

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 27, 2012

In the Matter of MAY/WARD, Minors.

No. 309703
Wayne Circuit Court
Family Division
LC No. 10-491815-NA

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the two minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding the statutory grounds proven by clear and convincing evidence. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009); MCR 3.977(K). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists “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.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

There was clear and convincing evidence supporting the statutory grounds for termination. Respondent’s involvement with Children’s Protective Services (CPS) began in 2001 with a substantiated complaint that respondent left her oldest daughter, then a newborn, in the care of the maternal grandmother, who had a long history of abuse and neglect. The children remained in respondent’s care, and petitioner provided services to the family. In 2007, petitioner again provided services after substantiating complaints that respondent’s oldest daughter was molested by her maternal aunt and that respondent was addicted to prescription drugs, lacked suitable housing, and was physically abusing the children. In 2008, respondent received additional services from petitioner because respondent’s third child, who is not at issue in this appeal, tested positive for THC shortly after birth. Before the present case, respondent was provided with counseling, parenting education, and anger management along with intensive in-home services to address issues of parenting education and substance abuse treatment.

The conditions that led to the children’s removal on January 14, 2010, were respondent’s alleged continued abuse and neglect and her failure to protect the children from harm. In December 2010, respondent’s oldest daughter told respondent that a family friend had touched her breast and vagina. Initially, respondent did not believe the child. However, after further

discussions with the child, respondent filed a police report. Respondent reportedly tried to get the alleged molester high on marijuana so that she could enact her vengeance upon him. Respondent admitted using marijuana while in the children's presence.

On June 4, 2010, the trial court acquired jurisdiction of the children based on a CPS investigative report that was admitted into evidence, along with respondent's testimony and stipulations to the petition's factual allegations. The court determined that respondent failed to provide support and care for the children and there was a substantial risk of harm to the children's mental well being. Respondent admitted using drugs in the past and testified that she had not used crack cocaine for almost six years. She smoked marijuana and had prescription medications for treating her seizures and bipolar disorder. She denied using any substances other than marijuana and doctor-prescribed medications. Respondent stated that she would not intentionally expose her children to someone she believed was a sexual abuser. The court found that petitioner had failed to meet its statutory burden relative to its request for permanent custody.

At the July 9, 2010, initial disposition hearing, the court ordered respondent to participate in and benefit from a treatment plan. Treatment goals included: (1) maintaining a drug-free lifestyle; (2) acquiring adequate parenting skills; (3) achieving mental well being and emotional stability; (4) maintaining suitable housing; (5) achieving financial stability; and (6) cooperating and keeping regular contact with petitioner. Petitioner's reunification services included: (1) substance abuse treatment; (2) weekly random drug screens; (3) parenting classes; (4) psychiatric and psychological evaluations and following all recommendations; (5) a Clinic for Child Study; (6) individual counseling; (7) weekly parenting time; and (8) transportation assistance. Respondent was also to maintain stable housing and a legal income.

Respondent attended her first parenting class session on September 9, 2010. However, she was unable to stay for the class because she had three seizures before the class started. She did not attend additional classes and was terminated for noncompliance. On October 5, 2010, respondent, then five months pregnant, was hospitalized for a ruptured placenta and miscarried the baby. She remained in the hospital for five days.

From January to October 30, 2011, respondent was incarcerated after she pleaded guilty to attempted unarmed robbery. On June 8, 2011, during respondent's incarceration, petitioner filed a supplemental petition to terminate respondent's parental rights. The court found statutory grounds to terminate respondent's parental rights on February 17, 2012, and later concluded, at the March 30, 2012 bifurcated best-interest hearing, that termination was in the children's best interests.

The trial court did not clearly err in finding that respondent had failed to comply with and benefit from the court-ordered treatment plan, despite more than 19 months of reunification efforts. Although respondent was referred to and completed an assessment with a Clinic for Child study on September 24, 2010, there was undisputed evidence that, at the time of the termination and best-interest hearings, respondent had not achieved sobriety or obtained safe and suitable housing and a sufficient legal income. Respondent was referred for substance abuse and individual therapy on August 10, 2010. She was terminated from services on January 21, 2011, because of noncooperation. Respondent failed to follow through with additional referrals for

individual counseling made on January 20, 2011, and in November 2011. Respondent failed to participate fully in random drug screens, providing only two out of 75 requested screens from August 2010 to February 2012 and testing positive at both screens for marijuana and opiates or benzodiazepines. During the termination proceedings, respondent tested positive for marijuana and cocaine. Respondent failed to participate in a psychological evaluation after two referrals made on September 13, 2010, and January 20, 2011, although she later completed a psychological evaluation shortly before the best-interest hearing. Respondent did not complete parenting classes despite four referrals. Since the time the children were placed in foster care, respondent missed almost half of the 55 visits offered when she was not incarcerated.

The record clearly shows that termination was proper under MCL 712A.19b(3)(c)(i). More than 182 days passed since the July 9, 2010, initial disposition, and the conditions that led to the children's removal continued to exist. Respondent had ongoing struggles with substance abuse, unemployment, and inadequate housing throughout the duration of this case. Respondent asserts that the trial court did not consider that her ongoing medical issues, including her miscarriage and seizure disorder, hindered her ability to fully participate in services. Respondent contends that she had less than 182 days to engage in services after taking into consideration her incarceration and significant medical problems and transportation issues posed functional barriers to complying with her treatment plan. This argument is unpersuasive. Even during the time between her miscarriage in early October 2010 and her incarceration in January 2011, respondent only partially complied with her treatment plan. Respondent, after being advised by her case worker and the court that her substance abuse was a critical barrier to being reunited with her children, refused to provide drug screens. Her claim that she was unable to provide drug screens because of transportation issues (she was unable to pay \$2 in bus transfers) and replace a reportedly stolen identification card, rings hollow. Petitioner regularly provided respondent with bus tokens. Additionally, respondent's mother, with whom respondent resided while not incarcerated, testified at the termination hearing that she had the financial means to support the children. Surely, respondent could have obtained \$2 from her mother for bus transfers. Most telling, respondent twice tested positive for drugs during this period and she testified that she missed drug screens because it took too long to get to the testing agency in addition to making weekly visits with the children. There is no credible evidence in the record that respondent's medical problems and transportation issues posed a barrier to fully participating in services, particularly in-home therapy and drug screens. The record further shows that from the time of her October 2011 jail release to the March 30, 2012, best-interest hearing, respondent refused to participate in offered drug treatment and random drug screens, even after petitioner made additional referrals in November 2011.

Throughout the case, the case worker had at least ten conversations with respondent about the importance of complying with the court orders and completing the drug treatment. Just days before the hearing, she spoke with respondent about drug treatment. Respondent stated that she planned on getting into treatment but just had not done so and made no mention of any medical barriers. She was also referred a fourth time to parenting classes but was terminated from the program after missing three of the eight weekly classes, reportedly because she could not remember the session dates. There was sufficient evidence that respondent was unwilling to participate in services even during this critical juncture when possible termination of her rights was imminent. Respondent's similar argument that termination was premature is also groundless in light of the ample evidence that she was repeatedly offered services, and, at the termination

hearing, readily admitted that she had been procrastinating in taking the necessary action to be reunited with her children.

For similar reasons, the trial court did not clearly err in finding clear and convincing evidence for terminating respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j). Before the termination hearing, respondent had not made any plans for housing if the children were returned to her care. She explained that she did not regularly visit with her children even when she was not incarcerated because it took an hour and a half to get from her home to the agency by two buses. Respondent said she was looking for work but remained chronically unemployed. Respondent never secured an income. Respondent was not receiving any assistance and relied on family and friends. Also, respondent testified that she planned to support her children with the job she was purportedly starting that day, but she later admitted she had not yet been interviewed for the position. Clearly, she did not have the ability to support two children.

Respondent never fully addressed her substance abuse issues while she was not incarcerated. Despite being re-referred for a psychiatric evaluation and drug treatment in November 2011, she waited until the day before the February 17, 2012, termination hearing to participate in a substance abuse telephone intake and had yet to fully engage in the evaluation. At the termination hearing, respondent showed lack of insight and veracity when she testified that she did not know how long the maternal grandmother had been drug-free, which was contrary to previous testimony that the maternal grandmother was still using drugs. She did not have regular psychiatric care for her bipolar disorder since her incarceration. Respondent claimed that she attended NA meetings on average only two to three times every two weeks but did not provide any verification. She admitted being a recovering addict but could not remember the 12 steps of recovery. Respondent admitted that she had "made a mistake with the jail time that I did and I know I've been procrastinating on doing the things that I should have already had done but I am starting them now and I am going to fulfill it"

Returning the children to respondent's care would place them in continued risk of harm. In addition to unsuitable housing and insufficient income, respondent clearly had an entrenched substance addiction, as evidenced by a positive drug screen for marijuana and cocaine on the first day of the termination hearing, and her testimony revealed a lack of insight necessary to overcome that critical issue. During the termination hearing, respondent denied using cocaine and could not explain how she recently tested positive for cocaine. She also denied smoking marijuana since that termination hearing, which contradicted statements made to the evaluator that she had smoked a week before her March 14, 2012, evaluation.

Also, Gail Mills, a psychologist and qualified expert in child abuse and neglect, opined that respondent was incapable of parenting the children and incapable of completing a reunification program within a reasonable length of time because she had made no progress toward her treatment goals. Mills also opined that respondent lacked minimal parental insight and that it was not in the children's best interests to wait any longer for permanency. It was in the children's best interests to terminate respondent's parental rights rather than continue in long-term foster care with respondent having access to the children.

Reviewing the record as a whole, the trial court did not clearly err in concluding that respondent, without regard to intent, was unable to permanently provide the children with a stable and safe living environment and that returning them to respondent's harm would likely be harmful to their well being.

Further, contrary to respondent's contention, the record shows that petitioner continued to offer reunification services from the time of the initial disposition until her parental rights were terminated. The court stated that services would continue even though a permanent custody petition was to be filed and service referrals continued to be made. Respondent's argument is groundless that petitioner failed to engage respondent during her incarceration, as directed by *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Respondent was advised to participate in any services that were offered to her at the jail, and the caseworker personally met respondent at least two times during her incarceration. Respondent also participated in dispositional reviews during her incarceration. Although no referrals were made from February 2011 until her release on October 30, 2011, respondent testified that she had participated in NA meetings, parenting classes, and individual therapy for her mental health issues, and she received prescription medication for anxiety. There was clear evidence that respondent was provided with assistance to overcome her reunification barriers while she was incarcerated. Thus it cannot be argued that petitioner failed in its duties to engage respondent in her treatment plan during that period. Moreover, because termination proceedings are considered to be a single continuous proceeding, *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973), it was not clearly erroneous for the trial court to overlook any lapses in making service referrals during this brief period, considering a clear record of petitioner providing respondent with a long continuum of services from 2001 until the March 2012.

Respondent also asserts that petitioner failed to determine whether there was a fit and appropriate relative, specifically respondent's sister, with whom the children could have been placed, as required under MCL 722.954a(2), after the children were removed from respondent's custody. She further argues that the trial court did not properly consider relative placement rather than terminating respondent's parental rights. At the time of removal, respondent attended a team decision meeting and possible relative placement was considered. The record shows that petitioner initially made the required inquiries into possibly placing the children with a suitable relative; however, no relatives came forward who were interested in providing placement. During the proceeding, only three relatives—the maternal grandmother, respondent's 19-year-old sister, and respondent's 21-year-old brother—were named for relative placement, but none were deemed suitable. Shortly after the children's removal, petitioner's investigation revealed that the maternal grandmother was unsuitable for placement because she had a recent CPS history involving respondent's sister and brother, who were placed in foster care. The maternal grandmother testified that her other daughter was also bipolar and difficult to manage. Respondent had testified that she was not planning to return to her mother's home after her incarceration because her mother still used drugs. Respondent's brother was receiving SSI because of his cognitive disabilities. Respondent was told to provide her case worker with any further information about possible relative placement. At the December 12, 2011, custody hearing, respondent stated that the only relative with whom the children could be placed was her mother. The court advised respondent to discuss with her case worker possible placement with other relatives, such as cousins, uncles, great uncles and even a great grandmother. Although the maternal aunt expressed an interest in having the children placed with her, her suitability was

unlikely given a previous substantiated complaint that she had molested respondent's oldest daughter in 2007.

Further, the record shows that the court explored possible relative placement rather than termination and adoption. The primary permanency plan was for adoption with a secondary plan for placement with a relative. During the termination proceedings, respondent testified that there were no other possible relatives, other than her mother and brother, who could care for the children. The case worker opined that long term foster care relative placement was not possible and having the current foster parent adopting the children was not an option. Additionally, the expert psychologist, who had recently evaluated respondent, testified that it was in the children's best interests to terminate respondent's parental rights rather than long-term foster care with respondent having access to the children.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter