

STATE OF MICHIGAN
COURT OF APPEALS

In re BUDZIAK, Minors.

UNPUBLISHED

April 15, 2021

No. 354798

Iosco Circuit Court

Family Division

LC No. 18-000667-NA

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

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating her parental rights to her children, DB and LB, under MCL 712A.19b(3)(c)(i) and (j).¹ Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

On August 23, 2018, Ryan Eberline, a child protective services (CPS) investigator, received a referral that respondent, her husband, and their two infant children were living in a relative’s home that was subject to foreclosure. The home appeared to be under construction, and there were tools, machinery, and exposed wires accessible in the home. Additionally, the home was extremely dirty, there were animal feces throughout it, and there was a bug infestation. Cleaning supplies, a BB gun, and debris were exposed to the eldest child, DB, who was able to walk. The home did not have running water. The family did not have clean clothes or clean baby bottles. It was one of the most “traumatizing, neglectful situations” that Eberline had witnessed in her career. Immediate services were put in place to clean the home, remove the animal feces and bugs, and provide adequate water to the family.

¹ Although respondent asserts on appeal that the trial court terminated her parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), the trial court’s findings reflect that respondent’s parental rights were only terminated under MCL 712A.19b(3)(c)(i) and (j). The parental rights of the children’s father, respondent’s husband, were also terminated, but he is not a party to this appeal.

Angela Kortman began to supervise the family and found that there were several barriers to closing the case, including neglect of the children, a lack of suitable housing, unemployment, the need for parenting classes, domestic violence, and medical issues. Despite the provision of services from five different entities, Kortman witnessed the condition of the home decline further. The children continued to be dirty and unkempt, and there were choking and other safety hazards present in the home. Additionally, respondent took medication apparently for back pain that rendered her unconscious or incoherent, and the children's father reportedly suffered from seizures. Respondent lacked "natural" parenting skills that should have been evident. She did not remove dangers to DB who could crawl on the floor, did not regularly change the children's diapers, did not feed the children on a schedule, and did not have clean bottles available. The animals contributed to the smell of the home, and urine-soaked areas were present on the wood floors. Furthermore, there were allegations that the couple engaged in domestic violence in front of the children and did not comply with the safety plan. Although respondent appeared to love her children, she did not possess the capability to parent. Also, both parents had criminal contacts with law enforcement. Because of the decline in the circumstances, the court authorized the removal of the children, and they were placed in foster care.

Richel Kubik assumed the foster care case to find there was a lack of employment, deplorable housing conditions, lack of mental health care, lack of parenting skills, substance abuse, and domestic violence. Although the couple moved into an apartment, petitioner's agent paid the rent. However, the agency only paid for a year, and before the conclusion of the year, the couple broke up, and respondent could not afford to pay the rent. Respondent was able to secure two part-time jobs. However, both employers represented that respondent failed to report or communicate, resulting in her termination. Additionally, respondent did not regularly attend her mental health counseling, she failed to take her medication, and she no longer had the means to obtain it. Respondent did not regularly participate in drug screens, but when she did, she tested negative. The drug screens were required because respondent was charged with operating under the influence of marijuana.

Respondent graduated from parenting classes, but she did not learn the concept of stages of development. More importantly, the cleanliness of the home continued to be an issue because of foul odors, animal feces, and bedbugs. Consequently, the children could not be taken to the apartment for home visits anymore. Additionally, the children suffered from anxiety before and after the visits and would cling to their foster parents or the agency supervisor. Initially, the visits were moved to outdoor parks, but then to the agency visitation room. In the agency room, the supervisor had to remind respondent to redirect the children, feed them, and to change their diapers. During the visits, DB placed himself in a corner and did not engage respondent, and LB did not respond to respondent. Also, the couple would swear and argue with each other in front of the children. Respondent missed nearly half of the parenting time offered, which consisted of two-hour sessions held twice weekly. Petitioner agreed to provide the supervision, schedule, location, and transportation for the visits, but respondent never indicated that she required transportation assistance. Instead, respondent's guardian drove respondent to the parenting time. Respondent

frequently reported that she missed visits because the couple overslept, and when they did attend, her clothing was dirty, and she had a foul odor.²

Kubik knew that respondent may have had difficulty maintaining a working phone number. But, even when she attempted to visit respondent in person, the couple was sleeping, and the worker was not allowed access to the home. Shortly thereafter, Kubik was no longer assigned to the case. However, in light of her observations during her supervision of the case, she opined that the children faced a substantial risk of harm if returned to the parents, the barriers that caused the children's removal were not remedied, and adequate services were provided to try to remedy the barriers.

Hannah Perryman supervised the visits and found respondent's parenting time to be "inconsistent." Parenting time was missed because the couple overslept. During the visits, respondent sometimes followed a worker's direction, but then reverted back to old habits. DB reacted "rough" during the visits. Sometimes, he would throw himself to the ground and cry and refuse to enter the agency. Additionally, DB would hit and punch respondent. The parents used their phones "a lot." Respondent played the "Baby Shark" song on her phone to calm DB, but Perryman would have preferred reading a book or using a toy instead of relying on the phone. In fact, respondent was repeatedly told that a "rule" of the visits was that "no phones" were to be used. Respondent was dressed appropriately for the visits, but had a foul smell, and the room was "sprayed" after the visits. The most recent visit had occurred in the park because of the pandemic. During the quarantine, the visits were held online. Respondent loved the children and was bonded to them, particularly DB. However, Perryman opined that the lack of a bond between the children and respondent was a barrier to reunification.

Andrea Balliet worked as a senior school success liaison and attempted to remove barriers that prevented a child or family from being successful. Balliet worked with respondent after DB was born and tried to find shelter, food sources, healthcare, and mental healthcare for her. Eventually, Balliet changed jobs. However, at the conclusion of Balliet's work, respondent had the same barriers to success, and it was a constant struggle for respondent to maintain a suitable home, stability, and mental health. Balliet provided transportation to respondent for visits or other necessities, and she assisted in obtaining respondent's apartment with the rent-paid by an agent for one year. However, there were times when Balliet dropped respondent off for parenting time, but later learned that respondent never attended the visit. She also learned that respondent was evicted from the apartment because the landlord arrived to find individuals partying in the home in respondent's absence. Balliet opined that respondent loved her children, but led a traumatic, unstable life, did not have the skills to take care of the children, and was not bonded to them. Although respondent spoke to the school counselor and was encouraged to address her mental health issues, she failed to follow through with a mental health professional. Thus, Balliet opined

² Kubik acknowledged that the couple broke up when she supervised their case. However, Kubik declined to separate respondent's parenting time from the father's time because of the adverse emotional reaction by DB to the visits.

that, after two years, service providers “tried everything in our tool kit” to remove respondent’s barriers, but were unsuccessful.³

Erika Rice, foster care service specialist, filed a supplemental petition to terminate respondent’s parental rights shortly after being assigned to the case. In seeking termination, Rice relied on the failure to secure housing and employment, respondent’s recent incarceration, the failure to seek mental health counseling, and the failure to demonstrate parenting skills during supervised visits. The children had been placed in foster care for over a year, and respondent was not in compliance with her parent-agency treatment plan. Respondent recently moved into a room of her brother’s home, but there was no indication that the children could live there. During the parenting visits, respondent was not completely focused on the children. When video visits were used because of the pandemic, respondent could not be reached for a month to schedule the visits. Yet, despite the pandemic, respondent continued to receive services.

Rice acknowledged that respondent did not always have a working phone number. Consequently, recent communication with respondent was through e-mail, but it took a couple of days for her to answer. Respondent did not ask Rice for phone cards or a Tracphone to assist in communicating. Rice opined that housing, employment, substance abuse, parenting skills, and resource management remained unresolved issues by respondent and that she failed to benefit from the services provided. Rice concluded that it was in the best interests of the children to have respondent’s parental rights terminated. She further maintained that petitioner provided adequate resources and assistance to overcome barriers. Rice recognized that respondent requested separate parenting time from her husband, the children’s father. However, the travel distance for the children and their emotional reaction to the visits weighed against separate visits. Once it became apparent to Rice that the children’s father threatened respondent, the visits were separated.

Respondent testified that she was currently employed as a cashier at a tobacco shop. During the quarantine, she took on odd jobs such as mowing lawns and walking dogs. She currently rented a room from her brother’s family. Respondent was looking for a third therapist, but found speaking to family and friends was more helpful. She attributed many of her problems to the children’s father, but was no longer in a relationship with him. Her fear of him prevented her from seeing her children. Respondent testified that she cared for an animatronic baby for a week to demonstrate that she could care for a baby. She loved her children and believed that her parenting skills “worked.”

On cross-examination, respondent admitted that she did not contact law enforcement after the children’s father assaulted her. She testified about not attending 30 of 80 parenting visits, but blamed the children’s father for failing to attend. She also faulted him for her inability to secure housing because of his presence on the sex offender registry. Although she did not attend therapy, respondent opined that her practice of meditation and exercise improved her mental health. She explained that her lack of communication with the agency was because of “wifi” problems, and

³ Following Balliet’s testimony, Angela Giori, a private therapist, provided opinion testimony regarding DB. However, the trial court disregarded the testimony and admonished petitioner for presenting it to circumvent an earlier unfavorable court ruling.

she tried as best as she could. When asked if the agency provided transportation, respondent testified that Rice gave her access to bus transportation.

At the conclusion of the testimony, the guardian ad litem for the children argued that the children's ages, the amount of time spent in foster care, and "the complete lack of participation" demonstrated that the statutory grounds were established and that termination was in the best interests of the children. At the next hearing, the trial court rendered its factual findings and conclusions of law, determining that the statutory grounds were established. Additionally, the trial court concluded that the children needed stability, a family that they recognized, and the length of time in foster care demonstrated that they looked to others as parents. Because of the children's ages, their needs, and a lack of progress, the trial court concluded that termination of parental rights was in the children's best interests.

II. REASONABLE EFFORTS

Respondent first alleges that petitioner failed to make reasonable efforts to reunify respondent with her children by tailoring the services to her needs. We disagree.

To preserve an issue regarding whether reasonable efforts for reunification were made, a respondent must raise the issue when the services are offered. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). When a respondent fails to "object or indicate that the services provided to [her] were somehow inadequate," the issue is not preserved. *Id.* Because respondent failed to object or indicate that the proposed services were somehow inadequate at the time the services were offered, this issue is unpreserved.

Preserved challenges to a trial court's findings regarding reasonable efforts are reviewed for clear error. *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* (citation and quotation marks omitted). Unpreserved challenges to a trial court's findings regarding reasonable efforts are reviewed for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "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." *Id.* (citation and quotation marks 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 1, 9; 761 NW2d 253 (2008) (citation omitted).

"Reasonable efforts to reunify the child and family must be made in all cases except those involving aggravated circumstances under MCL 712A.19a(2)." *In re Rippy*, 330 Mich App 350, 355; 948 NW2d 131 (2019) (citation omitted).⁴ As part of these reasonable efforts, petitioner must create a service plan that includes services meant to facilitate the child's return to the home. MCL 712A.18f(3)(d). "If a child continues in placement outside of the child's home, the case service plan shall be updated and revised at 90-day intervals . . ." MCL 712A.18f(5). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to

⁴ This case does not involve aggravated circumstances under MCL 712A.19a(2).

terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009) (citation omitted). "While [petitioner] 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 (citation omitted).

Respondent asserts that petitioner failed to provide tailored services to address respondent's mental health, lack of transportation, lack of access to a telephone or computer, medical concerns, and domestic violence concerns. Although petitioner created a service plan that was meant to facilitate the children's return to respondent's home, respondent failed to fulfill her commensurate responsibility to participate in the services that were offered.

Petitioner made reasonable efforts to provide mental health services. The record reflects that respondent was referred to mental health professionals, engaged in mental health services for a period of time, and was prescribed medication. However, respondent failed to participate in the services on a regular basis and lost access to her medication as a result.

Furthermore, petitioner made reasonable efforts to provide housing and employment services. Respondent initially received assistance from an organization that gave respondent money to purchase necessities for the children and helped respondent clean her home. Respondent also received services from the Northeast Michigan Community Service Agency (NEMCSA) which helped respondent find housing and paid respondent's rental costs for a year. NEMCSA employees also assisted respondent in finding employment, but respondent was fired after approximately two months for a lack of attendance. Respondent did not attempt to find more affordable housing, and respondent was required to leave the apartment just prior to the one-year rental period ended. Recently, respondent rented a room in the home occupied by her brother's family, but there was insufficient space to accommodate the children.

Additionally, petitioner made reasonable efforts to foster respondent's parenting skills. Although respondent completed parenting classes, she did not benefit from the classes and displayed inadequate parenting skills during scheduled visits with the children. Respondent attended the visits with the children on a sporadic basis and did not appear to share a strong bond with the children. Notably, DB reacted negatively before, during, and after scheduled visits with respondent, and LB did not appear to acknowledge respondent during the visits. DB also broke out into hives before the visits occurred.

Respondent attributed her sporadic visitation to petitioner's failure to make reasonable efforts to provide transportation services for respondent. In January 2019, Kubik noted that transportation was an "issue" for respondent. Petitioner initially accommodated respondent's lack of transportation by conducting supervised visitation at respondent's apartment between January 2019 and April 2019. After April 2019, visits were moved to an agency facility because respondent's apartment was unsanitary and not fit for children. There is no evidence that respondent notified Kubik of her need for transportation after April 2019. Notably, Kubik believed that Linda Wade, an individual providing support for respondent, had agreed to transport respondent to and from scheduled visits with the children. Nonetheless, Kubik testified that she would have arranged for respondent to receive transportation if respondent had asked Kubik to do so. Respondent also received transportation assistance from county resource specialist Balliet, who testified that she occasionally transported respondent to hearings and visits with the children.

Lastly, foster care worker Rice gave respondent bus passes after Rice was assigned to the case in November 2019.

Respondent further attributes her sporadic communication to petitioner's failure to make reasonable efforts to provide respondent with access to a telephone and a computer, contending that Rice was aware of this issue, but failed to act. In support of this assertion, respondent relies upon petitioner's June 11, 2020 treatment plan documenting that respondent did not have a working telephone number, but was able to communicate with Rice through e-mail. Importantly, respondent does not identify any evidence that Rice or other caseworkers were aware of respondent's technological limitations before June 2020. Similarly, there is no evidence that respondent requested assistance in obtaining access to a telephone or computer during the proceedings.

Respondent also asserts that petitioner failed to make reasonable efforts to tailor its services to respondent's health conditions, which included back pain and cancer. Indeed, the December 26, 2018 case service plan indicates that respondent had a herniated disk in her back. As a result, a safety plan was instituted regarding who would care for the children because respondent's medication adversely impacted her parenting ability. However, there is no evidence that respondent requested an accommodation relating to her back pain or that respondent's back pain prevented her from complying with her case service plan. Similarly, respondent correctly asserts that caseworkers became aware of respondent's potential cancer diagnosis in or around February 2020. The February 25, 2020 court report indicates that respondent was undergoing tests to determine whether she had cancer. Nevertheless, later court reports show that respondent never informed the caseworkers that she was diagnosed with cancer and did not provide any updates regarding her physical wellbeing. Importantly, respondent never requested an accommodation in regard to her cancer diagnosis.

Finally, respondent attributes her sporadic visitation attendance to petitioner's failure to make reasonable efforts to accommodate her domestic violence concerns. Domestic violence was a concern when the case began in November 2018, and respondent maintained her relationship with the children's father until July 2019. In July 2019, respondent requested to attend visits without the children's father present.⁵ However, it is unclear whether respondent informed Kubik that she wished to attend visits without the children's father out of fear of domestic violence. Regardless, petitioner denied the request out of a concern for the children's wellbeing. Rice testified that respondent's request was denied because separate visitation would require the children to double their attendance at supervised visits. Rice stated that separate visitation would be harmful to the children in light of DB's adverse reaction to visitation particularly in light of respondent's sporadic attendance at the visits. Rice testified that she began to allow separate visitation in June 2020 after she became aware that the children's father had threatened respondent.

⁵ Respondent contends that she was faulted for having a relationship with the children's father, but yet also was criticized when she separated herself from him. In context, a caseworker indicated that respondent faulted the children's father for missed visits because he turned off their alarm. However, the caseworker noted that even after separating from the children's father, respondent missed a visit because she overslept.

In sum, plain error did not occur when the trial court determined that petitioner made reasonable efforts to reunify respondent with her children. Respondent was offered services meant to address her mental health needs, inadequate housing, and inadequate parenting ability, but respondent failed to fulfill her commensurate responsibility to participate in the services that were offered to her.

III. STATUTORY GROUNDS

Respondent also contends that the trial court clearly erred when it determined that there were statutory grounds to terminate respondent's parental rights. We disagree.

In order to terminate parental rights, a trial court must find that a statutory ground has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). The trial court's findings regarding statutory grounds are reviewed for clear error. *Id.* "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* (citation and quotation marks omitted).

A. MCL 712A.19b(3)(c)(i)

A trial court may terminate parental rights under MCL 712A.19b(3)(c)(i) if 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds that "[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 entered the initial dispositional order on January 9, 2019. Thus, more than 182 days had elapsed when, on August 20, 2020, the trial court entered an order terminating respondent's parental rights. Furthermore, the conditions that led to adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages. The conditions that led to adjudication included a lack of adequate parenting skills, a lack of adequate housing, domestic violence, and neglect. Although respondent addressed the domestic violence concerns by ending her relationship with the children's father, the other conditions still existed on the date of the evidentiary hearing.

The record reflects that respondent completed parenting classes, but failed to benefit from them. Respondent attended scheduled visits with the children on a sporadic basis. The caseworkers testified that respondent did not demonstrate strong parenting abilities during the visits, and respondent did not share a strong bond with the children. Notably, DB reacted negatively before, during, and after scheduled visits with respondent, and LB did not appear to acknowledge respondent during the visits. Additionally, respondent was unable to maintain her own personal hygiene and was frequently dirty during the visits. One caseworker opined that respondent was not able to grasp basic parenting skills. Thus, the record reflects that respondent failed to rectify her inadequate parenting skills.

Furthermore, respondent changed residences several times throughout the proceedings. More importantly, respondent was not able to maintain a clean home that was suitable for children. The children were initially removed from respondent's home due in part to unsanitary living

conditions. Respondent received assistance obtaining a new residence such that supervised visitation could take place there for a period of time. Ultimately, the location of supervised visits had to be changed to an agency facility because of the unsanitary conditions in respondent's home. On the date of the evidentiary hearing, respondent was renting a room in a four-bedroom home with five other individuals. Respondent acknowledged that she did not have any beds for the children in the home. Thus, the record reflects that respondent failed to rectify her inadequate housing conditions.

On the date of the evidentiary hearing, the children had been in foster care for large portions of their lives. Additionally, respondent was given the opportunity to rectify the conditions that led to adjudication over the period of approximately 20 months. In light of respondent's relative lack of progress over that period, there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages. Accordingly, the trial court did not clearly err when it determined that there were grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i).⁶

For purposes of completeness, we also note that the trial court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the children. *In re Martin*, 316 Mich App 73, 90; 896 NW2d 452 (2016). The children had been in care for over 20 months and required permanency and stability that respondent was not prepared to provide.

Affirmed.

/s/ Thomas C. Cameron
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly

⁶ Only one statutory ground needs to be established to support the termination of parental rights under MCL 712A.19b(3). *In re Martin*, 316 Mich App 73, 90; 896 NW2d 452 (2016). Although we need not address MCL 712A.19b(3)(j), we note that the trial court also did not clearly err in finding that this statutory ground was also satisfied.