STATE OF MICHIGAN

COURT OF APPEALS

In re JOHNSON/KIPP, Minors.

UNPUBLISHED
February 10, 2015

No. 322255
Genesee Circuit Court
Family Division
LC No. 12-129369-NA

Before: FORT HOOD, P.J., and JANSEN and STEPHENS, JJ.

PER CURIAM.

Respondent T. Geisbert appeals by right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(*i*), (a)(*ii*), (c)(*i*), (c)(*ii*), (g), and (j). We affirm.

Respondent argues that the trial court erred by finding that the cited statutory grounds for termination were established by clear and convincing evidence. We review the trial court's decision for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "It is only necessary for the DHS to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights." *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

The trial court erred to the extent that it applied §§ 19b(3)(a)(*i*) and (a)(*ii*) to respondent. Those subsections were apparently intended to apply to the children's fathers. Respondent was not an unidentifiable parent, and the court did not identify any period of 91 or more days during which respondent intentionally left the children with the intent to abandon them. The evidence did not support the statutory grounds set forth in §§ 19b(3)(a)(*i*) and (a)(*ii*).

We also question whether there was sufficient evidence to prove the statutory ground set forth in § 19b(3)(c)(*i*). The trial court obtained jurisdiction over the children pursuant to respondent's plea of admission to an allegation of domestic violence in the home. Although the trial court found that respondent continued to maintain sporadic relationships with other men, it did not find that any of those relationships were affected by domestic violence. However, any error in relying on § 19b(3)(c)(*i*) was harmless because the trial court did not clearly err by finding that the remaining statutory grounds for termination were supported by clear and convincing evidence. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

With respect to § 19b(3)(c)(*ii*), the DHS caseworker, Kasondra Hansen, identified other conditions that would have justified the assumption of jurisdiction under MCL 712A.2(b). She

explained that before respondent moved into a YWCA shelter, there was no food for the children and the children were filthy. After respondent moved to the shelter, there were concerns regarding "her parenting and proper supervision and her ability to parent . . . ." Respondent was provided with recommendations to rectify those conditions, including counseling, parenting classes, and working with Diane Austin. The trial court found that respondent had not benefited from those services. That finding was not clearly erroneous. It was supported by evidence that respondent did not regularly attend family visits, by Hansen's testimony, and by other evidence in the record regarding respondent's poor parenting during family visits and her resistance to change. The evidence further established that respondent did not complete counseling and never obtained stable, suitable housing or a source of income. Moreover, because the children had been in care since September 2012 and these issues had not been resolved at the time of the hearing in May 2014, the trial court did not clearly err by finding that they were not likely to be rectified within a reasonable time given the children's ages.

There was also sufficient evidence to establish the statutory ground set forth in § 19b(3)(g). The children were exposed to violence in the home. The evidence produced at the termination hearing and other evidence in the record showed that respondent did not benefit from reunification services and was still not able to provide proper care and custody. Specifically, she had unresolved mental health issues, did not have stable housing or a verifiable source of income, and had not even seen the children in several months. Because respondent had not overcome the barriers to reunification after more than a year and never identified a relative who could provide for the children in her place, the trial court did not clearly err by finding that she would not be able to provide proper care and custody within a reasonable time given the children's ages.

Nor did the trial court clearly err by finding that § 19b(3)(j) was established by clear and convincing evidence. Austin's report indicated that the children had "a disorganized attachment" to respondent and Hansen's testimony and other evidence in the record showed that respondent still had difficulty with parenting and would not accept redirection. The evidence also showed that respondent did not have stable housing or a verifiable source of income with which to support the children. This evidence was sufficient to prove the statutory ground set forth in § 19b(3)(j).

In her argument challenging the trial court's findings regarding the statutory grounds for jurisdiction, respondent briefly raises other ancillary issues, none of which has merit. She contends that petitioner sabotaged her ability to achieve reunification by seeking to reduce her parenting time. This Court has held that a petitioner cannot seek termination of parental rights when it intentionally creates the grounds on which termination is sought. *In re B & J*, 279 Mich App 12, 19; 756 NW2d 234 (2008). Here, however, petitioner did not seek to limit respondent's parenting time. That request came from the children's lawyer-guardian ad litem, who was acting on behalf of the children. Second, the restriction of respondent's parenting time only limited how often respondent could visit; it did not prevent her from visiting the children or from participating in any other reunification services. Further, termination was not sought because respondent only visited the children once a week instead of three times a week. It was sought in part because respondent did not maintain a bond with the children or demonstrate an ability to properly parent them by visiting when she was able to do so. Thus, there is no merit to this argument.

Respondent also contends that petitioner failed to provide her with reasonable services to facilitate reunification. "In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). "Reasonable efforts to reunify the child and family must be made in all cases" except those cases involving exceptional circumstances not present here. MCL 712A.19a(2). Petitioner made reasonable efforts to assist respondent with reunification. It referred her for a psychological evaluation to assess her needs, referred her to CMH to obtain counseling in accordance with the recommendation from her psychological evaluation, referred her to parenting classes and domestic violence classes to address the issues alleged in the petition, referred her to Austin for additional assistance with those issues, had her screened to determine if substance abuse was a barrier to reunification, provided her with family visits, and assisted with transportation when that became an issue. Respondent undermined her ability to access service providers and to attend family visits in Genesee County because she elected to move to Clare County to be with a new boyfriend. Hansen testified that she did not learn that respondent had left the area until after the fact and then provided respondent with bus passes and gas cards. Respondent attended family visits only sporadically. It is respondent's duty to "participate in the services that are offered," *In re Frey*, 297 Mich App at 248, and the lack of cooperation on respondent's part does not constitute a failure to provide reasonable services on petitioner's part.

Respondent also contends that petitioner failed to accommodate her special needs under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. The ADA requires a public agency such as the DHS "to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services. Thus, the reunification services and programs provided by the [DHS] must comply with the ADA." *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). If the DHS "fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Id.* at 26. Respondent's claim is based on the results of her psychological evaluation, which showed that she had cognitive limitations. Respondent does not address whether she was actually a "qualified individual with a disability" entitled to protection under the ADA. See 42 USC 12131(2); 42 USC 12132. Furthermore, when respondent raised the issue of the ADA, the trial court directed that in lieu of repeating parenting classes, respondent should work with a parent aide at family visits for one-on-one instruction. Respondent has not demonstrated that this was not a reasonable accommodation to meet her needs. Further, she has not identified any additional services that she believes should have been offered or shown that she "would have fared better" had those additional services been offered. *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). Accordingly, we reject this claim of error.

Finally, the trial court did not clearly err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the children's best interests under MCL 712A.19b(5). *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The children had been in foster care for more than a year and a half. While in foster care, the older child's problematic behaviors improved and the children were doing well in their placement. Respondent had moved to another state and had not seen the children for many months. Hansen testified that the children were stable, having "finally come to terms with not having their mother in their life." Even before respondent left,

she did not visit regularly, causing the children to have "a disorganized attachment." Further, while respondent claimed to have suitable housing, she had not shown that it was stable or that she could afford it. Respondent also claimed to have an income, but had not shown that it was sufficient to meet her needs or the children's needs. The trial court properly determined that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens