

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EMILY JEAN ROBERTS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KRAIG EARL ROBERTS,

Respondent-Appellant.

UNPUBLISHED

October 9, 2007

No. 276726

Eaton Circuit Court

Family Division

LC No. 04-015231-NA

Before: Jansen, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(ii), (g), and (j). We affirm.

The trial court assumed jurisdiction over the minor child because of the mother's substance abuse. Respondent, the child's father, did not actively participate in the case service plan until after the mother committed suicide in November 2005. Respondent complied with some of the requirements of his case service plan, but did not complete other requirements, including the counseling requirement. Further, although respondent attended two sets of parenting classes, he did not demonstrate adequate parenting skills during visits with the child. The trial court terminated respondent's parental rights because respondent had failed to successfully complete the requirements of his case service plan and lacked the basic skills to care for the child.

I

Respondent first argues that the trial court erred in allowing witnesses to testify concerning out-of-court statements made by the child's mother, Christy Ridenour, which implicated respondent as her source and connection for obtaining drugs and alcohol. Because petitioner sought to terminate respondent's parental rights for reasons unrelated to the circumstances that led to the trial court's jurisdiction over the child, legally admissible evidence was required to terminate respondent's parental rights. MCR 3.977(F); *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000). Although the challenged statements were hearsay, the trial court found that they were admissible under MRE 804(b)(3) as statements against interest.

MRE 804(b)(3) provides that certain statements are not excluded as hearsay if the declarant is unavailable as a witness:

A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

This exception is based on the premise that people generally do not make damaging statements about themselves unless those statements are true. *People v Washington*, 468 Mich 667, 671; 664 NW2d 203 (2003).

We review de novo a trial court's determination whether a statement was against the declarant's penal or pecuniary interest. *People v Barrera*, 451 Mich 261, 268; 547 NW2d 280 (1996). The determination whether a reasonable person in the declarant's position would have believed the statement to be true and whether there are sufficient circumstances indicative of trustworthiness involves both findings of fact and application of the legal standard to those facts. Therefore, those questions are reviewed under both the clearly erroneous standard and for an abuse of discretion. *Id.* at 268-269.

The trial court held that Ridenour's statements, which implicated respondent as her source of drugs, were against her interest because she was a respondent in a child protective proceeding and the statements could affect her rights to the child in that proceeding. We agree that such statements are encompassed within the scope of MRE 804(b)(3). The trial court did not err in determining that Ridenour's out-of-court statements were statements against interest within the meaning of MRE 804(b)(3).

The trial court was also required to determine (1) whether a reasonable person in Ridenour's position would have believed that the statements were true, and (2) whether the circumstances surrounding the statements indicated their trustworthiness. In deciding if a statement was made against the declarant's interest, the trial court must examine the context in which it was made. *People v Underwood*, 184 Mich App 784, 787; 459 NW2d 106 (1990). "If it appears that the declarant had some other motive in making the statement, whether self-interest or otherwise, the declaration should be excluded since it lacks the requisite indicia of reliability that underlies the exception." *Id.*, citing *People v Conte*, 152 Mich App 8, 12; 391 NW2d 763 (1986).

The fact that Ridenour lost custody of her children because of substance abuse and the fact that she was embroiled in proceedings with petitioner to regain custody of the children both support the trial court's determination that a reasonable person in Ridenour's position would not have made statements implicating herself in continued substance abuse unless those statements were true. The more pertinent question, however, concerns Ridenour's statements tending to implicate respondent as her source or connection for drugs.

Respondent asserts that Ridenour was motivated to implicate him because she wanted her fiancé to adopt the child and wanted to prevent respondent from seeing the child. Respondent further claims that Ridenour was motivated to make false statements against him because she knew that he had reported her relapse to petitioner. He argues that Ridenour made the statements only to portray him in a bad light or for retaliation. At the time the statements were made, however, respondent was not actively involved in the child protective proceeding and was not seeking custody of the child. Thus, it is unlikely that Ridenour would have had reason to falsely implicate respondent, especially in light of the fact that the statements in question also implicated Ridenour in continued substance abuse.

Other factors support a finding of the statements' trustworthiness as well. Several of the challenged statements were made to Kristy McKnight. McKnight was Ridenour's coworker and someone in whom Ridenour often confided. This fact supports the trial court's finding that the statements were reliable. Ridenour also made statements to Kelly Root and Robin Mahan that contained indicia of trustworthiness. In both of these cases, Ridenour was confronted with allegations that she was using drugs, which she initially denied. However, Ridenour thereafter admitted using illegal substances to Root and Mahan, and stated that respondent was responsible for her drug use.

Ridenour also made statements concerning respondent to her employer, Paula Mapes, and to her former fiancé, Harold Ritchie. Although the circumstances surrounding these statements do not contain the same indicia of reliability as the circumstances surrounding Ridenour's other statements, any error in allowing these statements was harmless because they were essentially cumulative of other properly admitted evidence concerning respondent.¹

II

Next, respondent argues that his parental rights were improperly terminated because respondent failed to make reasonable efforts to assist him in complying with the requirements of his treatment plan and to reunite him with his child. We disagree.

Petitioner is generally required to make reasonable efforts to rectify the conditions that caused the child's removal from a parent's home through adoption of a service plan. See MCL 712A.18f(4). In this case, the trial court specifically found that petitioner made reasonable efforts to rectify the conditions that caused the child's removal and to attempt to reunite respondent with the child. The court terminated respondent's parental rights, in part, because of respondent's failure to substantially complete the terms of the treatment plan.

We review the trial court's findings of fact in a parental termination case under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake was made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference must be accorded to the trial court's ability to

¹ Respondent also argues that the trial court erred by not analyzing the admissibility of Ridenour's challenged statements in its written decision. However, because the court addressed the admissibility of these statements on the record, no error occurred in this regard.

assess the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Respondent contends that reasonable efforts were not made to reunite him with his child because (1) he was not considered a viable placement for the child until December 2005, and (2) he was not offered critical services sooner.

We find no merit in respondent's argument that petitioner failed to make reasonable efforts to work with him before December 2005. Respondent admitted that he made no effort to work on the treatment plan or to obtain custody of the minor child before Ridenour died in November 2005. Petitioner did not work with respondent earlier because respondent was unwilling to work toward obtaining custody of the child before Ridenour's death.

Respondent points out that petitioner did not refer him to a psychologist for an evaluation until December 2005, even though the court had ordered an evaluation in August 2005. Again, however, this was due not to any fault of petitioner, but rather to respondent's refusal to participate in this case while Ridenour was alive. Indeed, respondent admits that a proper referral was made in December 2005, less than one month after Ridenour's death.

Respondent also complains that petitioner failed to refer him to a therapist to participate in the recommended counseling. The record discloses that respondent was aware of the counseling requirement, but wanted to attend counseling with a therapist whom the caseworker could not approve because that therapist was not on petitioner's list of approved providers. Respondent never requested a different referral. Instead, he unsuccessfully tried to complete counseling on his own. Throughout the case, respondent maintained only sporadic and infrequent contact with the caseworker, and only rarely sought assistance with the necessary requirements of his treatment plan. Respondent's failure to complete the requirements of the service plan was not caused by a lack of reasonable efforts by petitioner, but rather by respondent's initial disagreement with petitioner's recommendations and his subsequent failure to cooperate and communicate with the caseworker.

Respondent also asserts that petitioner should have had a therapist work with him during his visits with the child in an effort to help foster a stronger father-child bond. However, a parent aide was provided for limited help during visits. Moreover, parenting classes and counseling were ordered to address respondent's parenting issues. Although respondent completed the parenting classes, he did not appear to benefit from them or to apply the concepts he had learned during visits with the child. Respondent was offered the services necessary to improve as a parent, but failed to fully take advantage of these services and hence to improve his parenting skills.

The trial court did not clearly err in finding that petitioner made reasonable efforts to rectify the conditions that led to adjudication and to attempt to reunite respondent with his child. MCR 3.977(J).

III

Respondent further argues that the trial court erred in finding that he did not substantially comply with the terms of his treatment plan and that, even if he did not, termination of his parental rights was not warranted for this reason.

The trial court found that respondent delayed in completing the psychological evaluation and failed to complete the recommended therapy. The few therapy sessions he did attend were insufficient to satisfy the plan's requirement, and at least another year of therapy was needed. The court found that although respondent attended parenting classes, he did not benefit from them because it was apparent from his conduct during visits that he did not know how to accommodate the child's basic needs. The court also found that respondent failed to maintain regular contact with the caseworker.

Although respondent complied with some of the requirements of his treatment plan, he failed to comply with the recommendations made after his psychological evaluation, which was a critical requirement in this case. Both psychologists who evaluated respondent agreed that counseling was necessary, not only because of respondent's psychological profile, but because of his deficiencies during visits with the child.

The aspects of the treatment plan that respondent completed had little to do with the most pressing problem in this case: the question whether respondent could learn to properly care for the child and address her basic needs on a consistent basis. Respondent's procrastination in completing the requirements was indicative of his underlying failure to assign importance and priority to the child's needs. As the trial court noted, throughout this case respondent either put off his responsibilities until the last moment or waited for others to take responsibility in his place. Respondent's actions indicated that he was ill prepared to care for a young child and to attend to her basic needs.

The trial court did not clearly err in finding that respondent failed to substantially comply with the terms of his treatment plan, which was designed to address the neglectful behavior at issue in this case. This factor was properly considered by the trial court and supported the trial court's decision to terminate respondent's parental rights under MCL 712A.19b(3)(c)(ii) and (g). See *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000); see also *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). We perceive no clear error in the trial court's finding that there were sufficient statutory grounds to terminate respondent's parental rights in this case. MCR 3.977(J).²

² We need not determine whether termination was warranted under MCL 712A.19b(3)(j) because only one statutory ground is required to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). We also note that respondent does not argue that the trial court erred in determining that termination was not clearly contrary to the child's best interests. See MCL 712A.19b(5). Because respondent has not raised this issue on appeal, we decline to address it.

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey