

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 25, 2013

In the Matter of FOSTER, Minors.

No. 313036
Wayne Circuit Court
Family Division
LC No. 05-447827-NA

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

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

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the trial court's decision for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

The trial court did not clearly err in finding that the statutory grounds were established by clear and convincing evidence. The minor children had been in the temporary care of the trial court for approximately 21 months. They were brought into care because respondent did not have housing and she was not receiving treatment for her mental illness. In addition, her older child had previously been under the temporary jurisdiction of the trial court, services had been received, and the case had been dismissed. Throughout the current proceedings, respondent was unable to show that she had stable housing and, at the time of the termination hearing, she testified that she was living with a friend temporarily and that she did not have beds for the children. Throughout the proceedings, respondent was also unable to show compliance with parenting time, individual and substance abuse therapy, taking her prescribed medication, and drug screens.

While the trial court acknowledged that respondent loved her children and did not walk away from them, she was unable to show that she could provide proper care and custody or would be able to do so within a reasonable time. Respondent was not compliant with the terms of her treatment plan. She did not consistently visit the minor children, she did not have a telephone so she could comply with the required substance abuse screens, and she was not

compliant with her mental health treatment despite receiving a diagnosis of bipolar disorder. Her testimony was filled with rants and rambling, while she blamed others for stealing her identity, canceling visitations, and testifying dishonestly in court against her, and respondent provided excuses for her failure to comply with what was required of her. She did not have housing for the children and did not have the financial means to provide them with the basic necessities of life, including food and beds. She did not have any plans to do so in the near future. Without the means to provide the minor children with shelter and the basic necessities of their life, there was a reasonable likelihood that the minor children would be harmed if returned to respondent's care.

Respondent also argues that petitioner did not provide reasonable services to rectify the reasons that the children came into care. Generally, petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f; *In re HRC*, 286 Mich App 444, 465-466; 781 NW2d 105 (2009). The reasonableness of services offered to a respondent may affect the sufficiency of evidence to establish the statutory grounds for termination. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

We find that the evidence is clear and convincing that respondent was provided reasonable reunification services by petitioner. Respondent was referred numerous times for the same services, including parenting classes and individual and substance abuse treatment, because she failed to follow through. She was provided with instructions and directions with regard to the required substance abuse screens and visitation as well as bus tickets. Respondent did not have a telephone so that the case workers could reach her, did not have a permanent address so that the case workers could send her referrals and bus tickets, and even provided an incorrect address and the referrals were returned to the agency for a period of time. In addition, the trial court specifically explained to respondent what she needed to do and even gave her extra time. Respondent blamed everyone else and other circumstances for her inability to comply with the service plan. The evidence does not support her claim that reasonable services were not provided.

Finally, respondent argues that she was afforded ineffective assistance of counsel because her attorney did not adequately direct respondent during her testimony to "avoid colloquy," failed to question the workers in enough detail to show the lack of assistance provided, and failed to adequately advocate on respondent's behalf in closing argument. We disagree. This issue was not preserved in the trial court, and we therefore review it for plain error that affected substantial rights. *People v Borgne*, 483 Mich 178, 196; 768 NW2d 290 (2009); *People v Carines*, 460 Mich 750, 765-766; 597 NW2d 130 (1999). Our review is limited to errors apparent on the record. *People v Lockett*, 295 Mich App 165, 186; 814 NW2d 295 (2012).

In order to show ineffective assistance of counsel, respondent must establish that her counsel's performance was deficient and that, but for her counsel's deficient performance, the result of the proceeding would have been different. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Decisions to decline to object to procedures, evidence, or an argument may fall within sound trial strategy. *People v Unger*, 278 Mich App 210, 242, 253; 749 NW2d 272 (2008). Counsel is afforded wide latitude on matters of trial strategy and this Court abstains from reviewing such decisions with the benefit of hindsight. *Id.* at 242-243.

Respondent's attorney gave respondent the opportunity to respond to the allegations and the evidence that she had not complied with the court ordered treatment plan. Respondent answered every question asked of her with a rambling recitation of why others were to blame and she was not. The trial court gave respondent every opportunity to explain her position even when petitioner objected to respondent's continuous recitations. It does not appear that respondent's attorney could have done anything to contain respondent's rants,¹ and the decision by respondent's attorney to provide the trial court with respondent's defense of the allegations and evidence against her with regard to her failure to comply with the treatment plan clearly falls within sound trial strategy. With regard to respondent's argument that her attorney did not provide effective representation in closing argument, we find that the performance of respondent's attorney was not constitutionally ineffective. Respondent's attorney deferred to the trial court to decide what was in the best interests of the minor children. Based on the evidence that had been presented in this case, this tactic also clearly falls within sound trial strategy. Finally, respondent's attorney did question the case workers on the services provided and the evidence showed that respondent did not follow through. Furthermore, in light of the compelling evidence, respondent has not shown that the result of the proceedings would be any different if her attorney had limited respondent's answers to the questions when she testified, questioned the workers in a different way, or made a different closing argument.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause

¹ In fact, at one of the review hearings, the trial court had to threaten respondent that she would be removed from the trial court if she did not stop with her ramblings.