to respondent. DHHS created a case service plan, which the trial court adopted. The case service plan required respondent to submit to a psychological evaluation, substance abuse counseling, weekly drug screenings, and a parenting class. Respondent was also required to obtain suitable housing and a legal source of income, to participate in visitations with the minor children, and to cooperate with DHHS. Respondent’s participation in the case service plan was poor, and he did not consistently attend visitations with the children. After January 2019, respondent stopped attending visitations, stopped consistently attending court hearings, and stopped participating in services.

In April 2019, petitioner filed a supplemental petition, requesting that the trial court terminate respondent’s parental rights to the children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). The termination hearing was held on February 5, 2020, and respondent failed to appear despite being provided notice. After the close of proofs, the trial court found that reasonable reunification efforts were made but that respondent had failed to take advantage of the services. The trial court also concluded that statutory grounds existed to support the termination of respondent’s parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), and (j) and that termination of respondent’s parental rights was in the children’s best interests.³ This appeal followed.

II. ANALYSIS

A. STATUTORY GROUNDS

Respondent argues that the trial court clearly erred by finding clear and convincing evidence supporting the 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). A finding is clearly

³ Although the supplemental petition did not list MCL 712A.19b(3)(a)(ii) as a statutory ground for termination, petitioner made arguments at the termination hearing that termination of respondent’s parental rights was proper under MCL 712A.19b(3)(a)(ii). Evidence supporting that respondent had deserted the children for more than 91 days during the proceeding was also presented.

erroneous if, although there was evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). To be clearly erroneous, a decision must be more than maybe wrong or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

We conclude that the trial court did not clearly err by finding that a ground for terminating respondent's parental rights to the minor children was 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[ren] 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[ren]'s age[s].

Our Supreme Court has held that "a parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody[.]" *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

In this case, the record overwhelmingly establishes that respondent failed to comply with the case service plan. He never provided proof that he had obtained suitable, independent housing. Indeed, at times during the proceeding, case workers were unsure of where respondent was living. While respondent reported to DHHS and to the trial court that he was employed, he never provided proof of his income. Respondent also failed to submit to a psychological evaluation. Although respondent did submit to a substance abuse assessment, he failed to comply with the recommendations and did not complete substance abuse treatment. Respondent failed to consistently participate in weekly substance screenings even though he was informed that missed screenings would be considered positive. Specifically, of the 80 random screenings that were requested, respondent only submitted to 10 screenings. Respondent tested positive for marijuana, cocaine, and amphetamines during the proceeding, and respondent tested positive for illegal drugs during at least one of his visits with the minor children.

Respondent failed to complete a parenting class, failed to participate in the "parent partner program," and failed to consistently attend parenting time. Between January 2018 and January 2019, respondent cancelled 24 out of 51 visits with the children. When respondent did attend visitations, he struggled to "pay attention to both children." At the time of termination, respondent had not attended a visitation for more than a year. Respondent failed to remain in contact with the case workers during the proceeding, and he did not speak to case workers at all between March 29, 2019, and January 24, 2020. Respondent did not consistently attend review hearings, and he did not appear at the termination hearing despite having been provided notice. Thus, the record establishes that, although respondent was "financially able to do so," he was unable to provide proper care and custody at the time of termination.

Although respondent argues that termination was not appropriate because he required additional time to participate in services because "[d]rug addiction is a disease that is not easily or quickly conquered," the record establishes that respondent was offered a myriad of services, including inpatient treatment, to treat his substance abuse issues. Respondent failed to take advantage of these services, and he demonstrated a lack of commitment during the proceeding.

Given the lack of evidence that respondent would comply with the case service plan, would consistently attend visitations with the children, would establish that he had obtained legal income and stable housing, and would address his substance abuse issues, it is unlikely that he would do so within a reasonable time. At the time of termination, the children had spent more than two years of their young lives in care and had not seen respondent in more than a year. Because the children required consistency and permanency, we conclude that the trial court's finding that termination of respondent's parental rights was proper under MCL 712A.19b(3)(g) was not clearly erroneous. Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

In so holding, we note that respondent argues that "appropriate services were not given to [respondent] for the necessary period of time." 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, *People v Randolph*, 502 Mich 1, 10; 917 NW2d 249 (2018).

We conclude that the trial court did not plainly err by finding that petitioner made reasonable efforts to reunify respondent and the minor children. Petitioner referred respondent to a psychological assessment three times, parenting classes three times, and a substance abuse assessment once. Respondent did not complete the psychological evaluation or parenting classes. While respondent did complete the substance abuse assessment, he did not follow the recommendation and complete substance abuse treatment. Respondent was provided with weekly drug screens, which respondent mostly failed to submit to, and respondent failed to enter inpatient treatment despite it being offered to him on numerous occasions. Petitioner also offered weekly visits with the minor children, which respondent did not consistently attend and eventually stopped attending. Although it appears that respondent had issues with transportation at times, some of his services were in-home. Additionally, petitioner offered respondent gas cards and bus passes to assist him with getting to services that were out in the community. There is no indication that respondent took advantage of the transportation assistance.

Given that respondent failed to uphold his "commensurate responsibility" to engage in and benefit from the services offered by petitioner, see *In re Frey*, 297 Mich App at 248, we are not persuaded that he would have fared better if petitioner had offered other services, see *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). Indeed, it is unclear what other services petitioner could have offered, and respondent does not identify on appeal what additional services petitioner should have provided. We conclude that the trial court did not commit plain error affecting respondent's substantial rights when it determined that petitioner made reasonable efforts to promote reunification.

B. BEST INTERESTS

Respondent argues that the trial court clearly erred by finding that termination of his 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.*

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). “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 219, 237; 894 NW2d 653 (2016) (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 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 713-714 (quotation marks and citations omitted).]

The record does not support that respondent was bonded to the minor children. At the beginning of the proceeding, respondent was inconsistent with attending visitations. When respondent did attend, he struggled with parenting both children at once, and he tested positive for illegal substances during one visitation. Respondent altogether failed to attend visitation after January 2019. At the time of termination, respondent had not seen the children in more than a year. It was unknown whether the children, who were both younger than five years old, even knew respondent.

Furthermore, as already discussed at length, respondent failed to comply with the case service plan and failed to address his issues with substance abuse. Respondent consistently demonstrated a lack of commitment and an inability to provide stability and permanency to the children. Meanwhile, the children were doing well in their placement, where their special needs were being addressed and where they had the opportunity to obtain permanency. According to one of the case workers, the children were bonded to their foster parents and CM referred to them as “mom and dad.” 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/ Colleen A. O’Brien
/s/ Jane M. Beckering
/s/ Thomas C. Cameron