

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 15, 2013

In the Matter of L.M.R. Jackson, Minor.

No. 310495
Ingham Circuit Court
Family Division
LC No. 10-001936-NA

Before: OWENS, P.J., and FITZGERALD and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to her minor child, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. BACKGROUND

In a previous case allegations of domestic violence in the home between respondent and her boyfriend were substantiated and, in January 2010, respondent began receiving intensive services, including domestic violence counseling. That case was ultimately closed in July 2010 because respondent's boyfriend was incarcerated. However, the same day the case was closed, respondent's boyfriend was released and he returned to her home within a week, staying there roughly four days a week.

In November 2010, upon receiving reports about the boyfriend's continued presence, petitioner interviewed respondent and requested that she place the child with a relative. Respondent agreed. Respondent admitted numerous violations of a no-contact order and probation orders, and her drug screen was positive for THC, benzodiazepines, and opiates. The present case was initiated because of concerns about substance use and ongoing domestic violence and, in January 2011, respondent entered a plea giving the trial court jurisdiction over the case.

Respondent originally agreed to voluntarily participate in some services and was referred for a substance abuse evaluation, a psychological evaluation, and individual counseling. She completed only the psychological evaluation and a single counseling session. She never appeared for a scheduled substance abuse assessment. Respondent failed to take any of the required drug screens, to complete parenting classes, to obtain stable housing, or to obtain and maintain a legal source of income. She also continued to have contact with her abusive boyfriend. At one point, respondent indicated to her caseworker that she might be pregnant with

her boyfriend's child. Respondent failed to appear for any of her appointments with her caseworkers, although they did speak on the phone.

Georgia Smith took over as respondent's caseworker in March 2011. Their first contact did not occur until April 2011 because respondent had previously moved to Indiana to be with her boyfriend. During that time, respondent never visited or contacted the child. When her boyfriend kicked her out, respondent returned to Michigan and made plans to move to St. Ignace to live with her father.

While in St. Ignace, respondent participated in individual counseling. She had an intake assessment and four sessions of domestic counseling, but never had the substance abuse assessment performed or had any drug screens and did not participate in parenting classes. Respondent was, however, employed and visited the child every two weeks, utilizing bus passes provided by petitioner.

In June 2011, only two months after moving to St. Ignace, respondent moved back to Lansing. Respondent was close to reunification and her visitation with the child was unsupervised. However, petitioner began to receive reports that respondent's boyfriend was present during the unsupervised parenting time. Also, even though respondent made contact with Eve's House for counseling, she failed to complete the program. Respondent had permitted her boyfriend to pick up both her and the child and spent the entire time together. In addition, the child reported that she was left outside unsupervised with the boyfriend's son while respondent and her boyfriend were inside having sex.

In light of this information, Smith changed the recommendation from reunification to termination of parental rights at the July 2011 permanency planning hearing. By that time respondent had received services for almost a year, had been non-compliant, had not completed any services except the psychological evaluation, and had continued contact with her boyfriend in violation of both the parenting plan and court orders. Respondent's parenting time was changed to supervised, but she failed to visit the child or have any contact with her from July 29, 2011 until October 2011.

In October 2011, respondent reestablished contact with Smith and indicated she wanted to re-engage in services. Smith re-referred respondent for all of the services. However, instead of following through, respondent contacted Smith and told Smith she was self-referring herself to Odyssey House, a therapeutic community substance abuse treatment facility, and had gone into inpatient treatment. Respondent began the program on October 18, 2011. The termination hearing was originally scheduled for November 2011, but respondent's counsel received a continuance to February 2012 to allow respondent to progress in the program. On the scheduled hearing date, respondent's counsel requested another continuance and represented that it would be roughly eight more months before respondent would be finished with the program. The trial court indicated it could not continue the case for eight months, but agreed to continue the hearing until April.

When the termination hearing began on April 23, 2012, respondent was living at Odyssey House with a reported discharge date of July 2012. Smith admitted that Odyssey House was addressing some of the issues in the petition, and explained that substance abuse was "always

back burner in this case,” particularly where respondent had indicated to Smith that she used substances.¹ However, respondent still had not had individual counseling with the referred counselor, had not completed the substance abuse assessment, had not completed any random drug screenings with petitioner or provided results from any drug screenings completed elsewhere, and had not worked with Eve’s House. She had completed parenting classes and received a certificate of completion from a domestic violence support group at the YWCA, and Smith noted that although the YWCA program was not “100 percent focused on domestic violence like Eve’s House is, . . . it does provide some level of domestic violence support.” However, there was no documentation of the YWCA program goals or respondent’s progress in the program. Smith was also concerned because respondent only completed the YWCA program after Smith asked Odyssey House to complete an outside domestic violence program. Further, Smith indicated she had no way to determine if respondent had benefitted from the program because respondent was not in a relationship. “[U]ntil she becomes involved in a relationship,” Smith explained, “I don’t know whether or not she’ll benefit from this service.”

Smith explained that the issues with respondent’s parenting involved decision-making, not parenting skills, so the controlled environment at Odyssey House made it impossible for respondent to show decision-making skills had been learned. In fact, respondent had repeatedly made poor choices each time she was given the freedom to make them in an uncontrolled setting. Respondent even admitted that the last time she had been in a relationship she had chosen her boyfriend over her child. Smith testified that since the petition for termination had been filed, respondent continued to make poor choices, continued to be dependent on others, and, although respondent could parent in a controlled setting, did not make appropriate decisions with the child in an unsupervised setting. Thus, Smith was concerned that, when given complete freedom, respondent would return to Lansing and allow her boyfriend access to her and the child. Smith also believed that respondent’s emotional stability remained a barrier to reunification, relying on reports from Odyssey House that respondent struggled with her attitude, making appropriate decisions, and working with other residents.

Smith testified that respondent was still utilizing her supervised parenting time, but that the child’s attitude changed for the worse after visits, as well as sometimes when she knew she was going to visit respondent. The relative with whom the child was placed reported that the child’s behavior improved after the supervised parenting stopped. She stated that the child “wasn’t making inappropriate statements regarding sexual events. She wasn’t making inappropriate statements about adult situations as she had in the past. She was being a little girl. She was no longer worried about her mother’s safety” and stopped asking if her mother was getting hit. In addition, respondent had brought additional people to parenting time without

¹ Smith was familiar with Odyssey House from a previous client and, based on what she knew, she would not have recommended respondent engage in services there. Odyssey House provided an intensive inpatient program, yet respondent had failed to complete the substance abuse assessment and the only information they had was that respondent used alcohol and marijuana socially, which would not require inpatient treatment. Smith also stated that she only received updates from Odyssey House “when we get to court.”

obtaining petitioner's approval and violated the requirement that she not discuss the case service plan with the child.

Smith thought there would be likely harm if the child was returned to respondent, but that there would not be substantial harm if rights were terminated. She acknowledged that the child would initially have difficulty adjusting if respondent's rights were terminated, but noted that the child had previously adjusted to not seeing her mother and would be able to adjust again. Smith thought reasonable efforts had been made to reunify the family and, although respondent made some progress, it was stalled.

Elizabeth Reyes, respondent's primary therapist at Odyssey House, testified on respondent's behalf. Reyes described how clients, such as respondent, enter the program and the stages they move through, as well as what was required or permitted at each of the various stages. Respondent was "level four" at Odyssey House, which meant increased freedom, being able to do things outside in the community and going into transitional housing. Respondent had not relapsed in the month she had been in level four. Her next step would be outpatient treatment, with respondent either getting her own housing or living in Odyssey House's residential housing. Reyes testified that Odyssey House permitted children to join their parents in the program at any time and had on-site and off-site daycare available. Respondent testified that the child could join her immediately and that Odyssey House would provide a psychological review of the child as well.

According to Reyes, respondent "moved through the program quicker than any of the other residents that [she'd] seen there," although it was also established that Reyes only began working at Odyssey House around the same time respondent arrived. Reyes believed respondent's substance abuse had been addressed, but noted that successful completion of the program would not occur until respondent remained sober and completed all levels. Reyes could not say for certain when respondent would complete the Odyssey House program, but she thought respondent could complete the residential program by July 2012.

Respondent testified that she recognized relationships like she one she had with her boyfriend were "very bad . . . because of the harm and the effect it can have on my child and myself and my future," and she understood that the child witnessing "things" could have an effect on the child's future and relationships. She testified that she had broken things off completely with her boyfriend since she left Indiana, and that she had learned the signs of an abusive relationship, such as isolation and control. Respondent admitted that her boyfriend was not her first abusive relationship and that the child's father was also abusive. However, she thought she had grown a lot and was in a position to take care of the child. She admitted that the child had witnessed domestic violence between her and her boyfriend and that she continued to use drugs after the child came into care of the court.

Respondent was enrolled at Mott Community College and would begin classes there in May 2012, but had not done anything in terms of obtaining employment. Respondent testified that if she had custody of the child she would continue with school and find a part-time job while the child went to daycare, and she would seek help from her family when needed. Her future plans were to become a nurse, which would require additional education. She received food stamps through Genesee County, which Odyssey House utilized to provide her with food.

Respondent did not think it would be stressful when she left the structured environment of Odyssey House and, even if it was, she had the tools and growth to learn to deal with it.

During closing arguments, the lawyer-guardian ad litem argued in favor of termination, concluding that “in the interest of safeguarding and keeping [the child] secure, I do believe at this time that the benefit of participation in services has not been shown to an extent where I would recommend the case to continue.” The trial court discussed the testimony and, relying heavily on respondent’s psychological evaluation, concluded that respondent had learned nothing about domestic violence and how to protect herself or the child from it, given the lack of counseling this time around, and the fact that she had repeatedly returned to the boyfriend even after completing counseling at Eve’s House in the 2010 case. Although the court believed Odyssey House was beneficial for respondent, it noted that “her main problems that brought her before this court and placed her child under the jurisdiction of the court twice are not her substance abuse but her failure to protect her child from domestic violence in the partners she selects.” The trial court concluded that termination was proper under MCL 712A.19b(3)(c)(i) (the conditions leading to the adjudication continue to exist with no reasonable likelihood of rectification within a reasonable time given the child’s age), (g) (irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that she might do so within a reasonable time given the child’s age), and (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), and that termination was in the child’s best interests.

II. STANDARDS OF REVIEW

We review for clear error a trial court’s finding of whether a statutory ground for termination has been proven by clear and convincing evidence and the court’s decision regarding a child’s best interests. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). “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.” *In re BZ*, 264 Mich App at 296-297.

III. ANALYSIS

Respondent argues that insufficient evidence supported the termination of her parental rights on any of the three statutory grounds on which the trial court relied. After reviewing the record, we conclude that clear and convincing evidence supports termination of respondent’s parental rights on all three grounds.

There is no question that until respondent entered Odyssey House six months prior to the termination hearing, she had done little to rectify the conditions that led to adjudication. The question was whether her progress and accomplishments at Odyssey House were sufficient. Based on the record, they were not. Respondent’s main issue has always been domestic violence. Although she completed the YWCA program, there is simply no evidence in the record that she received any benefit from it. Indeed, respondent had previously completed counseling with Eve’s House in her prior case and yet, immediately upon its closing, she returned to her boyfriend, going so far as leaving the child and moving to Indiana to be with the

boyfriend, returning only because he kicked her out. “[T]he totality of the evidence amply supports that she had not accomplished any meaningful change in the conditions existing by the time of the adjudication.” *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009); see MCL 712A.19b(3)(c)(i).

In addition, there was no reasonable likelihood that respondent would be able to rectify these problems within a reasonable time. MCL 712A.19b(3)(c)(i). There was no evidence that respondent could parent appropriately in an uncontrolled setting and respondent was going to remain in a controlled setting for the foreseeable future. Indeed, she had as it was her sole source of food, clothing, and shelter. And, given respondent’s history of making poor choices and exhibiting no benefits even after participating in services, viewing her actions in an uncontrolled setting was essential to a determination of respondent’s fitness.

Respondent’s argument is focused on the fact that she was making progress and should have been given more time. Certainly, the trial court could have given respondent more time, but under the circumstances there was simply no way to know if or when respondent would be able to care for the child. The child had been in care over a year this time (and almost three years including the prior involvement), and yet respondent still could not show any long-term changes or benefits from services. Accordingly, the record “clearly and convincingly supports the trial court’s reliance on MCL 712A.19b(g) as an alternative grounds for terminating her parental rights.” *In re Williams*, 286 Mich App at 273.

Additionally, respondent’s psychological profile indicated that she was vulnerable to repeat the same patterns of behavior. This tendency was evidenced by respondent’s repeated return to her abusive boyfriend, even after completing domestic violence counseling. The profile also indicated that it would be very difficult for respondent to change these behaviors. Such a diagnosis was even more problematic where respondent was not receiving domestic violence counseling. Odyssey House was not addressing domestic violence at all until Smith asked that respondent be required to complete the YWCA program. But even then, Smith was not provided with enough information to know what program goals were set for respondent and how successful she was in meeting these goals. The record also showed that the child had been emotionally damaged by respondent’s behavior and that she improved and exhibited more appropriate, child-like behaviors when respondent was not around. Thus, the record supported the conclusion that there was a reasonable likelihood that the child would be harmed if returned to respondent’s care. MCL 712A.19b(3)(j).

Respondent also asserts that the trial court erred in concluding that termination was in the child’s best interests. We disagree. The trial court recognized and acknowledged the bond respondent had with the child and how much respondent loved her. However, the issue was whether it was in the child’s best interests to terminate respondent’s parental rights. The trial court noted that by terminating respondent’s parental rights, the child would be able to “live in an environment that’s free of domestic violence and where she has stability and where she can enjoy childhood.” Given the testimony that the child would exhibit poor behavior after visiting with respondent, time with respondent appeared detrimental to continuing the improvement the child had shown while being cared for outside of respondent’s home. In light of the child’s age, and how long she had already been in care, the trial court’s conclusion that it was in her best interests to have respondent’s parental rights terminated was not erroneous. As the court stated,

she was entitled to a stable, safe and secure home free from domestic violence. *In re LeFlure*, 48 Mich app 377, 388; 210 NW2d 482 (1973).

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Michael J. Riordan