STATE OF MICHIGAN

COURT OF APPEALS

In re VANNATTER/COOPER, Minors.

UNPUBLISHED
December 10, 2020

Nos. 352587; 352588
Newaygo Circuit Court
Family Division
LC No. 18-009146-NA

Before: MURRAY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father and respondent-mother appeal as of right the order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(*i*) and (*ii*).[1] For the reasons stated in this opinion, we affirm.

The Department of Health and Human Services (DHHS) petitioned the trial court for the removal of the minor children, TV, MV, and MC, from the home after it received complaints that the children were sexually abusing each other.[2] The DHHS also alleged that mother and father were improperly supervising the children and physically abusing them. The DHHS also noted that it had previously investigated mother and father for the same allegations contained in the petition 17 times since 2012. The DHHS asserted that it created safety plans with mother and father, but mother and father failed to comply with them, and also physically threatened the children to not speak to the DHHS. The trial court authorized the petition, and removed the children from the

[1] The Department of Health and Human Services sought termination under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). The trial court did not specify on the record or in its written opinion under which provision it was terminating mother's and father's parental rights. However, the trial court's language in its written opinion indicates that it only terminated mother's and father's parental rights under MCL 712A.19b(3)(c)(*i*) and (*ii*).

[2] Mother and father lived together with the minor children, but father was not MC's legal or putative father. The DHHS identified another man as MC's putative father during the lower court proceedings, but he was not made a respondent.

home. The DHHS placed MC in a residential treatment facility, and placed TV and MV in separate foster-care homes.

The record establishes that in general mother and father initially complied with the service plans that they created with DHHS caseworker Kortney Aishe, but they failed to show any benefit from the services. They continued to deny that any sexual or physical abuse occurred in the home, despite the fact that during services the children revealed that they each had cognitive delays and also suffered from complex trauma. Additionally, during the proceedings, MV made several disclosures that implicated mother and father in the sexual abuse that was occurring in the home, so the trial court suspended mother's and father's parenting visits with the children. The DHHS also submitted a supplemental petition containing MV's disclosures, and the trial court authorized the supplemental petition. The DHHS then submitted a termination petition, and the trial court, finding that mother and father had not overcome the initial barriers in this case and would likely not do so in a reasonable time, terminated both father's and mother's parental rights. Mother and father now appeal.

Father first argues that the DHHS did not make reasonable efforts toward reunification because it failed to accommodate his disability under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. We disagree.

Unpreserved issues are "limited to plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id*. at 9. "When plain error has occurred, [r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant *or* when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. (quotation marks and citations omitted; alterations in original).

"Under Michigan's Probate Code, the Department has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). See MCL 712A.18f(3)(b) and (c); MCL 712A.19a(2). "As part of these reasonable efforts, the Department must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *Hicks/Brown*, 500 Mich at 85-86. See MCL 712A.18f(3)(d). The DHHS "also has obligations under the ADA that dovetail with its obligations under the Probate Code." *Hicks/Brown*, 500 Mich at 86. For example, the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 USC 12132. Additionally, 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 public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 CFR 35.130(b)(7)(*i*) (2016). See *Hicks/Brown*, 500 Mich at 86.

If the DHHS fails to make "reasonable modifications to the services or programs offered to a disabled parent, the Department has failed in its duty under the ADA to reasonably

accommodate a disability." *Hicks/Brown*, 500 Mich at 86. "In turn, the Department has failed in its duty under the Probate Code to offer services designed to facilitate the child's return to his or her home, see MCL 712A.18f(3)(d), and has, therefore, failed in its duty to make reasonable efforts at reunification under MCL 712A.19a(2)." *Id*. Therefore, "efforts at reunification cannot be reasonable under the Probate Code if the Department has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA." *Id*.

The record establishes that the DHHS accommodated father's disability. Aishe informed the trial court at the beginning of this case that father had a disability. Aishe referred father to a psychological evaluation, and the evaluation revealed that father had an "intellectual development disorder." Aishe told the trial court about this disorder, and she acknowledged that father's disorder meant that he would struggle to follow instructions. Aishe also informed the trial court about the ways in which she was accommodating father, including by sending the father's counselor the psychological evaluation results, and then discussing his disorder and how to best treat father. Aishe specifically informed father's counselor that "role-playing or modeling" would help father. Father's evaluation also revealed that he had a personality disorder, and Aishe recognized that this disorder meant that father would struggle with attending and participating in counseling. Aishe testified that she would ensure that father attended his counseling appointments. Additionally, when Aishe held family-team meetings, she always specifically asked father whether he had any additional questions. She also explained to mother what father needed to do so that mother could help explain to father what he needed to do. Furthermore, after Aishe referred father to Supportive Visitation Services for parenting education, she spoke to Supportive Visitation Services about father's disorders so that it could implement "role-playing or modeling" to assist father. Therefore, the record indicates that the DHHS accommodated father's disability.

The record also indicates that although the DHHS provided father services that accommodated his disability, father failed to fully participate in services. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Aishe repeatedly testified that father was reluctant to speak to her, which made it difficult to assess his participation or his benefit from services. Additionally, Aishe testified that father stopped scheduling family-team and Wraparound meetings, and that she was unsure whether father was still attending his counseling services because he refused to schedule or attend any meetings. Therefore, because father did not fully participate in services, his argument must fail. See *id*.

Turning now to the merits, father next argues that the trial court erred by terminating his parental rights under MCL 712A.19(3)(c)(*i*). "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 trial court's factual findings following a termination hearing are reviewed for clear error. *In re Gonzales/Martinez*, 310 Mich App 426, 430; 871 NW2d 868 (2015). "A finding is clearly erroneous if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id*. at 430-431 (quotation marks and citation omitted). Whether the trial court properly selected, interpreted, and applied a statute is reviewed de novo. *Id*. at 431.

Termination of parental rights under MCL 712A.19b(3)(c) is proper when "182 or more days" have elapsed since the trial court issued its first dispositional order. Additionally,

termination of parental rights under MCL 712A.19b(3)(c)(*i*) is proper when "[t]he 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."

The trial court did not clearly err in terminating father's parental rights under MCL 712A.19b(3)(c)(*i*). More than 182 days elapsed between the issuance of the initial dispositional order and the termination of father's parental rights. See MCL 712A.19b(3)(c). Additionally, the record indicates that father never rectified any of the barriers to reunification. To overcome his initial barriers—parenting skills, emotional stability, child characteristics, and sexual abuse—father participated in the services of supervised parenting, parenting education, and counseling. However, as noted, father did not always fully participate in services, as his communication with Aishe was limited, and during parenting visits, he talked about inappropriate topics and played on his phone. The record also indicates that father eventually stopped participating with his service plan, and that ultimately father never benefited from the services. Aishe repeatedly expressed concern about father's "extreme denial" about what happened in the home. Specifically, father denied that any sexual abuse or violence occurred in the home, and he denied that the children ever needed to be removed from the home. Father's only admission was that the children "were difficult to manage."

Furthermore, the record supports the trial court's finding that father would be unable to rectify the conditions that led to adjudication within a reasonable time considering the children's ages. See MCL 712A.19b(3)(c)(*i*). At the termination hearing, TV was eight years old and MV was 11 years old, and both were behind in school, suffered from complex trauma, had cognitive delays, were hypersexualized, and struggled to control their aggressive behaviors. TV's and MV's service providers testified that both needed to feel safe and secure in order to work on their trauma and cognitive delays. The children also needed specialized services and care to overcome the trauma that they had endured in the home. However, Aishe testified that the children would not be safe in the home, and it would be difficult for father to ever overcome the barriers because after years of services, he continued to refuse to acknowledge what happened in the home. Therefore, because this case was ongoing for over 182 days, and father was not likely to make any progress within a reasonable time considering the children's ages, the trial court did not clearly err by finding that termination was proper under MCL 712A.19b(3)(c)(*i*). See *Gonzales/Martinez*, 310 Mich App at 430.

Mother likewise argues that the trial court erred by terminating her parental rights under MCL 712A.19b(3)(c)(*i*). We again conclude otherwise.

It is undisputed that more than 182 days elapsed since the trial court issued the initial dispositional order. See MCL 712A.19b(3)(c). Additionally, although the record indicates that mother liked and enjoyed participating in services, she was never able to show that she benefited from any of the services. There were concerns about mother's behavior during her parenting visits with TV and MV, and she struggled to make and communicate the appointments that she made for herself and the children. Mother also repeatedly denied that any sexual abuse, violence, or traumatic events occurred in the home. Furthermore, by the termination hearing, mother had stopped scheduling family-team and Wraparound meetings, and Aishe was unsure whether mother was still in counseling. Therefore, mother never overcame the barriers to reunification.

The record also supports the trial court's finding that mother would be unable to rectify the conditions that led to adjudication within a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(*i*). The children had spent approximately one year in the foster-care system, and during that time, the trial court learned the extent of the children's cognitive limitations and trauma, which partially stemmed from their time living in the home with mother. The children's service providers emphasized the importance of the children having good support systems, trusting relationships, and a safe and loving environment to overcome the trauma that they endured in the home. However, after years of services, mother continued to deny that any abuse occurred in the home. Aishe testified that it would be difficult for mother to ever make any progress to overcome the barriers in this case because after years of services, she continued to refuse to acknowledge what happened in the home, or that any barriers to reunification existed. Therefore, because this case was ongoing for over 182 days and evidence supported the conclusion that mother was not likely to make any progress within a reasonable time considering the children's ages, the trial court did not clearly err by finding that termination was proper under MCL 712A.19b(3)(c)(*i*).[3]

We also reject mother's argument that the trial court erred by finding that it was in the children's best interests to terminate her parental rights.[4] "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). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." See *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court must evaluate each child's best interests individually, *Olive/Metts Minors*, 297 Mich App at 42, unless the best interests of the individual children do not significantly differ, then the trial court need not repeat the same factual findings for each child, *In re White*, 303 Mich App 701, 715; 846 NW2d 61 (2014). The trial court should "consider such factors as 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 Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016) (quotation marks and citation 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." *White*, 303 Mich App at 714. The focus of this determination is on the child, not the parent. *Schadler*, 315 Mich App at 411.

Mother argues that the trial court improperly found that there was no relative placement for the children when determining whether it was in their best interests to terminate mother's

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[3] Mother also argues that the trial court erred by terminating her parental rights under MCL 712A.19b(3)(c)(*ii*), but because the trial court properly terminated mother's parenting rights under MCL 712A.19b(3)(c)(*i*), we need not determine whether termination under MCL 712A.19b(3)(c)(*ii*) was proper. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

[4] Mother also argued that the trial court improperly relied on inadmissible hearsay when deciding to terminate her parental rights. However, because mother failed to provide this Court with the statements that she believed amounted to inadmissible hearsay, or explain how those statements amounted to hearsay, she has abandoned this issue on appeal. See *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

parental rights. The record supports that DHHS caseworker Megan Hagle looked into relative placements for the children, but was hesitant to make a referral because there were "numerous people from the families" who had some history with sexual abuse. Therefore, the trial court did not clearly err by finding that there was no appropriate family placement for these children.

The trial court also properly considered and weighed mother's participation in her service plan in favor of termination. See *White*, 303 Mich App at 714. There is no dispute that mother initially complied with her service plan, but by the termination hearing, concerns existed about mother's lack of participation. Mother stopped scheduling family-team and Wraparound meetings, and Aishe was no longer confident that mother was attending counseling. Additionally, Aishe repeatedly expressed concern that mother was not benefiting from the services because she refused to recognized that any sexual abuse or violence occurred in the home. See *Schadler*, 315 Mich App at 411.

Additionally, because each child had significant trauma and cognitive delays, the trial court also properly considered and weighed the children's need for permanency, stability, and finality in favor of termination. See *id*. The record indicates that the children had been involved in over 17 DHHS investigations since 2012, involving physical abuse, sibling-on-sibling sexual abuse, and improper supervision. Mother repeatedly proved that she was unable to keep the children safe by failing to acknowledge that any abuse occurred in the home, and by failing to follow any of the safety plans that she created with the DHHS. The children's service providers testified that in order for the children to work on their cognitive delays and trauma, which were partially a result of their experiences in the home with mother, they needed to be in a safe, loving, and stable home.

Furthermore, although adoption did not look like a possibility for any of the children, see *White*, 303 Mich App at 714, the record indicates that the children's placements provided them the safe and stable environment that they needed, see *Schadler*, 315 Mich App at 411. MV indicated that she loved and felt safe with her foster-care family. She made significant educational strides, and her behavior improved significantly. TV also made significant educational and behavioral strides while in foster care, and by the termination hearing, TV's foster-care mother reported that TV was able to independently complete his school work, was more talkative, and exhibited more emotions than when he first moved in. MC also made significant improvements at the residential facility. When MC first moved into the facility, there were concerns about her aggressive and sexualized behavior and her reluctance to open up. By the termination, MC's aggressive behavior decreased, she was starting to speak to her counselor, and her interactions with the other children at the facility were improving.

Finally, although the trial court was not required to consider the bonds that each child had with mother, see *Olive/Metts*, 297 Mich App at 42-43, the record indicates that this factor would have weighed in favor of termination, see *Schadler*, 315 Mich App at 411. MV was happy when she learned that she no longer had parenting visits with mother, and MV indicated to her therapist that she did not have a connection with mother. TV refused to talk about mother to anyone, and when he was injured on his foster-care family's farm and had to go to the hospital, he only asked for his foster-care mother. Neither MV nor TV ever mentioned wanting to go home. MC verbalized that she trusted mother, but indicated that she only wanted to speak to mother so that mother could bring her some of her possessions from the home. Additionally, MC indicated that

she wanted to return to the foster-care home that she was staying at before she was placed in the residential facility.

Based on this evidence, a preponderance of the evidence supports the trial court's conclusion that termination of mother's parental rights was in TV's, MV's, and MC's best interests. See *Moss*, 301 Mich App at 90. The trial court's finding was not clearly erroneous.

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens