

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 16, 2010

In the Matter of D. M. HUDGENS, Minor.

No. 297515
Wayne Circuit Court
Family Division
LC No. 08-477542

In the Matter of D. M. HUDGENS, Minor.

No. 297516
Wayne Circuit Court
Family Division
LC No. 08-477542

Before: SHAPIRO, P.J., and SAAD and KELLY, JJ.

PER CURIAM.

In Docket No. 297515, respondent-father appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). In Docket No. 297516, respondent-mother appeals as of right from the same order, which also terminated her parental rights to the child pursuant to the same statutory grounds. We affirm.

I. STATUTORY GROUNDS FOR TERMINATION

Respondent-father argues that the trial court erred in finding that the statutory grounds for termination of his parental rights were established by clear and convincing evidence. We disagree. The trial court's findings of fact are reviewed for clear error and may be set aside only if the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(K); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is given to the trial court's special opportunity to judge the credibility of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

A trial court may terminate a parent's parental rights if its finds:

(c) The 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 ... the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The 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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3).]

The conditions that led to the initial adjudication were respondent-father's domestic violence and alcohol use, and marijuana use by respondent-mother. After the initial adjudication, respondent-father completed domestic violence counseling and substance abuse treatment, yet tested positive for marijuana and had another diluted drug screen during the termination hearing. He admitted that he had recently consumed alcohol and smoked marijuana, attributing it to stress caused by a relative's recent death. The record shows that despite attending domestic violence counseling, domestic violence was a continuing issue between respondent-father and respondent-mother. Their disturbances led to landlord complaints that threatened respondent-mother's housing. Respondent-father's episodes of domestic violence were also aggravated by his alcohol use. Respondent-father eventually left respondent-mother's home in February 2010, despite being unemployed and not having a legal source of income.

The trial court did clearly err in terminating respondent-father's parental rights. Respondent-father had not been able to resolve his substance abuse and domestic violence issues after participating in services for approximately two years, and remained unemployed without appropriate housing or a legal source of income. As a result, the trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist and that respondent-father was not reasonably likely to rectify those conditions or be in a position to provide proper care and custody within a reasonable time, thereby supporting the termination of his parental rights under §§ 19b(3)(c)(i) and (g). Further, considering respondent-father's continued substance abuse and unresolved domestic violence issues, and his frequent reunifications with respondent-mother, who had her own substance abuse and mental health issues, there was a reasonable likelihood that the child would be harmed if returned to respondent-father's home. Thus, the trial court did not err in finding that termination was also appropriate under § 19b(3)(j).

We further reject respondent-father's related argument that if he had received adequate services, including housing and individual counseling, that there would be no statutory grounds for terminating his parental rights of the child. Respondent-father received adequate services

including substance abuse treatment, regular drug screenings, parenting classes, domestic violence counseling, and a psychiatric evaluation. Despite those services, the trial court's decision to terminate respondent-father's parental rights was supported by clear and convincing evidence.

II. REASONABLE EFFORTS TOWARD REUNIFICATION

Respondent-mother argues that her parental rights should not have been terminated because petitioner did not provide family counseling, and thus did not comply with its statutory obligation to provide reasonable efforts toward reunification. Respondent-mother concedes that she did not raise this issue below, leaving it unpreserved. This Court reviews unpreserved issues for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Generally, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan if reunification is the goal. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005); see also MCL 712A.18f(1)(a) and (4), and MCL 712A.19(7)(a). In this case, respondent-mother was provided with numerous services during the approximate two-year pendency of this case, including individual therapy, substance abuse treatment, parenting classes, intense in-home services upon the child's brief return in August 2009, and other services. Respondent-mother was also permitted to participate in the child's therapy sessions during the brief period the child was returned to respondent-mother's care. Although respondent-mother was never provided with family counseling, the case never progressed to the point where family counseling would have been helpful. Respondent-mother's parental rights were terminated primarily because of her lack of success in addressing her own personal issues, such as her continued substance abuse, mental health problems, and questionable parenting skills. The services that were provided were reasonably designed to rectify these conditions, but respondent-mother was unable to benefit from the services. Accordingly, there is no merit to respondent-mother's argument that petitioner failed to make reasonable efforts to reunify the family.

Respondent-mother also argues that defense counsel was ineffective for failing to challenge the adequacy of services in the trial court. Because the record discloses that reasonable efforts toward reunification were made, this claim cannot succeed. Counsel is not ineffective for failing to make a futile objection or argue a meritless position. *In re Archer*, 277 Mich App 71, 84; 744 NW2d 1 (2007)

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Kirsten Frank Kelly