STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of J. HORNER, Minor.

UNPUBLISHED
August 14, 2014

No. 319923
Kent Circuit Court
Family Division
LC No. 12-050875-NA

Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the January 2, 2014, order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist) and (g) (failure to provide proper care or custody). 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).

Respondent appears to argue on appeal that the trial court improperly found that termination was proper under MCL 712A.19b(3)(c)(*i*) and (g). However, the issue whether termination was improper under (c)(*i*) is not properly presented for appellate review because respondent failed to raise it in her statement of questions presented. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 404; 628 NW2d 86 (2001). On this ground alone, we could deny relief on the issue whether a statutory ground was established. *In re HRC*, 286 Mich App at 641; *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987). Nevertheless, we have considered the issue.

Termination under MCL 712A.19b(3)(g) is proper where "[t]he 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." This Court has previously held that termination under (g) was appropriate where the record established that the respondent "only minimally complied" with portions of the parent-agency agreement. *In re BZ*, 264 Mich App 286, 300; 690 NW2d 505 (2004).

Respondent was unable to provide proper care to the child at the beginning of the proceeding because she was abusing alcohol and prescription medication and was mentally unstable. Respondent was diagnosed with attention deficit hyperactivity disorder (ADHD); generalized anxiety disorder; and "negativistic, borderline, narcissistic, and schizoid personality features." Respondent was ordered to attend counseling to address her mental instability. She attended counseling with Angela Dejonge-Meraz from May 2012 until the end of February 2013. In March 2013, respondent refused to continue attending counseling with Dejonge-Meraz. Respondent began counseling in May 2013 with Lisa Tamblyn. However, in June 2013, respondent did not schedule any counseling appointments, and she claimed no appointments were available for July. When her claim proved to be untrue, three July appointments were scheduled. Respondent cancelled two of them. Respondent admitted to having a "breakdown" in early August 2013. After respondent had an angry outburst during an August 22, 2013, counseling session, neither Tamblyn nor any other counselor at the agency would work with respondent. Respondent failed to follow through with referrals to begin counseling with a different service provider, and she denied that she had mental health issues. At best, she minimally complied with her agreement. *In re BZ*, 264 Mich App at 300.

Respondent was also ordered to obtain and maintain a stable income. During the proceeding, respondent's application for Social Security Disability was denied, as was her appeal of the denial. She failed to follow through with referrals to help her find employment, and she only worked twice each month cleaning for a relative. In the weeks leading up to termination, respondent had to acquire state emergency relief so her gas was not turned off. *Id.*

Further, respondent failed to adequately address her substance abuse during the proceeding. She had several health issues, including head, knee, and back pain. She reported that, when the pain became extreme, she sought Dilaudid. In the first few months of the proceeding, respondent went to the emergency room complaining of pain. Respondent sought Norco in January 2013. In early August 2013, respondent stopped consistently attending Alcoholics Anonymous, was found in bed with a glass of beer on the nightstand, and did not communicate with service providers for over one week. Although respondent had consistently tested negative for alcohol and illegal substances, at the time of termination, there continued to be concerns that she would relapse in the future because she did not have an appropriate relapse prevention plan, was no longer attending counseling, did not have a support system, and had no plan regarding how she would address her physical pain without taking narcotics. The record clearly supports that respondent could not provide proper care and custody at the time of termination. See MCL 712A.19b(3)(g).

Further, the record clearly establishes that there was "no reasonable expectation that [respondent would] be able to provide proper care and custody within a reasonable time considering" the child's age. See MCL 712A.19b(3)(g). During the 20-month proceeding, respondent denied that she had mental health issues, entirely failed to address how she would manage her pain without using narcotics, and failed to create a relapse prevention plan. Further, given respondent's lack of commitment, there was no evidence to support that she would obtain stable employment within a reasonable time. At the time of termination, the minor child was over 3-1/2 years old, had been in care for 20 months, and required permanency in the near future. The trial court's finding that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(g) 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 specifically consider the additional ground upon which the trial court based its decision. *Id.* at 461.

In reaching our conclusion, we reject respondent's argument that petitioner failed to provide her with reasonable services to address her mental health issues. This issue is unpreserved, *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), and we review for plain error affecting substantial rights, *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

The record supports that respondent's failure to make progress with her mental health issues was the result of her failure to fully invest and participate in the multitude of services offered to her over the course of the 20-month proceeding. Respondent never committed to counseling given that she refused to continue to attend counseling with Dejonge-Meraz in March 2013, did not begin attending counseling with Tamblyn until May 2013, was discharged from counseling with Tamblyn in August 2013 because of her poor behavior and inconsistent attendance, and failed to follow through with a referral to begin counseling with a different service provider. Further, respondent was provided psychiatric assessments during the proceeding to aid in determining whether psychotropic medication would help address her anxiety disorder. Although respondent argues on appeal that psychotropic medication made her ill, there is no evidence of this on the record. Aside from the Xanax that respondent was abusing when the proceeding began, she never took medication to help with her anxiety. Further, she discontinued use of three ADHD medications a short period of time after she began taking them. Respondent was hospitalized in July 2012 only because she doubled the prescribed dose of Ritalin. She was informed during the proceeding that taking prescription medication would not be used against her in the child protective proceeding if she needed the medication and complied with medical instructions when taking it. Tellingly, respondent continued to deny that she required medication and counseling in the weeks leading up to termination. *In re Frey*, 297 Mich App at 248. Respondent has failed to establish plain error. *Rivette v Rose-Molina*, 278 Mich App 327, 328-329; 750 NW2d 603 (2008).

Affirmed.

/s/ Michael J. Kelly
/s/ David H. Sawyer
/s/ Joel P. Hoekstra