

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 14, 2013

In the Matter of C.L. JONES, Minor.

No. 310580
Wayne Circuit Court
Family Division
LC No. 07-474530-NA

Before: GLEICHER, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals by right the order terminating her parental rights to the minor child under MCL 712A.19b(3)(a)(i), (a)(ii), (c)(i), (g), and (j). We affirm.

The child was removed in November 2007, after respondent made statements at a McDonald's restaurant interpreted as threats to drive herself and the child into the Detroit River. The child was placed with her maternal grandmother for the next four and a half years, except for a brief period when the Department of Human Services (DHS) alleged that the grandmother was not allowing DHS to visit the child. Orders of adjudication and disposition were entered in March 2008. Respondent was ordered to comply with a case service plan, which required attendance at parenting classes, parenting time, individual and family counseling, psychiatric treatment, and substance abuse screening and assessment if recommended. Respondent was also to keep in contact with the caseworker and have suitable housing and legal income.

Throughout the four and a half years since the child was removed from respondent's care, there were periods of compliance as well as noncompliance. Initially, respondent was purportedly homeless as a result of making threats. However, respondent was able to obtain a legal source of income through social security benefits, obtained a one-bedroom apartment, and had unsupervised visits with the child. Respondent participated in therapy, parenting classes, and self-reported that she was taking her medication. However, there were two lengthy periods of time when respondent completely stopped visiting the child. Additionally, respondent's erratic behavior caused the suspension of unsupervised visits. Although respondent self-reported

that she was taking her medications to control her mental illness,¹ she would yell and curse at agency representatives, even in front of the child. Respondent opted not to testify at the termination hearing, stating that she would not be able to remain calm. The trial court found that the statutory subsections for termination were established and that termination was in the child's best interests.

On appeal, respondent argues that DHS failed to provide sufficient assistance with helping her to acquire emotional stability. Respondent correctly notes that DHS failed to comply with several orders for a psychiatric evaluation. Respondent maintains that her rights were prematurely terminated without reasonable efforts to reunify the family. In response, DHS claims that respondent waived this issue by failing to timely raise it and by avoiding mental health treatment throughout the case.

We conclude that DHS provided sufficient services and made reasonable efforts to reunify respondent with her child. Reasonable efforts to reunify parents and children must be made "in all cases" except those involving aggravated circumstances not present here. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). MCL 712A.18f(3)(d) states that a case service plan must include a "[s]chedule for services to be provided to the parent . . . to facilitate the child's return . . . home or to facilitate the child's permanent placement." Clearly delineated, properly tailored services are very important, because the parent will be judged to see if she is participating and has benefited sufficiently to return the child. See, e.g., *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute on other grounds.

In the case at bar, respondent at times failed to object and to indicate that mental health services were inadequate. In *In re Frey*, 297 Mich App 242, 247; ___ NW2d ___ (2012), the Court held that a respondent's failure to timely object waived the issue. In this case, however, all parties recognized the need for respondent to receive mental health services, including the thrice-ordered psychiatric evaluation. Respondent was provided numerous mental health services. These included individual therapy, which respondent completed in 2010, and two evaluations by the Clinic for Child Study. Respondent had a psychiatric evaluation just before the child was removed, when she was a patient in a psychiatric facility. Respondent also had a psychological evaluation, another psychiatric evaluation, and additional individual therapy. During the pendency of the case, respondent absented herself several times for lengthy periods. Parents have a responsibility to participate in services offered. *Frey*, 297 Mich at 247-248. Here, respondent participated to a certain extent, but she did not want to take psychotropic medicine. Irrespective of any lapses in the efforts by DHS to complete a psychiatric evaluation, respondent was resistant to a psychiatric evaluation, and even after being diagnosed with bipolar disorder, she remained "adamantly against the idea of using psychotropic medication." The psychiatrist recommended that visits return to supervised in light of respondent's emotional dysfunction.

¹ In an effort to have respondent attend therapy, a copy of her psychiatric evaluation was shown to respondent. Apparently, respondent felt that she had no choice, but to attend because she was a court ward and told the case worker, "If you want me to be crazy, I'll be crazy."

DHS correctly notes that it was respondent who frequently derailed her own ability to receive appropriate services. Accordingly, this claim of error does not entitle respondent to appellate relief. *Frey*, 297 Mich App at 247-248.

Respondent further claims that clear and convincing evidence did not support termination of her parental rights under MCL 712A.19b(3)(a)(i), (a)(ii), (c)(i), (g), and (j). Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination, and that termination is in the child's best interests. MCR 3.977(H)(3); MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 355, 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(K); *Mason*, 486 Mich at 152; *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *B & J*, 279 Mich App at 17. 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. *Mason*, 486 Mich at 152; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *B & J*, 279 Mich App at 17-18.

In the present case, termination of respondent's parental rights was not appropriate under MCL 712A.19b(3)(a)(i) and (a)(ii). Subsection (a)(i) applies only when the parent's identity is unknown. Under subsection (a)(ii), petitioner must show by clear and convincing evidence that the parent "deserted the child for 91 or more days and has not sought custody of the child during that period." This subsection requires an intentional or willful act of desertion. *B & J*, 279 Mich App at 18-19, n 3. Here, the evidence was insufficient that respondent intended to desert the child by not visiting during the periods identified by DHS. Unlike the situation in *In re TM (After Remand)*, 245 Mich App 181, 193-194; 628 NW2d 570 (2001), respondent did not desert the child for three years. She returned each time and resumed participating in her case service plan. During her absence, her attorney represented her interest in court and did "seek custody." Some of the time, respondent also performed acts inconsistent with desertion, for example calling a clinic for an appointment and attempting to attend parenting time. DHS did not show by clear and convincing evidence that respondent deserted the child within the meaning of subsection (a)(ii).

However, only one statutory ground for termination need be established, *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012), and the remaining subsections were proven by clear and convincing evidence. While respondent loved her child, she failed to benefit sufficiently from services. Benefit as well as participation is required under MCL 712A.19b(3)(c)(i). *Gazella*, 264 Mich App at 676-677. In this case, the referee likened respondent's on-again, off-again progress to a roller coaster. She continued to have emotional outbursts, sometimes in front of the child, as late as December 2011, to the extent that the caseworker feared for her physical safety. At the final hearing, the referee described respondent as "not lucid." When asked to state her last name for the record, respondent announced that Whitney Houston had died, a circumstance which occurred six weeks previously. Respondent had participated in many services and at one point progressed to unsupervised and even overnight visits, but she could not sustain her progress well enough to be able to provide adequate care for her child. The conditions that brought the child into care were not rectified and could not be rectified within a reasonable time considering the child's age.

The requirements of MCL 712A.19b(3)(g) and (j) were also proven by clear and convincing evidence. Respondent failed to provide adequate care and custody for the child under subsection (g). She disappeared for long periods and was unavailable to visit. This negatively affected the child, who loved her mother and looked forward to seeing her. Respondent had had three or more psychiatric hospitalizations. After four and a half years of services, her mental health failed to improve such that she would be able to properly care for a child. She refused psychotropic medication most of the time and had repeated outbursts. Respondent did not explain her reluctance or refusal to take psychotropic medications, which might have prevented or lessened the severity of her decompensations. Such repeated angry outbursts do show a reasonable likelihood of harm should the child be returned. *Olive/Metts Minors*, 297 Mich App at 41. Respondent's mental instability and repeated angry outbursts posed a danger of at least emotional harm to the child under subsection (j). The court did not clearly err in finding clear and convincing evidence to support the statutory grounds in subsections (g) and (j).

Finally, respondent contends that the court erred in finding termination to be in the child's best interests. Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights if termination is in the child's best interests. MCR 3.977(H)(3); MCL 712A.19b(5). The trial court's decision on best interests is reviewed for clear error. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

Initially, respondent argues that the court failed to adequately consider the issue of relative placement in the context of best interests. In *Mason*, 482 Mich at 164, the Court stated that "placement with relatives weighs against termination under MCL 712A.19a(6)(a)" and that "placement with respondent's family was an explicit factor to consider in determining whether termination was in the children's best interests." This ruling was applied in *In re Mays*, 490 Mich 993; 807 NW2d 304 (2012),² where the Court found that the trial court's failure to explicitly consider relative placement rendered the record "inadequate to make a best interests determination."

In the present case, the trial court gave sufficient consideration to the fact that the child was in relative care. The court noted that she was being cared for by her grandmother who was interested in planning long term. The court stated that while respondent loved the child and they shared a bond, the child had been in care for nearly five years and the court could not find "any evidence of anytime in the foreseeable future that the mother's mental health status will be stable enough for her to be able to care for this child." The relative placement was considered at numerous other hearings. The issue of guardianship, both subsidized and unsubsidized, was discussed, but it was determined that adoption would provide further benefits, including health care, for the child. The caseworker testified to a phone call in which she overheard respondent

² Although this is only an order of the Supreme Court, such orders constitute binding precedent when the rationale can be understood. *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 196; 650 NW2d 364 (2002).

yelling and screaming obscenities at the relative caretaker, who was going to call another family member for a ride. The relative caretaker ended up taking a cab with the child after respondent tried to prevent the child from riding with the other family member. The court dealt with this at a hearing and saw the problems respondent had in communicating with the relative caretaker. Viewing the record as a whole, we conclude that the court made sufficient findings addressing the best interests issue in light of relative placement.

We further hold that the court did not err in finding termination to be in the child's best interests. The child needs a permanent, safe, stable home, which respondent would be unable to provide in the foreseeable future. Although respondent loved her child and they shared a close bond, respondent's inability to conquer her mental health issues meant that she would be unable to adequately care for the child. The child was doing well in relative care, and the relative wished to adopt her. There was no clear error in the trial court's best interests ruling.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ Karen M. Fort Hood