STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KYLER SCHIEFEL, ISABELLA TOLEN-SCHIEFEL, and D-SHAWN LEI TOLEN-SCHIEFEL, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARION SCHIEFEL,

Respondent-Appellant.

UNPUBLISHED
March 12, 2009

No. 286587
Marquette Circuit Court
Family Division
LC No. 05-008289-NA

In the Matter of ISABELLA TOLEN-SCHIEFEL and D-SHAWN LEI TOLEN-SCHIEFEL, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JASON TOLEN,

Respondent-Appellant.

No. 286609
Marquette Circuit Court
Family Division
LC No. 05-008289-NA

Before: Sawyer, P.J., and Zahra and Shapiro, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the separate orders terminating their parental rights to their minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). Because clear and convincing evidence established statutory grounds for termination, and termination of respondents' parental rights was not clearly contrary to the best interests of the children, we affirm.

The primary condition of the initial adjudication, which related to Isabella and Kyler, who is not a child of respondent father, was the existence of domestic violence between respondents, occurring in the presence of the children. The same condition was a basis for jurisdiction over D-Shawn, born during these proceedings. Petitioner initially sought termination of the parental rights of both respondents in June 2007, which was denied following a trial in September 2007. Respondent mother was provided with a new service plan following the denial of termination, but respondent father, who was then incarcerated, was not. Petitioner again sought termination in March 2008, which was granted with regard to both respondents. Our review of the record reveals that the trial court did not clearly err by finding that statutory grounds for termination pursuant to MCL 712A.19b(3)(c)(i) and (g) were established by clear and convincing evidence. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 3.977(J).

I. Statutory Grounds as to Respondent Mother

After adjudication, respondent mother was directed to participate in an anger management assessment, to follow all recommendations, and to engage in individual counseling. However, the record reveals that she demonstrated little willingness to examine her own behaviors, as reflected in her resistance to counseling, her delay in seeking anger management therapy, and her refusal to participate in substance abuse treatment. There is no evidence that respondent mother actually undertook a course of treatment that would lead to reunification. Indeed, the evidence suggests respondent mother failed to participate or benefit from any of the extensive services provided.

Although substance abuse treatment was strongly indicated by her anger management assessment, respondent mother failed to participate. She failed to achieve the goals set with her family health education worker because of the lack of consistent visits. Her Infant Mental Health worker reported that, while there was initial progress, after approximately December 2007, progress ceased because she was not able to see respondent mother based on respondent mother's failure to contact her. Respondent mother's Wraparound[1] worker testified that she had only one meeting with respondent mother due to difficulty contacting her, and that during the singular meeting, very little was accomplished. Both her family mental health education worker and Infant Mental Health worker described having great difficulty contacting respondent mother. Her failure to engage in her treatment plan during the pendency of this case is evidence of her failure to provide proper care and custody for her children. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Additionally, throughout the lengthy proceedings, respondent mother failed to maintain stable housing or employment. We conclude that all of this evidence supports the trial court's conclusion that, if the children were returned to respondent mother, there was no reasonable likelihood that the conditions which gave rise to the court's jurisdiction would be rectified within a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(i) and (g). This was particularly so, given the trial court's recognition of "[h]er failure to take

[1] Wraparound is a service provided through DHS which is "a planning process that is designed to create an individualized plan to meet the needs of children and their families by utilizing their strengths." http://www.michigan.gov/mdch/0,1607,7-132-2941_4868_7145-14676--,00.html.

advantage of a second opportunity [after the initial petition for termination was denied], during which service providers made significantly more strenuous efforts to help her . . . ."

Respondent mother contends on appeal that petitioner did not provide reasonable services directed toward reunification, specifically arguing that she should have been psychologically evaluated, which would have led to a diagnosis of bipolar disorder for which she could be treated. Respondent mother's contention that reasonable efforts toward reunification of the family were not offered ultimately relates to the issue of the sufficiency of the evidence to establish a statutory ground for the termination of her parental rights. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). We initially note that the conclusion that respondent mother suffers from bipolar disorder is nowhere found in the record. The record does reveal that respondent mother had previously been prescribed Prozac, for a diagnosis of depression, but indicated that she could no longer afford it. A foster care worker testified that she repeatedly urged respondent to secure Medicaid or MCAC[2] in order to obtain her medication, but respondent mother did not do so. An updated service plan of February 11, 2008, indicates that respondent mother was instructed numerous times that the Medicaid program was in open enrollment status. If respondent mother had followed through with the necessary steps to secure treatment for her psychiatric condition, it seems reasonable to believe that she would have been treated for her existing condition, whatever it might be. However, she did not seek such treatment, despite being urged to do so.

Under these circumstances, where respondent mother was offered extensive services, including anger management and substance abuse assessment, substance abuse treatment, individual counseling, drug testing, Wraparound services, Infant Mental Health services, and family education services, but completed only the anger management and substance abuse assessment, and made no attempt to secure treatment for the psychiatric condition for which she had already been diagnosed, the failure of the petitioner to secure a psychological evaluation is not enough to render insufficient the evidence for the termination of parental rights.

Therefore, we find that the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) and (g) were established with regard to respondent mother.

II. Statutory Grounds as to Respondent Father

Following the adjudication hearing in November 2006, respondent father was directed to participate in counseling to address the issue of domestic violence. Respondent father was provided with names of agencies to contact for anger management/counseling services, but he did not follow through. The foster care worker then set him up with counseling. Respondent father began counseling in April 2007 and attended four sessions before his incarceration in May 2007 for a federal charge of "knowingly receiving, possessing, concealing, storing, and disposing of six stolen firearms." His counseling assessment indicates that he presented with anger and control issues, to which he would admit, but at the same time would deny as being a problem.

[2] The foster care worker testified that Medical Care Access Coalition is a local organization that provides free medical services.

The assessment further noted that he exhibited many traits of anti-social personality disorder and had chronic problems with responsibility and being able to see his own role in his current difficulties.

While respondent father was incarcerated on the federal charge, he was subsequently charged with second-degree murder. At the time of the second termination trial, respondent father was awaiting trial on the murder charge. Respondent father's own testimony indicated that the murder charge stemmed from an altercation that occurred during his incarceration for the federal offense. This behavior substantiates petitioner's position that respondent father continues to be unable to appropriately deal with his anger and control issues. His minimal participation in counseling to address the serious issues of domestic violence existing at the adjudication of this case was inadequate. Sufficient benefit from the services provided is required, *In re Gazella*, 264 Mich App 668; 692 NW2d 708 (2005), and the evidence showed that respondent father had not obtained any substantial level of benefit at the time of the termination hearing.

Additionally, at the time of the termination hearing, even if respondent father were to be acquitted of the second-degree murder charge, his earliest possible release would have been in January or February 2009 based on his criminal attorney's representation that trial could be in January 2009.[3] Thus, respondent father could not even begin to address the anger, control, and domestic violence issues for at least six months. And, even if he were acquitted and released in January 2009, several months of treatment would still be necessary to address the serious issues of domestic violence, so that the children would be required to wait, at minimum, an additional nine months for any resolution. Given that Isabella had already been in foster care for almost two years, D-Shawn had been in foster care his entire life, and the children would have to wait at least nine more months for a highly uncertain prospect of rehabilitation and reunification, it was not clearly erroneous for the trial court to determine that there was no reasonable likelihood the conditions could be rectified within a reasonable time considering the ages of the children. Thus, termination was proper under MCL 712A.19b(3)(c)(i).

Termination was also proper under MCL 712A.19b(3)(g). Respondent father failed to provide proper care and custody for Isabella by engaging in domestic violence in her presence and he further failed to provide proper care and custody for his children by engaging in criminal activity that caused respondent to be incarcerated when D-Shawn was less than three months old and Isabella was barely over one year old. Respondent father had no contact with the children once he was incarcerated, and there was no evidence that he had attempted to either contact them or provide for them, physically, emotionally, or monetarily. As previously noted, under the most favorable scenario possible, it would have been a minimum of nine more months before respondent father could conceivably address the substantial barriers to reunification, including domestic violence and substance abuse. Respondent father admitted at trial that he could not "provide anything for my children" because of his incarceration. Respondent father's failure to

[3] Subsequent to the termination proceedings, respondent father was tried in January 2009 on the murder charge. The federal jury convicted him of voluntary manslaughter, which carries a sentence of up to 15 years. However, we have based our decision on the facts that existed at the time of the hearing.

comply with his treatment plan prior to his incarceration supplies further evidence of his inability to provide proper care and custody for the children. *In re* JK, *supra*. Accordingly, we conclude that the trial court did not clearly err by finding that there was no reasonable likelihood that respondent father would be able to provide proper care and custody for the children within a reasonable time considering their ages. MCL 712A.19b(3)(g).

On appeal, respondent father argues that the agency failed in its duty to provide reasonable services toward reunification, particularly by failing to provide him a service plan during his incarceration. We disagree. We note that respondent father does not argue that there were, in fact, services available, which he was denied. Instead, he argues that the caseworker did not make an exhaustive search to determine whether any other services were available to him. This is not required by the statute.

Generally, petitioner must make reasonable efforts directed toward reunification of families and to avoid termination of parental rights. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). However, petitioner need only offer *reasonable* services; it has no duty to provide every conceivable service. MCL 712A.18f(4). Additionally, services are not required in every case. Where it is unreasonable to offer services, petitioner may decline to do so, but must justify that decision. MCL 712A.18f(1)(b).

Here, the caseworker testified that she looked into services that would be available for respondent while incarcerated, but was advised that, based on his status as a federal inmate, services were not available for him in the Marquette County Jail. Additionally, respondent father was moved to a federal prison in Illinois seven months prior to the termination hearing, such that he was quite clearly out of the jurisdiction of the agency. We do not find the trial court's acceptance of these justifications clearly erroneous.

In any event, complaints that reasonable efforts toward reunification of the family were not offered are evaluated as issues regarding the sufficiency of the evidence to establish a statutory ground for the termination of his parental rights. See *In re Fried*, *supra*. Even when respondent father was provided with services prior to his incarceration, his participation was minimal and sporadic. There was no evidence to suggest that respondent father's attitude or participation would have been any different had services been available during incarceration. Under these circumstances, petitioner's failure to provide services to respondent father for the six months he was incarcerated at the Marquette County Jail is not enough to undercut the sufficiency of the evidence for the termination of parental rights.

III. Best Interests

Finally, the trial court did not clearly err by finding that termination of the parental rights of both respondents was not clearly contrary to the best interests of the children. MCL 712A.19b(5); MCR 3.977(J). The infant D-Shawn has never been in the care of respondents, and Isabella, now approximately three and one half years old, has been in foster care since she was approximately six months old. According to an agency report subsequent to the termination of respondents' parental rights, Isabella and D-Shawn are in placements that wish to adopt them. Kyler is placed with his father. Given respondent mother's failure to complete any aspect of her treatment plan beyond anger management and substance abuse assessments, it is clear that she is not in a position to offer the children stability. Respondent father remains incarcerated and upon

his release would have to successfully address substantial barriers to reunification, a task he failed to seriously undertake prior to his incarceration. This record supplies no evidence that the trial court's best interests determination was clearly erroneous.

Affirmed.

/s/ David H. Sawyer
/s/ Brian K. Zahra
/s/ Douglas B. Shaprio