

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of L.A.C. BOMBARD, Minor.

UNPUBLISHED
January 28, 2014

No. 315331
Calhoun Circuit Court
Family Division
LC No. 2011-003180-NA

Before: SAWYER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions exist that cause the child to come under jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent). We affirm.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.* “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

We first find that the trial court did not clearly err in finding that petitioner established, by clear and convincing evidence, a statutory ground for termination under MCL 712A.19b(3)(c)(ii). MCL 712A.19b(3)(c) provides, in relevant part, that termination is proper when

[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . .

* * *

(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.

Here, the record establishes that "182 or more days" had "elapsed since the issuance of an initial dispositional order." After respondent became actively involved in the proceeding in late December 2011, it was discovered that he had a history of abusing alcohol, methamphetamines, and marijuana. During the 13 months that respondent participated in drug screenings, he failed to submit to 15 screenings. Respondent tested positive for marijuana in January 2012 and failed to submit to drug screenings in April 2012 because he was taking pain medication for which he did not have a prescription. After respondent completed two therapy groups related to substance abuse recovery, he tested positive for methamphetamines on July 11, 2012. Respondent did not again submit to drug screenings until after August 2012. After the termination petition was filed, respondent relapsed on methamphetamines in October 2012. Respondent did not consistently begin attending individual therapy until the end of October 2012, and he failed to submit to a substance screening in December 2012. The record supports that, at the time of the March 7, 2013 termination hearing, respondent had only demonstrated sobriety for a little over four months. He required an additional three months before he could complete his relapse prevention therapy group because of his inconsistent attendance. Importantly, even though respondent had abused alcohol in the past and was aware that particular social situations and consuming alcohol was a "trigger" for him to use other substances, he went to a bar a few weeks before the termination hearing. Respondent's psychological evaluation revealed concerns that he would be unable to maintain sobriety once he was not being monitored closely. The record establishes that respondent "had been given notice, repeatedly, of . . . the changes that [he] would have to make in order to have [the minor child] returned," but at the time of termination, he had failed to ameliorate concerns regarding his long-term substance abuse. See *In re Sours Minors*, 459 Mich 624, 640; 593 NW2d 520 (1999). The record further establishes that there was no reasonable likelihood that respondent's substance abuse would "be rectified within a reasonable time considering the child's age." See MCL 712A.19b(3)(c)(ii). Respondent demonstrated a lack of commitment throughout a majority of the proceedings and remained at risk of relapsing at the time of termination as a result. Moreover, the six-year-old minor child had been in care for 16 months. The trial court's finding that termination was proper pursuant to MCL 712A.19b(3)(c)(ii) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App at 459.

Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *Id.* at 461. Nevertheless, we have reviewed those grounds and conclude that termination was appropriate under MCL 712A.19b(3)(g) and (j). We find, however, that the trial court clearly erred by terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) because the record clearly establishes that the conditions that led to adjudication no longer existed at the time of termination.¹

¹ The conditions that led to adjudication with respect to respondent included that he was not able to provide care to the minor child because he was allegedly a fugitive living in Florida. At the

In reaching our conclusion, we reject respondent's argument that termination of his parental rights to the minor child was attributable to deficient efforts by petitioner. Whether a parent received reasonable reunification services involves the trial court's factual findings, which we review for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "When a child is removed from a parent's custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [the parent] to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

While the record establishes that respondent was referred to and accessed a multitude of services during his involvement in the proceeding, he argues that petitioner's failure to provide him with parenting classes until June 2012 was indicative of its failure to timely provide services to secure reunification. The record establishes that respondent informed petitioner at the end of December 2011 that he was willing to participate in services in Michigan. Respondent was referred to parenting classes that were scheduled to begin in February 2012 but was "dropped" from the class after he failed to attend the first session. Respondent had to wait for the next class to begin in June 2012 as a result.

Next, respondent argues that petitioner failed to foster "a relationship between father and son" by waiting until March 2012 to provide him with parenting time. The trial court initially ordered that respondent was required to submit to a psychological evaluation before parenting time could begin because he had not seen the minor child for an extended period of time. Psychological evaluations were required to be scheduled 60 days in advance. The record supports that the delay was attributable to respondent waiting to notify petitioner that he was willing to participate in services in Michigan. Further, although respondent argues that he should have been granted additional parenting time after June 2012 because of his progress, the record supports that respondent relapsed on methamphetamines at the beginning of July 2012 and again in October 2012. Moreover, he did not take advantage of all of the parenting time that he was afforded because he failed to attend some of the visits without explanation throughout the proceeding. Respondent also failed to attend all but one of the minor child's school functions.

Respondent further argues that petitioner referred him to individual counseling to address his mental health and then refused to pay for the service. However, the record supports that petitioner lacked funding to pay for that particular service, and once it was discovered that respondent could not pay for individual counseling, respondent was referred to group counseling, which was free of charge. Respondent did not attend the group therapy.

Finally, with respect to respondent's claim that the trial court's ruling was influenced by "disingenuous" testimony from the caseworker, the trial court found that the witnesses who testified at the termination hearing were credible. This Court gives "deference to the trial court's

time of termination, respondent was living in Michigan and no evidence was presented that he was a fugitive. Further, the caseworker testified that the conditions that led to adjudication no longer existed.

special opportunity to judge the credibility of the witnesses.” *In re HRC*, 286 Mich App at 459. Moreover, we find that the testimony was supported by the record. The trial court’s finding that reasonable efforts were made to preserve and reunify the family does not leave us with a definite and firm conviction that a mistake has been made. *Id.*

Affirmed.

/s/ David H. Sawyer
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro