

STATE OF MICHIGAN
COURT OF APPEALS

In re DAVIS/ORR/URSERY/WALLER/
CUNINGAN, Minors.

UNPUBLISHED
May 27, 2021

No. 354120
Wayne Circuit Court
Family Division
LC No. 2013-514697-NA

Before: BOONSTRA, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

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

I. FACTS

Respondent was 33 years old at the time her parental rights were terminated¹ and had eight children ranging in age from 1 to 14 years old. Respondent’s history with Child Protective Services (CPS) dates back to 2009 and includes a prior removal of several of the children from her care. Between 2009 and 2013, CPS investigated respondent several times for complaints of untreated mental health issues, physical abuse of the children, environmental and physical neglect of the children, and domestic violence. Preventive services were offered during this time to avoid removal of the children. In October 2013, CPS discovered respondent and her then four children living in unsuitable housing. There was no furniture in the home, the children were sleeping on pallets and cardboard, and the children were dirty and lacked adequate clothing. Petitioner, the Department of Health and Human Services (DHHS), filed a temporary custody petition and the trial court removed the four children from respondent’s care, making them temporary wards of the

¹ The parental rights of all but one of the children’s fathers to their respective children also were terminated.

court. Shortly thereafter, respondent gave birth to her fifth child, who was also removed from her care.

Respondent was ordered to comply with a parent-agency treatment plan designed to address her mental health issues, housing, and parenting skills. As part of her court-ordered services, respondent underwent a psychiatric evaluation in July 2014; she was diagnosed with bipolar disorder and was prescribed medication. In 2015, respondent gave birth to her sixth child, who was not removed from her care. Shortly thereafter, it was determined that respondent had met her reunification goals; the children were returned to her care, and the trial court terminated its jurisdiction in September 2015.

In March 2016, respondent gave birth to her seventh child. Later that year, CPS investigated complaints of neglect and respondent was, once again, offered preventive services. Despite this assistance, in August 2017, respondent and her children were found illegally residing in a vacant house, again lacking furniture and bedding. The children again were dirty and, although respondent received assistance for food, there was insufficient food in the home to feed the children. On October 13, 2017, the children were removed from respondent's care and a petition for permanent custody was filed.

At a hearing in June 2018, the court concluded that the children came within its jurisdiction based on respondent's untreated mental health issues, physical neglect, environmental neglect, and the substantial risk of harm to the children. However, the trial court did not find that statutory grounds to terminate respondent's parental rights were established by clear and convincing evidence. Consequently, the trial court dismissed the permanent custody petition, made the children temporary wards of the court, and ordered respondent to participate in a treatment plan that included psychological evaluation and treatment, visitation with the children, infant mental health services, individual counseling, domestic violence counseling, obtaining and maintaining suitable housing and a legal source of income, and documentation of her asserted hearing impairment.

The children were placed in various care arrangements; the two oldest children suffered from severe behavioral and mental health issues and were placed in residential treatment/living facilities. Two of the children were placed with a maternal great aunt, and the remaining children were placed in foster homes. Shortly after the disposition, respondent gave birth to her eighth child, who was removed from her care. The child was born prematurely and suffered from significant, life-threatening medical conditions requiring a tracheostomy. After his discharge from the hospital, the child was placed in a licensed foster home with some of his siblings where the foster mother, a nurse, was qualified to care for a medically fragile child.

Because of the medical fragility of the youngest child, any caregiver responsible for him required training to care for his tracheostomy, which included attending educational sessions and demonstrating that the caregiver could respond to the child's medical needs during a 24-hour period while in the confines of the hospital setting. Before the child was released from the hospital and to their care, the foster parents satisfied these requirements. Respondent, however, failed to participate in the 24-hour observation period offered by the hospital, and as a result respondent's visits with the child had to be supervised by someone with appropriate medical training.

In August 2019, petitioner determined that respondent had not made sufficient progress, and filed a supplemental petition seeking termination of respondent's parental rights to the eight children. The petition alleged that despite numerous services offered from 2013 to 2015, and again from 2016 through 2019, respondent failed to obtain suitable housing, improve her parenting skills, and to address her mental health and domestic-violence issues.

Also in August 2019, respondent gave birth to a ninth child, who did not survive. After the birth, respondent apparently had photographs taken of the deceased child, and the photographs were later found in the possession of one of respondent's other children. Some of respondent's other children also reported having seen the photographs, and one began having nightmares as a result. Respondent denied that she had shared the photographs with the children during parenting time.

At the termination hearing, the foster care case supervisor testified that the conditions that led to adjudication included respondent's untreated mental health issues and physical and environmental neglect of the children. Respondent's treatment plan required that she participate in supportive visitation, a psychological evaluation and recommended treatment, individual therapy, domestic-violence counseling, and parenting classes. She was also required to obtain suitable housing and a legal source of income. According to the foster care case supervisor, during the two years that the children had been in care, respondent only partially complied with the treatment plan, and to the extent that she participated in services, she had not benefited. Although respondent consistently attended parenting time with her older children, she did not visit with the youngest child. She completed parenting classes in 2013 and again in 2019, but did not benefit from the education. She continued to arrive late to parenting time and visits often were cut short because her behavior would cause the children to behave chaotically.

During the time that respondent was receiving services, she was observed exhibiting aggressive behavior, agitation, irritability, and mood swings. Respondent, however, failed to participate in mental health treatment and declined to take prescribed medication. Respondent also failed to participate in domestic-violence counseling ordered to address violence between respondent and the father of the eighth child. At the time of termination, respondent lacked suitable housing, and had failed to demonstrate proof of a legal source of income, other than SSI benefits.

The foster care case supervisor testified that termination of respondent's parental rights would be in the children's best interests. She noted that all of the children had special needs, including mental health concerns, hearing deficiencies, and learning disabilities. According to the foster care case supervisor, respondent had not demonstrated that she had the ability to make proper decisions relative to her children's needs. Moreover, respondent had not benefited from years of services and, as a consequence, the children would be at risk of harm in her care. By contrast, the children were improving in their current placements where they were being given stability and permanence. The foster care case supervisor and the foster care workers working with the children testified that the children were negatively affected by contact with respondent.

Respondent testified that she recalled receiving a parent-agency treatment plan and understood that there were certain things she was ordered to do. Respondent explained that she was receiving \$514 a month in SSI benefits and also was entitled to a lump sum payment for back

benefits. Respondent at that time was living with her grandparents, and explained that she had completed applications for Section 8 housing.

Respondent further testified that she had participated in three psychological evaluations, and understood that she was required to take a domestic-violence class, but testified that the caseworker failed to refer her for that service. Respondent testified that she visited all but the youngest child regularly and had a good relationship with her children, and they were bonded to her. Respondent testified that she learned a lot from the parenting classes that she completed and that she loved her children and wanted them returned to her care. Respondent testified that she was properly trained to care for the youngest child's tracheostomy because she had attended the class, but was unaware that there was further training required that she had failed to attend. Respondent also testified that it was not difficult for her to manage her seven older children, and that she did not require counseling.

The trial court terminated respondent's parental rights to all of the children pursuant to MCL 712A.19b(3)(c)(i) and (j). The trial court found that petitioner had provided services to respondent for nearly seven years, but that respondent did not adequately participate in or benefit from the treatment offered. Respondent had failed to address her mental health issues, poor parenting skills, and housing instability. Accordingly, the trial court concluded that respondent could not provide proper care for her special needs children and that they would be at risk of harm in her care. The trial court found that because of respondent's history, and her inability or unwillingness to participate in services, it would be unlikely that she would remove the barriers to reunification within a reasonable time. The trial court also addressed each child's circumstances individually, incorporating by reference earlier findings of fact, and thereafter concluded that termination of respondent's parental rights was in each of the children's best interests. Respondent now appeals.

II. DISCUSSION

A. STATUTORY BASIS FOR TERMINATION

Respondent contends that the trial court erred by finding that clear and convincing evidence established a statutory basis to terminate her parental rights under MCL 712A.19b(3)(c)(i) and (j). We disagree.

To terminate parental rights, the trial court must find that at least one statutory basis for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re Keillor*, 325 Mich App 80, 85; 923 NW2d 617 (2018). We review for clear error the trial court's determination that a statutory basis for termination of parental rights has been proven by clear and convincing evidence, as well as the trial court's factual findings supporting its determination. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). A factual finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made, giving due regard to the trial court's special opportunity to observe the witnesses. *Id.* A finding is not clearly erroneous unless it is more than possibly or probably incorrect. *Id.*

In this case, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (j).² Those statutory sections 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:

* * *

(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.

* * *

(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.

We conclude that the trial court did not clearly err by determining that there was clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(c)(i). Termination of parental rights is proper under subsection (c)(i) when "the totality of the evidence amply supports" that the parent has not accomplished "any meaningful change in the conditions" that led to the trial court assuming jurisdiction of the child, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), and when there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i). Failure of a parent to comply with the case service plan is evidence that the parent will not be able to provide proper care and custody for the child, and also that the child will be harmed if returned to the parent's home. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014).

In this case, respondent's history with CPS dates back more than 10 years. Between 2013 and 2015, her five oldest children were removed from her care. At that time, respondent was given two years to participate in a court-ordered treatment plan designed to address her mental health issues, environmental and physical neglect of the children, and domestic violence. Although the trial court returned the children to her care in June 2015, respondent's stability was short lived.

In 2017, CPS once again investigated respondent, by then the mother of seven children, for physical and environmental neglect of the children. Again, preventive services were offered.

² Although respondent also asserts that the trial court erred by terminating her parental rights under MCL 712A.19b(3)(g), the record does not indicate that the court relied on this statutory ground when terminating respondent's parental rights.

Despite this assistance, in August 2017, respondent and her children were found illegally occupying a vacant house without furniture, bedding, or adequate food. The children were dirty, and respondent was not receiving treatment for her mental health issues. Consequently, the children were again removed from her care, and respondent was again offered a treatment plan designed to address her mental health issues, lack of stability, housing insecurity, and poor parenting skills. During the two years the children remained in care, respondent did not comply with most of the services offered and did not benefit from the services in which she participated.

Respondent was offered nurse-supervised parenting time, parenting classes, supportive visitation, and family therapy in an effort to improve her parenting skills. After multiple referrals, she eventually completed her parenting classes and attended parenting time with her seven oldest children. Respondent did not regularly visit her medically fragile youngest child, and failed to complete the training for his medical care that would have facilitated visits with the child. At the time of termination there was no indication that respondent had benefited from the services or that she was able to safely parent her children. Respondent never obtained suitable housing, did not comply with the mental health component of her treatment plan, and continued to exhibit mood swings, aggression, and delusional behavior. Although petitioner continued to refer respondent for treatment, she failed to participate in the recommended services. To the extent that respondent did participate in services, she did not benefit. Despite years of assistance, she was in no better position to parent her children than when they were removed from her care two years earlier. The record also supports the trial court's finding that there was no reasonable likelihood that respondent would be in a position to safely parent her children within a reasonable time. The trial court therefore did not clearly err in its determination that the conditions that led to adjudication continued to exist and the children would be at risk of harm in respondent's care. Accordingly, the trial court did not clearly err when it found clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (j).

B. REASONABLE EFFORTS

Respondent asserts that petitioner failed to make reasonable efforts toward reunification because it failed to consider her psychiatric condition and hearing impairment when structuring the treatment plan. We find no record support for respondent's position.

Before seeking termination of parental rights, the petitioner generally must make reasonable efforts to reunify the family. MCL 712A.19a(2); *In re Hicks/Brown*, 500 Mich 79, 87; 893 NW2d 637 (2017). The adequacy of the petitioner's efforts to provide services is relevant to whether there is sufficient evidence to terminate parental rights. *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). Although the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, does not provide a defense to proceedings to terminate parental rights, the ADA requires petitioner to reasonably accommodate a disabled parent when providing services directed at removing the barriers to reunification. *In re Terry*, 240 Mich App 14, 24-25; 610 NW2d 563 (2000). Petitioner neglects its duty under the ADA to reasonably accommodate a disability when it fails to implement reasonable modifications to services or programs offered to a disabled parent. *In re Hicks/Brown*, 500 Mich at 86.

In this case, there is no support for the assertion that petitioner failed to accommodate respondent's hearing impairment. The record reflects that the trial court directed respondent to

provide documentation of the nature and extent of her hearing impairment, but respondent failed to do so. Moreover, nothing in the record suggests that respondent's hearing impeded her ability to understand or participate in the process or the proceedings. Similarly, there is no support for respondent's claim that DHHS did not take her mental health issues into account when structuring the case-service plan. In an effort to remove this barrier, respondent was ordered to comply with a treatment plan that included participation in psychological evaluation and treatment. The psychologist evaluating respondent recommended that she participate in therapy, and consistent with this recommendation, the caseworker referred respondent for individual therapy, family therapy, and domestic-violence counseling. Respondent, however, failed to participate in the referred services. "While 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 services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Finally, respondent does not identify what additional services petitioner should have provided that would have yielded a different outcome, see *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005), and in fact testified at the termination hearing that she did not require further counseling. Considering respondent's resistant posture, there is no indication that she would have fared better had additional or alternative services been offered.

C. BEST INTERESTS OF THE CHILDREN

Respondent also contends that the trial court erred in determining that termination of her parental rights was in her children's best interests. We disagree. Once a statutory ground for termination has been demonstrated, the trial court must determine by a preponderance of the evidence that termination is in the best interests of the child before terminating parental rights. MCL 712A.19b(5); *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). If the trial court finds that a preponderance of the evidence establishes that termination is in the best interests of the child, the trial court is required to terminate the parent's parental rights. MCL 712A.19b(5). This Court reviews for clear error the trial court's decision regarding a child's best interests. *In re Medina*, 317 Mich App 219, 226; 894 NW2d 653 (2016).

When determining whether the termination of parental rights is in a child's best interests, the trial court should weigh all the available evidence, and consider a variety of factors including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, the advantages of a foster home over the parent's home, the parent's compliance with the case service plan, the parent's visitation history with the child, the child's well-being in the foster home, and the possibility of adoption. *In re White*, 303 Mich App at 713. In addition, the trial court should consider the child's safety and well-being, including the risk of harm a child might face if returned to the parent's care. See *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011).

In this case, respondent had a history of unresolved mental health issues, housing instability, poor decision making, poor parenting skills, and neglect of the children. She failed to participate in and benefit from her treatment plan. The children had special needs that included mental health issues, hearing impairments, learning disabilities, and, as to the youngest child, severe medical issues. At no time did respondent demonstrate that she could meet her children's

needs. A preponderance of the evidence supports the trial court's finding that termination of respondent's parental rights was in the children's best interests.

Respondent asserts that the trial court failed to consider the best interests of each child individually, and simply made a "perfunctory" statement as to each child that termination was in his or her best interests. We disagree. In determining the best interests of the child, the trial court is required to determine the best interests of each child individually. *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). Here, the trial court initially summarized the testimony presented during the hearing, then emphasized the testimony it found most compelling, much of which related to the unique circumstances of each child and the relationship between the child and respondent. The trial court then summarized its conclusions regarding the best interests of the children. The trial court thus fulfilled the mandate to decide the best interests of each child individually, specifically considering the unique circumstances of each child and their own individual needs before concluding that termination of respondent's parental rights was in all of the children's best interests. Accordingly, respondent's claim of error is without merit.

Affirmed.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Michael F. Gadola