

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 3, 2013

In the Matter of JOHNSON/BUTLER, Minors.

No. 313821
Wayne Circuit Court
Family Division
LC No. No. 05-441519-NA

In the Matter of JOHNSON/BUTLER, Minors.

No. 313822
Wayne Circuit Court
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LC No. No. 05-441519-NA

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

In Docket No. 313821, respondent mother appeals as of right the order terminating her parental rights to her three minor children under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist) and (g) (failure to provide proper care and custody). In Docket No. 313822, respondent father appeals as of right the order terminating his parental rights to his two children under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (c)(ii) (other conditions now exist), and (g) (failure to provide proper care and custody). The cases were consolidated for review. We affirm.

I. FACTUAL BACKGROUND

The children were removed from respondent mother's home on February 11, 2011, as she had been hospitalized for mental health treatment. Because respondent father was a long-distance truck driver, there was no one to care for the children. The three minor children were placed with their maternal grandmother and the court took jurisdiction over the children. At the preliminary hearing, the trial court found that respondent mother was in a "crisis center for mental health issues" and that she was "schizophrenic and refused to take her medications." The court further found that the home conditions "were deplorable[,] there was no food, no heat, it was unsanitary and the fathers of those children did not visit or support."

After various permanency planning hearings, the case eventually proceeded to termination on September 10, 2012. Jasmine Lott, the foster care worker involved in the case, testified that respondent mother's treatment plan included parenting classes, maintaining safe and

suitable housing, receiving a legal source of income, participating in random drug screens, maintaining contact with the foster care worker, individual counseling with a substance abuse component, and participating in psychiatric/psychological services.

After several referrals, respondent mother eventually completed her parenting classes on August 21, 2012, less than a month before the termination hearing began. Lott testified that respondent mother's housing was stable and she received social security income and income for being a home health care provider for her father. According to Lott, during the pendency of the litigation respondent mother smacked one of the minor children in the face during a weekend overnight visit. The visits were thereafter supervised. Lott testified that respondent mother's visits were sporadic, even though she was permitted to visit the children twice a week. Respondent mother at times offered excuses for her absence, including taking care of her ill father, failing to remember, it was raining, attending classes, or looking for housing. However, Lott testified that during visitation, respondent mother behaved appropriate and loving.

But, respondent mother continued to miss several drug screens, tested positive once for marijuana, and tested negative for other screens.¹ When the termination hearing reconvened on October 12, 2012, Lott testified that respondent mother was attending individual counseling appointments, was benefitting, and was doing well. Lott testified that respondent mother was in compliance with the substance component of individual therapy although she missed the drug screen the Monday before the hearing.

According to Lott, the most troubling issue for respondent mother was her mental health. Respondent mother completed the psychological and psychiatric evaluations and complied with recommendations such as pursuing her career goals and increasing her self-esteem. However, she refused to take medication for her depression and communicated her belief that there was nothing wrong with her. Lott testified that after the removal of the children and the initiation of these proceedings, respondent mother was admitted to a mental health facility again on December 1, 2011, to December 13, 2011, for noncompliance with medication, hallucination, and paranoia. As recent as August, 22, 2012, respondent mother expressed to Lott that she did not need medication and that she refused to follow the psychiatrist recommendation regarding medication. Lott testified that the July 2011 psychiatry report indicated that respondent mother's noncompliance with the treatment protocol would render the prognosis for providing long term stability poor, and that nothing had changed since then.

As for respondent father, his treatment plan was to participate in parenting classes, attend individual counseling with a substance abuse component, contact the worker, visit with the children, maintain safe and suitable housing, and maintain a legal source of income. Lott testified that respondent father had been referred for parenting classes and individual therapy but had not completed them. Further, in March and April 2012, respondent father admitted himself into a rehabilitation center for an addiction to crack cocaine. While he finished the in-patient portion of the program, he did not complete the transition program that aided patients in locating

¹ On appeal, respondent mother contends that some of her missed drug screens were because they had not been authorized. She was provided with bus tickets to facilitate the drug screens.

housing, employment, counseling, and follow-up services. In July 2012, respondent father was ordered to submit to random drug screens, the majority of which he did not appear for even though special accommodations were made for his job as a long-distance truck driver.

According to Lott, respondent father did not visit the children for months at a time, although he appeared to have a bond with them. Moreover, since the beginning of the case, he reported to living in at least three different residences. While Lott testified that respondent father had not been providing financial support for the minor children, she also acknowledged that he claimed he was buying them clothes.

According to Lott, termination was in the children's best interests because the issues that led to these proceedings had not been rectified, respondent mother's mental health would not be sufficiently addressed in the foreseeable future, visits with respondents had been sporadic, and the children were in a permanent placement with their grandmother and had been living there for almost two years. Lott testified that respondents had not appeared to benefit from services and it was not until very recently that they showed any initiative in completing the services. She also indicated that she discussed potential guardianship with the maternal grandmother, although termination was recommended because the children would have more permanence.

The trial court found the statutory grounds for termination, MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (c)(ii) (other conditions now exist), and (g) (failure to provide proper care and custody) were proven by clear and convincing evidence. The court also found that it was in the children's best interests to terminate respondents' parental rights. Both respondents now appeal on several grounds.

II. STATUTORY GROUNDS FOR TERMINATION

A. Standard of Review

On appeal, respondents first argue that the trial court clearly erred in finding that there was clear and convincing evidence of the statutory grounds for termination. This Court reviews "for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks, citation, and brackets omitted).

B. Analysis

In the instant case, respondents' parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), which states that the trial court must find by clear and convincing evidence that "[t]he 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.”² The conditions that led to adjudication in the instant case were that respondent mother had a mental health incident requiring hospitalization and there was no one to care for the minor children.

During the course of these proceedings, respondent mother succeeded in obtaining psychological and psychiatric evaluations and was progressing in individual therapy. However, she also was directed to take medication to treat her depression, which she steadfastly refused. Consequently, she again was admitted to a mental health facility for a number of days in December 2011, for noncompliance with medication, hallucination, and paranoia. Mere weeks before the termination hearing, respondent mother still insisted that she did not need medication, and refused to take it. According to Lott, the psychiatry report from July 2011 indicated that respondent mother’s noncompliance with the treatment protocol would render the prognosis for providing long term stability poor, and that nothing had changed since that date.

In light of this evidence, we find that the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence. Respondent mother’s refusal to comply with the psychiatric recommendation is certainly disappointing considering her progress in other areas. Yet, as the testimony at the termination hearing established, respondent mother’s repudiation of this medical directive rendered her prognosis for providing long term stability poor, and confirmed that the conditions that led to adjudication continued to exist. MCL 712A.19b(3)(c)(i). Further, this refusal to comply with professional recommendations or even acknowledge the severity of the problem indicates that there was not a reasonable likelihood that conditions would be rectified within a reasonable time considering the children’s ages, all of which were under 10 years. See *Matter of Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991) (even though a respondent may request additional time to improve the conditions that led to adjudication, the language of MCL 712A.19b(3)(c)(i) “indicates to us that the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time.”).³

Further, respondent father has not established a consistent presence in the area where the children lived that would enable him to care for them. He also failed to complete individual therapy, parenting classes, and drug screens.

“While respondents were offered various services and did participate in and complete certain mandated requirements of their respective treatment plans, they failed to demonstrate

² Appellants also challenge the termination finding pursuant to MCL 712A.19b(3)(a)(i) (parent unidentifiable) and (a)(ii) (desertion), but the trial court’s oral ruling makes it clear that those grounds apply to one of the minor children’s father who did not participate in these proceedings, not respondents.

³ While respondents contend that the trial court did not adequately consider the children’s ages, the trial court explicitly referenced the language in the statute referring to age being a consideration.

sufficient compliance with or benefit from those services specifically targeted to address the primary basis for the adjudication in this matter[.]” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Because we are not left with the definite and firm conviction that a mistake has been made, reversal is not warranted. *In re Mason*, 486 Mich at 152.

Respondents’ rights also were terminated pursuant to MCL 712A.19b(3)(g), which states: “The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”⁴ As the trial court found, respondent mother’s mental health problems were severe enough that she required hospitalization in February 2011, which precipitated these proceedings as there was no one in the home to provide proper care or custody of the minor children. Respondent mother again was hospitalized in December 2011, for noncompliance with medication, hallucination, and paranoia. Respondent father failed to acquire a permanent residence during these proceedings and his visitation with the minor children was sporadic at best. Lott also testified that respondent father had not been providing financial support for the minor children, although he claimed he was buying the children clothes.

In light of this evidence, we cannot conclude that the trial court committed clear error. Given respondent mother’s mental health hospitalizations and respondent father’s lack of presence in the children’s lives, there was a respective failure to provide proper care or custody of the minor children. MCL 712A.19b(3)(g). Further, considering respondent mother’s refusal to comply with the mental health recommendations and respondent father’s lack of progress or compliance with the service plan, the trial court did not clearly err in finding that each parent would not be able to provide proper care or custody of the children within a reasonable time considering the children’s age. MCL 712A.19b(3)(g).

Lastly, respondent father’s parental rights were terminated pursuant to MCL 712A.19b(3)(c)(ii), which states:

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

⁴ In order to affirm the trial court’s finding, only one statutory ground for termination needs to be established by clear and convincing evidence. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Thus, respondents’ arguments are precluded if the trial court correctly terminated their parental rights based on MCL 712A.19b(3)(c)(i), (c)(ii), or (g).

Late in the proceedings, respondent father unexpectedly revealed that he had been struggling with a drug addiction to crack cocaine and had admitted himself into rehabilitation.⁵ While respondent father completed the in-patient portion of the program, he did not complete the transition program that aided patients in locating housing, employment, counseling, and follow-up services. In July 2012, respondent father was ordered to submit to random drug screens, the majority of which he did not appear for, even though DHS attempted to accommodate his schedule.

Considering respondent father's admission that he was addicted to crack cocaine and his subsequent missed drug screens, we are not left with the definite and firm conviction that the trial court erred in finding that there is no reasonable likelihood that these conditions will be rectified within a reasonable time considering the children's age. MCL 712A.19b(3)(c)(ii). As the trial court recognized, respondent father checked himself into rehabilitation, but failed to complete the transition phase of the program. Though he contends that the latter portion was optional and therefore irrelevant, this ignores the fact that he also missed numerous drug screens after being released from rehabilitation.⁶ We find no clear error in the trial court's finding.

III. BEST INTEREST

A. Standard of Review

We review for clear error the lower court's finding that termination was in the children's best interest. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000).

B. Analysis

Initially, respondents argue that the court failed to consider the issue of relative placement. "[B]ecause a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012), citing *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010) (quotation marks omitted). "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.*

At the best interest hearing, the trial court explicitly referenced the fact that the children were living with their maternal grandmother. The court further noted that the clinic report recommended that it would "most likely be in the best interest of the children that [respondents]

⁵ Despite respondent father's arguments to the contrary, the record clearly demonstrates that the "other condition" was his addiction to crack cocaine.

⁶ The fact that respondent father may have had to complete drug screens for his employment does not negate the fact that he continually missed the required drug screens in these proceedings.

allow the maternal grandmother to gain full guardianship of the children and in the event that [respondent mother] decides in the future to address her mental health issues, her mother will be able to determine the amount of visitation, supervised or unsupervised [respondent mother] should have with the children.”

However, the trial court then referenced the testimony of Lott, stating:

Ms. Lott testified today, and I do understand the bond—that there’s a bond between the parents and the children and that there’s a possibility of a guardianship in this; however, Ms. Lott testified that she discussed with the grandmother the possibility of adoption and guardianship, depending on what the Court does. There is a possibility that the grandmother could adopt the children. As we sit here today, the children need permanency and stability in their lives. They’ve been in care and although it’s care of a relative, the court’s proceedings are ongoing and they don’t have the stability and permanency that they need in their lives; therefore, I’m finding that it is in the children’s best interest for the parental rights of all parents involved to be terminated in this matter.

Thus, contrary to respondents’ arguments, the trial court did explicitly consider placement with relatives in its best interest determination and the alternative option of guardianship. The trial court acknowledged that the children were living with the maternal grandmother and that guardianship was a potential option rather than termination. The trial court also noted that Lott had discussed guardianship with the relative caregiver.

However, the trial court ultimately concluded that termination was in the children’s best interests. As respondent mother recognizes on appeal, she did progress during the termination proceedings. However, a parent’s measured progress in termination proceedings and bond with the children are not the only factors relevant in a best interest determination. As the trial court recognized, the minor children were in need of permanency and stability after almost two years of these proceedings. In its written findings, the court found that the children “are at an age where permanent planning is essential for continued growth and development.” While respondents contend that guardianship was a viable alternative, that would not produce the desired permanence and stability that accompanies the finality of termination. Respondents’ visitation with the minor children during the proceedings also was described as “sporadic,” which underscores the lack of consistency and stability respondents have displayed in a circumstance similar to guardianship. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004) (a relevant factor in the best interest determination is that “respondent did not visit the children as specified[.]”).⁷

⁷ While respondents are correct that Lott testified that they should have a relationship with the minor children, she also clearly testified that termination, not guardianship, was in the best interests of the children. Lott expressed several reasons for her opinion, including that the children were all under 10 years old and “who knows how long it will take [respondent mother] to address any mental health issues. By then, the children may be adults. Who knows.”

Further, respondents' arguments gloss over the severity of respondent mother's mental health issues, which were significant enough to require two hospitalizations from the beginning of these proceedings. Even more troubling is that respondent mother, despite her progress, refused to take medications as directed or acknowledge that they were needed. The trial court specifically referenced the clinic report, which stated that in light of respondent mother's ongoing mental health problems, "the prognosis for [respondent mother] providing her children with a stable home in the future is poor at best." The clinician reported that respondent mother "completely denied a mental health history for herself" and felt that "the only reason she was hospitalized in the past was because she was petitioned to the hospital." The clinician noted that there were glimpses into respondent mother's "paranoia" and that she showed no insight into her mental health issues or why there was court intervention. The clinician also indicated that respondent father did not understand or acknowledge that respondent mother had mental health issues. Further, because respondent father had neither suitable housing nor sufficient presence in the area, the clinician concluded that he was not a viable option to care for the children on a permanent basis.

Essentially, "[t]he children were young" and "the ongoing uncertainty" surrounding respondent mother's mental health "weighed heavily against additional reunification efforts. The children had been placed in a stable home . . . that could provide them continued stability and permanency given the [caregiver's] desire to adopt them." *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011); see also *In re Frey*, 297 Mich App at 249 ("[t]he child required a permanent, safe, and stable home, which neither respondent was capable of providing."). In light of these factors, we are not left with the definite and firm conviction that the trial court erred in finding that termination was in the best interest of the minor children.⁸

IV. CONCLUSION

The trial court did not clearly err in finding the statutory grounds for termination, MCL 712A.19b(3)(c)(i), (c)(ii), and (g), had been proven by clear and convincing evidence or that termination was in the children's best interests. We have reviewed any remaining arguments in respondents' brief and found them to be without merit. We affirm.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Michael J. Riordan

⁸ Respondent mother also contends that the trial court erred in failing to consider each child's interests individually. However, there is no evidence that the trial court failed to take into account any relevant differences in the minor children's circumstances. Further, considering that the minor children were similarly situated, restating the best interest analysis in the redundant fashion respondent mother suggests was not warranted.