

STATE OF MICHIGAN
COURT OF APPEALS

In re SMITH/LIPSEY, Minors.

UNPUBLISHED
January 12, 2016

No. 327719
Clinton Circuit Court
Family Division
LC No. 14-025170-NA

Before: RONAYNE KRAUSE, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i), (g), and (j). Respondent does not challenge the trial court's conclusion that there were sufficient grounds to terminate her parental rights, but rather claims that petitioner, the Department of Health and Human Services, failed to make reasonable reunification efforts and that termination was not in the best interests of the children. We disagree, and therefore affirm.

I. STANDARD OF REVIEW

We review a trial court's findings of fact and a trial court's decision regarding whether termination is contrary to a child's best interests for clear error. MCR 3.977(K); MCR 2.613(C); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

II. REASONABLE REUNIFICATION EFFORTS

Respondent argues that petitioner did not expend reasonable efforts to reunify the family because petitioner failed to timely refer respondent for psychiatric services at the beginning of the court's involvement, and failed to provide her with additional parenting skills programs. Petitioner is required to make reasonable efforts to reunify a family before terminating parental rights unless aggravating circumstances are present. MCL 712A.19a(2). However, "there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

The record shows that petitioner offered respondent a plethora of services to address her reunification barriers, but she failed to participate in and benefit from the services provided.

Petitioner offered respondent referrals for a psychological evaluation, psychiatric evaluation, foster care supportive visitation program, housing resources, and transportation services. Petitioner also offered respondent information on domestic violence programs, but she chose to obtain services through Eve's House. Respondent's caseworker coordinated services while respondent lived at Eve's House, and was careful about timing because respondent was reportedly in school and he did not want her to become overwhelmed. Initially, there was a delay in starting some services because of respondent's resistance and her hospitalization. After the adjudication, respondent cancelled a May 29, 2014 psychological evaluation. In June 2014, respondent told her caseworker that she had arranged her own counseling through Owosso Behavioral Health, but the caseworker later learned that respondent was not participating in any therapy. Respondent was referred for a psychiatric evaluation in August 2014, but the evaluation did not occur until November because of respondent's resistance.

The psychologist who evaluated respondent concluded that she had significant mood disorders, including schizoaffective disorder and bipolar disorder with antisocial personality traits. Although the disorders could be controlled with antipsychotic medication and consistent therapy, the psychologist opined that respondent's treatment would be difficult because she was unwilling to take responsibility for her feelings and actions. The psychologist recommended terminating respondent's parental rights if she was unable to make progress or consistently participate in therapy.

Respondent's mental health therapist, who treated respondent from November 2014 until January 26, 2015, testified that respondent did not meet her treatment goals, which included managing anger, improving parenting skills, and making better life choices. Respondent was discharged from treatment because of non-participation after four consecutive cancellations. Although respondent received prescriptions for Celexa and Latuda, which appeared to help, respondent told her therapist that she did not believe that she should be on more than one medication, and the therapist suspected that respondent was only taking one because she was constantly angry and agitated, she spoke rapidly, and she had racing thoughts.

Respondent also did not adequately benefit from the parenting support services petitioner provided. Respondent received foster care visitation support and parent education services. Although she showed some improvement with nurturing, she continued to struggle in other areas such as age appropriate expectations and discipline. Respondent was often overwhelmed during parenting time, especially with her son. She did not satisfactorily complete the 12-week program because she spent half of the parenting time venting over issues she had with other people and because she did not complete her homework.

In 2015, respondent's parenting skills remained problematic. She had a difficult time giving needed attention to both of her children. Caseworkers had to intervene at parenting time to keep her younger child safe. Service providers testified at the termination hearing that respondent was not ready to care for the children on a full-time basis because of housing and employment instability. Service providers also testified that respondent would not benefit from any other services until she addressed her mental health issues. Respondent also needed to achieve emotional stability and adequate housing before she could be referred for at-home parenting programs.

Contrary to respondent's claim on appeal, there is no indication that a psychiatric evaluation at the onset of the proceedings would have changed the outcome. In this case, the lack of effort clearly rests with respondent, not petitioner. Accordingly, the trial court did not clearly err by concluding that petitioner made reasonable reunification efforts.

III. BEST INTERESTS

The trial court did not clearly err by finding that termination was in the children's best interests. A best-interest finding must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). In assessing a child's best interests, the trial court may consider various factors, including the parent's parenting ability, the child's bond to the parent, and the child's need for permanency, finality, and stability. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Respondent argues that termination was not in her daughter's best interests because she was placed with her father.¹ It is evident from the record that the child's placement with her father did not weigh in respondent's favor. Respondent had a history of domestic violence with the father, which included an incident where she attacked him with a knife and hit him with a lamp in the children's presence. Respondent was subject to a no contact order, apparently as the result of this act of domestic violence. Given this history, it was in the child's best interest to reside with her father without the threat of further harmful interference from respondent.

Respondent also argues that terminating her parental rights was not in the children's best interests because she could benefit from services if she was undergoing mental health treatment. However, respondent's therapist opined that she did not have an emotional attachment with her children and she lacked the insight to do what was needed to have her children returned. Similarly, the psychologist who evaluated respondent opined that respondent would have difficulty improving with therapy because she had a negative self-image resulting from her history and early experiences and abuse. Respondent's therapist testified that respondent would need to make significant progress with her mental health treatment before she could effectively parent her children, but respondent was unable to commit to weekly counseling sessions. In March 2015, respondent continued to resist mental health services. Accordingly, there is no indication that postponing termination would result in respondent effectively participating in mental health services. The trial court did not clearly err by concluding that terminating respondent's parental rights was in the children's best interests.

¹ Generally, "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Placement with a relative is "an explicit factor to consider in determining whether termination was in the children's best interests." *Id.* The trial court did not explicitly consider whether the child's placement with her father weighed against terminating respondent's parental rights. However, for purposes of § 19a, the term "relative" is defined by MCL 712A.13a(1)(j) as someone other than a parent. Therefore, the trial court was not required to explicitly consider the child's placement with her father.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Michael F. Gadola
/s/ Colleen A. O'Brien