STATE OF MICHIGAN

COURT OF APPEALS

In re RODRIGUEZ/CARRILLO, Minors.

UNPUBLISHED
February 18, 2016

No. 327887
Gratiot Circuit Court
Family Division
LC No. 13-007861-NA

Before: MURPHY, P.J., and WILDER and BORRELLO, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to six of her minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j).[1] We affirm.

A petition to take custody of the children was filed on June 4, 2013. When the petition was filed, all of the children at issue were under the age of ten (ages 2, 3, 6, 7, and 9), except for one who was 11 years old. We note that, up to the date of the petition, there had been 25 complaints or referrals to the Department of Health and Human Services (DHHS) regarding the care of the children, and respondent had been provided a litany of services by DHHS over the years. Pursuant to a second amended petition, it was alleged: that one of respondent's children tested positive for marijuana at birth, resulting in an earlier Child Protective Services (CPS) case; that respondent admitted to smoking marijuana during that particular pregnancy; that respondent continued to test positive for and admitted use of marijuana throughout that CPS matter; that respondent failed to see that the children were provided proper medical and dental care despite the availability of such care; and that respondent's home often reeked of marijuana when the children were home. The petition next alleged: that respondent had been given $1,000 in food-benefit assistance, but within two weeks there was no cash left on the benefits card and no food in the home; that one of the children, age two, ran into the street unattended and was nearly

[1] Two of respondent's other children, the youngest two, one of whom was born during the proceedings, were eventually placed with their non-respondent father, and those two children were not encompassed by the termination order. With respect to the six children covered by the termination order, the parental rights of the father of four of those children were also terminated, but he has not appealed.

struck by a car; that neighbors reported observing the children outside at all hours and running around everywhere, including down by the river, absent any supervision or proper attire; that the children had been seen hanging out of upstairs windows, playing on the roof of the home, and jumping on a trampoline in an unsafe manner; and that respondent allowed an inappropriate person to care for the children. Finally, the petition alleged: that respondent was arrested on two counts of retail fraud and recently pleaded guilty to the crimes, resulting in a sentence of 180 days in jail (incarcerated from May 28 to October 22, 2013);[2] that respondent had an extensive criminal history for offenses related to retail fraud, drunk driving, false pretenses, and operating a vehicle without a license; that the children had high tardy and absence rates at school; that the children often missed classes due to chronic lice infestations; and that respondent admitted to smoking marijuana twice a day while being the children's primary caregiver. The children were removed from the home pursuant to a court order dated June 4, 2013.

At the subsequent adjudication in July 2013, respondent entered a plea of admission to the allegations in the petition, and the trial court took jurisdiction over the children under MCL 712A.2(b)(2) ("home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, . . . is an unfit place for the juvenile to live in"). Respondent was granted supervised parenting time. At this stage, the goal was reunification, a parent-agency agreement and case service plan had been prepared and signed, and DHHS was ordered to engage in reasonable efforts at reunification. Lack of parenting skills, substance abuse, illiteracy, unemployment, resource unavailability, and incarceration were identified as barriers to reunification. Under the parent-agency agreement and case service plan and updated versions, DHHS made available through referrals and required respondent's participation in substance abuse counseling, regular AA/NA meetings, random drug screens, parenting education and skills training, housing and employment coaching, a psychological evaluation, individual therapy, nutrition and budgeting classes, and literacy tutoring.

In October 2014, a supplemental petition to terminate respondent's parental rights was authorized and filed. The supplemental petition contained the allegations found in the earlier amended petition, as cited above, plus new allegations regarding the timeframe following adjudication. These new allegations indicated that respondent had participated in only a *partial* psychological evaluation in 2013 due to repeated no shows for appointments and cancellations and that the partial evaluation showed that respondent had "no insight or acceptance of her role in neglecting her children," that her "risk of engaging in subsequent neglectful . . . behavior [was] quite high," that respondent had not benefited from services, and that her parenting knowledge was "markedly poor." The new allegations also provided: that respondent had once again been arrested for and pled guilty to retail fraud, landing her in the county jail for 12 months; that her parenting time had been suspended, yet she had phone contact with the children while they were visiting with one of the fathers; that respondent tested positive for Hydrocodone

[2] Two of the children were with respondent when she concealed items in her purse. It was respondent's incarceration for the retail fraud that triggered DHHS's petition.

on one occasion, marijuana on two occasions, and refused a drug screen on another occasion; that during periods when she was not incarcerated, respondent failed to comply with and benefit from the case service plan; and that during periods of incarceration, respondent participated in services but had not benefited from them. The supplemental petition for termination sought termination on the basis of MCL 712A.19b(3)(c)(*i*), (g), and (j),[3] and it alleged that termination of respondent's parental rights was in the best interests of the children, MCL 712A.19b(5).

A termination bench trial was conducted on November 19, 2014 (opening statements only), January 28, 29, and 30, 2015, February 27, 2015, and June 2, 2015 (trial court's ruling from the bench). The testimony from numerous witnesses mostly corroborated the allegations in the supplemental petition to terminate respondent's parental rights, including the allegations concerning the results of the 2013 partial psychological evaluation. There was testimony that a second and fully-completed psychological evaluation was conducted in December 2014 by the licensed psychologist who had performed the earlier partial evaluation. The new evaluation entailed numerous psychological tests that were taken by respondent. The psychologist essentially concluded that respondent had made little progress since 2013, that she remained

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[3] MCL 712A.19b(3)(c)(*i*), (g), and (j) authorize termination of parental rights under the following circumstances:

> (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 either of the following:
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> (*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.
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> * * *
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> (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.
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> * * *
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> (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.

unable to adequately recognize critical issues in caring for the children, and that respondent still could not appreciate the impact of her lack of supervision on the children's lives and the risk it created.

The evidence further revealed that respondent's participation in substance abuse counseling, parenting education and skills training, AA/NA meetings, housing and employment coaching, psychological evaluations and therapy, nutrition and budgeting classes, and literacy tutoring was minimal at best, with respondent often being late, canceling, or simply not showing up at all. At times she provided excuses, such as problems with transportation, while at other times she simply did not appear absent a phone call, notice, or explanation. Some counseling, training, and coaching sessions were discontinued because of respondent's repeated failures to participate. There was testimony by a foster care worker assigned to the case that respondent was continually offered transportation assistance, which she would regularly decline on the basis that she had arranged for transportation on her own, only for purported problems to thereafter arise with the transportation.[4] The foster care worker voiced his frustration that DHHS had worked diligently and had made extensive efforts in attempting to assist respondent in complying with services, but respondent generally failed to cooperate and to do her part as necessary to be reunified with her children. There was testimony that documents submitted by respondent supposedly showing compliance with AA/NA attendance requirements were forged, leading to a probation violation. During periods of incarceration, respondent did participate in some services offered through the jail.

With respect to the few instances in which respondent complied with services, the testimony established that she generally did not benefit from the services. The testimony arising out of respondent's limited contacts with professionals, including the psychologist referenced above, showed, for the most part, that respondent had poor parenting and child supervision skills, which were not going to improve within a reasonable time, that she believed that she had properly supervised the children despite the substantial evidence to the contrary, and that respondent viewed her marijuana use as acceptable and not interfering with her ability to care for the children.[5] The testimony and evidence further indicated that the four older children, as caused by the severe neglect in the home environment from which they were taken, had

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[4] There was some testimony showing that respondent occasionally had a legitimate excuse for being late or not showing up for an appointment, but those instances were few and far between. Her own criminal behavior that resulted in arrests precluded her from making some scheduled appointments for services. She was on a tether associated with probation for periods of time, but the evidence indicated that this did not prevent her from engaging in services.

[5] With respect to drug screens, respondent tested positive for an opiate on one occasion, but she produced a valid prescription. Prior to the termination trial, respondent had tested positive for marijuana twice and once failed to take a drug test, but other drug screens were negative. Respondent tested positive for marijuana one additional time following the close of petitioner's proofs at trial.

expressed suicidal thoughts and had suicidal ideations, engaged in stealing behaviors, and were suffering significant psychological and emotional problems. These children had been evaluated by the psychologist who conducted respondent's evaluations. According to the psychologist, the children struggled terribly with respondent's repeated incarcerations and indicated a belief that they were to blame for their removal from the home. The evidence did reflect that once in a safe and stable foster care environment, the children started making good progress, including with respect to their schooling, due in part to the fact that they now were actually going to school on a consistent basis. There was overwhelming evidence that the children were in great need of stability, consistency, and permanence that respondent could not provide and that termination of respondent's parental rights was in the best interests of the children, even though there was, undeniably, a loving bond between respondent and the children.

We shall further explore below the evidence presented at trial as necessary to address the issues on appeal, especially in regard to the testimony of an expert in mental health and counseling who was called to testify on respondent's behalf; his testimony forms the backbone of respondent's appellate arguments. The trial court, in a rather lengthy and thoughtful ruling from the bench, terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). The court also found that termination was in the best interests of each of the six children. An order terminating respondent's parental rights was later entered.

On appeal, in a fairly-cursory brief, respondent first argues, based solely on the testimony of her expert witness, that respondent would have been able to properly parent the children within a reasonable time considering their ages, where she had recently been diagnosed with post-traumatic stress disorder (PTSD) and now had an understanding of her anxieties and the resulting improper parenting behaviors, which were manageable and treatable with medication changes and therapy. Respondent maintains that the trial court should have given her at least six more months to show that she could develop the capacity to properly parent the children. Respondent next contends that DHHS failed to provide her with adequate services by not making arrangements to have her complete the psychological evaluation in 2013 that could have revealed that she suffers from PTSD, as caused by a childhood trauma and diagnosed by respondent's expert. Finally, respondent maintains that there was a lack of evidence showing that it was in the best interests of the children, and primarily the two youngest children who were not evaluated by the psychologist, to terminate respondent's parental rights, especially given the recent diagnosis of PTSD, the fair prognosis for treatment, and the love and bond between her and the children.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Moss,* 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781

NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Before directly confronting respondent's appellate arguments, we shall summarize the testimony by respondent's expert.[6] He testified that, for several months, he had counseled and treated respondent once a week while she was in jail. The expert opined that respondent suffered from PTSD. He explained that respondent had been "sexually molested at the age of three and again at seven and then raped at 15." According to the expert, respondent had indicated to him that her brother had vowed that he would protect her in the future following the sexual molestation at age seven, and when she was raped at age 15, she did not disclose it immediately, but after she told an individual about the rape, it got back to her brother who proceeded to shoot the rapist, landing her brother in prison. The expert stated, "I believe that [respondent] repeatedly put herself in jail to punish herself for her brother's imprisonment." The expert further observed that PTSD-related anxiety and cultural superstitions that respondent believed in could explain, but not excuse, her parenting failures. He elaborated:

> Consequently, when she would feel anxious there would be a trigger in her environment, a complaint or something on the news and then her child would complain that she didn't like something or she was worried about something and then [respondent] would . . . resort to protecting the child by keeping them home and not taking them out, not taking them to the dentist, not sending them to the school as was appropriate [and] that she should have been doing.

The expert further testified that the findings or impressions made in the partial psychological evaluation of respondent alluding to feelings of suspiciousness, distrust, and anxiety were all consistent with PTSD. The expert indicated that the PTSD diagnosis gave respondent new-found insight into her parenting problems, which were created by PTSD anxiety and depression, which could be managed. The expert testified that respondent's medication was adjusted to help her manage her anxiety. He asserted that respondent had progressed to the point that she now better appreciated and understood the necessity of meeting the medical, schooling, and supervisory needs of the children and that she was pursuing various avenues to further address her PTSD and other issues, such as signing up with Addiction Solutions and seeing a psychiatrist. The expert contended that the psychiatrist had also diagnosed respondent as having PTSD. Respondent's expert opined that "recovery" from PTSD generally takes 12 to 24 months and that, considering respondent's acknowledgement of her PTSD in August 2014, she could be

[6] Respondent's expert had been employed for 40 years with the Gratiot County Mental Health Center, and he was a licensed professional counselor, licensed master social worker, and a certified advance addictions drug counselor, with training in trauma and cognitive therapy.

able to make sound cognitive decisions by August 2015 in a best-case scenario.[7] He summed up his view as follows, "My hope would be that there would be a gradual introduction of her parenting skills and her parenting time over time, over the next six months and that she would be able to work through whatever issues [that] would come up."

On cross-examination of respondent's expert, the expert indicated that he had never seen respondent interact with the children, that he had not given respondent any of the psychological tests that were given her by the psychologist as part of the 2013 and 2014 evaluations, that he was unaware that respondent had just tested positive for marijuana use, while telling him that she had stopped using the drug, and that he recognized that the psychologist's findings in the 2014 evaluation, conducted only two months earlier, conflicted with many of his conclusions. When confronted with descriptions of some of the events that led to the filing of the initial petition, e.g., allowing the young children, unattended, to run around in the streets at all hours and to go down by the river, respondent's expert testified that the descriptions were not consistent with how respondent had represented the facts to him. Moreover, the expert struggled in addressing questions about how PTSD would have caused respondent not to supervise her children when they went outside the home. The trial court directly addressed the testimony by respondent's expert, ruling as follows:

> While the court does not question the testimony – or the credibility of [the expert's] testimony and I am optimistic that some personal progress has been and will continue to be made by [respondent] in the future related to the trauma that she endured in her . . . childhood, the court does not find the evidence of limited and recent insight or progress sufficient for this court to expect success in a time that is reasonable for these children. . . . It was clear to this court that [respondent] was selectively sharing information with [her expert] and that she continues to operate under the mistaken belief that she should not . . . be honest with the people who are trying to assist her. This is consistent with the mother's behavior in the past, specifically failing to tell the agency about a pending arrest or charges, falsifying records to reflect compliance with terms of probation[,] and evidence dating back to early service providers . . . who did not have complete information regarding the extent of [respondent's] trauma.

Also, the trial court, in making its ruling, relied, in part, on the testimony of the psychologist who evaluated respondent and the four older children in 2013 and 2015, which testimony it found to be corroborated by other witnesses who testified on behalf of DHHS. This reliance by the trial court reflected that it found the psychologist to be a credible witness.

[7] The expert explained that PTSD is a lifelong disorder and that "recovery" merely means reaching the point that a person is "able to make . . . better cognitive decision[s]."

Returning to respondent's appellate arguments, we first address her claim that she would have been able to properly parent the children within a reasonable time, given the PTSD diagnosis, treatment and management of her PTSD, new insights and understanding regarding her earlier parental failures, and the progress that she was making.

We first rule that there was no clear error, nor is error asserted, with respect to the trial court's findings that there was clear and convincing evidence that the conditions leading to adjudication continued to exist, § 19b(3)(c)(*i*), that respondent failed to provide proper care or custody for the children, § 19b(3)(g), and that there was a reasonable likelihood of harm if the children were returned to respondent, § 19b(3)(j). MCL 712A.19b(3)(c)(*i*) and (g) also required, respectively, a finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the children's ages, and that there was no reasonable expectation that respondent could have provided proper care and custody within a reasonable time considering the children's ages. Respondent's appellate argument goes to the issue of whether the trial court clearly erred in effectively finding that matters were not going to sufficiently improve within a reasonable time. We note that § 19b(3)(j), which addresses the likelihood of harm if a child were returned to a parent, has no language requiring contemplation of whether the risk of harm would be adequately diminished within a reasonable time. As only one ground for termination needs to be established, § 19b(3)(j) alone would support affirming the trial court's ruling relative to respondent's particular argument, where the argument fails to reach § 19b(3)(j).

Moreover, we cannot conclude that the trial court clearly erred in its analysis of the "within a reasonable time" question with respect to § 19b(3)(c)(*i*) and (j). Not only had the children been in foster care for two years by the time of the trial court's termination decision (June 4, 2013, to June 2, 2015), respondent had already been significantly involved with DHHS regarding parenting failures prior to removal of the children in June 2013. There was overwhelming evidence, including the multiple failures to comply with the parent-agency agreement and case service plan, repeated incarcerations, and the use of marijuana during the termination trial itself, showing that respondent would not be able to rectify the conditions of adjudication or to provide proper care and custody within a reasonable time. With regard to the testimony by respondent's expert witness, even he indicated that it could be up to another year and a half, around August 2016, before respondent was able to make sound parenting decisions and exercise proper supervision skills. This would not have been a reasonable period of time to await respondent's redemption, given the time that had already elapsed and the pre-removal failures by respondent. Additionally, although the trial court generally found that respondent's expert was credible, the court questioned his conclusions, which relied heavily on respondent's communications and characterizations of events, on the basis that respondent had "selectively shar[ed] information" with the expert. The record established respondent's repeated failures to be forthright and her inclination at times to outright fabricate, including the forging of the AA/NA attendance documents. Further, the trial court accepted the psychologist's findings and conclusions, and the court clearly found her to be the more credible witness, a credibility assessment to which we defer. *In re Miller*, 433 Mich at 337. In sum, and as supported by the record, the trial court did not clearly err in ruling that it did "not find the evidence of limited and

recent insight or progress sufficient . . . to expect success in a time that is reasonable for these children." Reversal is unwarranted.

We next address respondent's contention that DHHS failed to provide her with adequate services by not making arrangements to have her complete a full psychological evaluation in 2013.[8] Respondent maintains that a full evaluation in 2013 may have resulted in an earlier diagnosis of her PTSD, which could have been treated, resulting in progress being made as to her parenting skills. Respondent complains that none of DHHS's services addressed her childhood trauma. We first note that it was respondent's own fault that the 2013 psychological evaluation was not completed. Regardless, respondent fails to acknowledge that the fully-completed 2014 evaluation did not reveal PTSD, so it is doubtful that the 2013 evaluation, conducted by the same psychologist, would have resulted in a PTSD diagnosis, even if completed. As observed by the trial court, it was respondent's failure to give service providers information about her alleged childhood trauma that created a barrier to any PTSD diagnosis. And at trial, respondent's counsel did not even question the psychologist about the possibility of respondent having PTSD. Respondent's appellate argument is built on nothing but speculation. The record reflects that DHHS, time and time again, provided respondent with services, and that it was respondent's own failure to comply with service requirements and to be forthright that led to the termination of her parental rights. Therefore, assuming that respondent has PTSD and that it adequately explains why she was unable to properly care for and supervise her children, which we question, reversal is nonetheless unwarranted.

Finally, with respect to respondent's argument concerning the children's best interests, she focuses on the fact that the psychologist only evaluated the four older children and on the PTSD diagnosis and its manageability, along with claiming that the evidence revealed respondent's love for the children and the closeness of their bond. Considering the evidence of respondent's failure to comply with the parent-agency agreement and case service plan, her

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[8] Petitioner must make reasonable efforts to reunify a child with the child's family in all cases, except where aggravated circumstances are present. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008) ("In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights."). "Before the court enters an order of disposition, [petitioner] . . . must prepare a case service plan, which must include, among other things, a '[s]chedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child's return to his or her home or to facilitate the child's permanent placement.' " *In re Mason*, 486 Mich at 156, quoting MCL 712A.18f(3)(d). "When a child is removed from a parent's custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009).

repeated incarcerations, her continued use of marijuana, her inability to properly care for and supervise the children, and respondent's failure to make progress on these matters over the years, along with the evidence of the psychological damage done to the children by living with respondent and their improvement while in foster care, we hold that the trial court did not clearly err in determining that it was in the children's best interests to terminate respondent's parental rights. Despite the bond between respondent and the children, it was respondent's inability to parent and the children's need for permanency, stability, and finality, as well as the advantages of the foster homes over respondent's home, that dictated the ruling made by the trial court on the best-interests issue. See *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). Although the psychologist did not evaluate the two youngest children, and assuming the accuracy of the PTSD diagnosis, the record still fully supported the conclusion that the best interests of *each and every child* were served by terminating respondent's parental rights. Reversal is unwarranted.

Affirmed.

/s/ William B. Murphy
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello