STATE OF MICHIGAN

COURT OF APPEALS

In re K. SANDERS, Minor.

UNPUBLISHED
January 14, 2016

No. 328581
Berrien Circuit Court
Family Division
LC No. 14-000079-NA

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

PER CURIAM.

Respondent, Lakeisha Lewis, appeals as of right from the trial court's July 8, 2015 order terminating her parental rights to the minor child, KS, pursuant to MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist), (c)(*ii*) (other conditions exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if child is returned to parent). We affirm. The parental rights of the child's father, Marlon Sanders, were also terminated and are not at issue in this appeal.

I. BACKGROUND

KS was born nine weeks premature and with Tetralogy of Fallot, a congenital heart defect. KS's condition required constant monitoring, a thorough understanding of the symptoms associated with it, the ability to follow-up with doctors, at least one surgery after birth, and daily medication and treatment. From KS's birth, however, respondent struggled to comprehend KS's condition due to what is described throughout the record as her "mental deficiencies."[1] Lisa Batsell, a medical social worker at the hospital that KS was born in, testified that the idea of simply staying in the hospital for an extended period of time after KS's birth was "overwhelming" to respondent and "took a lot of convincing." Batsell explained that hospital staff assisted respondent with "assessing her Medicaid transportation benefits," something she described as "a fairly routine resource that a lot of families are able to kind of initiate and do . . .

[1] Respondent's performance on the Wechsler Adult Intelligence Quotient, Fourth Edition, placed her in the first percentile for verbal comprehension, working memory, and full scale intelligence quotient; the second percentile for perceptual reasoning; and the eighth percentile for processing speed. Generally, her performance indicated that her intellectual ability falls "within the extremely low intelligence range."

on their own." Batsell recalled having to "explain and re-explain . . . the needs of the baby" as well as nurses discussing KS's medication needs with respondent "very regularly." Batsell also explained that, in addition to explaining the child's needs, she provided video tutorials with animated diagrams of the heart for respondent in a further attempt to improve her understanding of KS's condition. Near the end of KS's hospital stay, however, respondent remained unable to recall KS's condition and "was only able to tell [Batsell] he had a murmur and it sounded like water." This was true despite the fact that hospital staff, including Batsell herself, had already had "multiple conversations about this diagnosis." While acknowledging that respondent had learned "[b]its and pieces" about KS's condition during his hospital stay, hospital personnel remained concerned that respondent would not be able to provide the necessary care for KS without constant guidance.

Because of this concern, hospital staff contacted petitioner, the Berrien County Department of Human Services (DHHS), and Child Protective Services (CPS). Kyle Gohlke, a CPS specialist, met with respondent before KS was to be released from the hospital, and he said that, at that time, respondent was unable to recall the name of KS's condition and unable to explain what was necessary to care for KS. Golke also recalled that respondent did not have a crib or diapers in her home at the time he met with her. According to Gohlke, respondent was "[d]efinitely" not able to care for KS at that time. Consequently, petitioner filed a petition seeking the removal of the minor child from respondent's and the child's father's care before the child was released from the hospital. As it relates to respondent, the petition alleged that she was unable to care for KS due to "her mental deficiencies" and KS's "high needs given he had been diagnosed with Tetralogy of Fallot (a hole in the heart) and was born 9 weeks premature." Specifically, the petition cited the fact that respondent "was unable to fully comprehend the minor child's diagnosis or need for on-going treatment," unable "to properly measure out the minor child's medicine because she us unable to read and understand directions," and unable to recognize when to feed KS despite "being notified that it was time for a feeding." The trial court authorized the petition and thereafter entered an order removing KS from respondent's and the child's father's care.[2] After a trial, the trial court later took jurisdiction over the child.

For the next several months, petitioner provided various services to respondent, but those services proved unsuccessful. While the record indicates the respondent largely complied with services in the beginning of this case, it also indicates that respondent did not benefit from those services or continue that level of participation. Indeed, at each review hearing, the evidence presented consistently indicated "partial" or "some" compliance by respondent but "no demonstration of benefit." Petitioner provided respondent with parenting classes as well as dial-a-ride tokens to assist with transportation to those classes; however, that service was discontinued after three unexcused absences. When given the opportunity to again participate in classes, respondent declined and expressed her opinion that she did not need that assistance.

[2] The child's father was incarcerated at the time the petition was filed. The record indicates that the child's father's parental rights to other children have been previously terminated. The record also indicates that he largely refused to participate in services in this matter and often encouraged respondent to refuse to as well.

Respondent was also able to participate in the child's doctor's appointments, but, during those appointments, she was unable to recall how frequently the child needed medication and treatment. Respondent was also able to participate in parenting time with the child when the child was medically able; however, on more than one occasion, she was unable to attend because she lacked transportation, again despite the fact that petitioner provided dial-a-ride tokens, or chose to leave the parenting-time session early.[3] Throughout this case, respondent also admittedly used marijuana on several occasions, failed to complete a mental health evaluation, and did not benefit from the one-on-one interactions that she was provided with hospital and DHHS personnel.

Based on respondent's lack of participation in and benefit from services over approximately one year, petitioner filed a supplemental petition seeking the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). Like the original petition, the supplemental petition sought termination of respondent's parental rights due to respondent's inability to meet the child's needs. Specifically, the supplemental petition cited respondent's inability "to take care of her own needs not to mention the needs of a special needs child," her "intellectual limitations," her lack of support, her inability to parent generally, and the fact that she "resides with the father who is inappropriate for the home." It was respondent's position that her parental rights should not be terminated based on her efforts throughout this case. She requested additional time in hopes of making further progress in being able to care for the child.

On June 8, 2014, the trial court issued an oral opinion, concluding that petitioner had established MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j) by clear and convincing evidence. To support this conclusion, the trial court relied on respondent's failure to both participate in and benefit from the various services that were provided to her, respondent's inability to understand KS's condition or need for treatment, and the unique and crucial medical needs of the child.[4]

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[3] KS had open heart surgery approximately five months into this case, and, based on his doctor's recommendation, parenting time did not occur in the time surrounding that surgery because of the extremely vulnerable condition of the child. The doctor advised the foster mother that, in both the time leading up to and after the surgery, the child was not to leave home except to attend doctor's appointments in order to increase the likelihood of a successful surgery. It appears that the surgery was largely successful; however, the record indicates that KS suffered from viral bronchiolitis and pericardial effusion shortly after the surgery. The need to suspend parenting time at the doctor's request was heightened because respondent was frequently instructed about various behaviors, kissing KS's face and bouncing him for example, that were potentially dangerous to KS in light of his condition, and respondent failed to abide by those instructions.

[4] The trial court specifically referred to information provided by KS's caregivers, which provided even further insight into the demands on caregivers presented by KS's condition. These included the need to recognize whether his head bobs when he breathes, whether his nostrils flair, whether and where his chest retracts, the pace of his breathing, the color and texture of his lips and skin, the severity of his coughing or wheezing, whether he has sufficient mucus, and whether he is eating sufficiently; the need to be able to administer breathing treatments every four hours,

The trial court also concluded that terminating respondent's parental rights was in the child's best interests. A written order reflecting the same was entered thereafter, and this appeal followed.

II. ANALYSIS

On appeal, it appears that respondent challenges the trial court's statutory grounds and best interests findings. Respondent also argues that petitioner failed to provide sufficient services to ensure reunification. We disagree in each respect.

A. STATUTORY GROUNDS

Pursuant to MCL 712A.19b(3), a trial court may terminate a parent's parental rights if it finds that at least one of the statutory grounds has been established by clear and convincing evidence. Petitioner bears the burden of proving at least one statutory ground. MCR 3.977(A)(3); *In re Trejo* Minors, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a trial court's finding that a statutory ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous 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 Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (citation and internal quotation marks omitted). To be clearly erroneous, a factual finding must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

In this case, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), which provide for the termination of a parent's parental rights if the following are found by clear and convincing evidence:

> (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:
>
> (*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.
>
> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, 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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properly medicate him, properly mix water with his formula, monitor his bowel movements, frequently work with a specialty pharmacist, attend various doctor's appointments in various locations, and know when to contact a physician or seek hospitalization; and the willingness to commit to providing this type of care for KS's entire life.

* * *

> (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.

Here, the trial court did not clearly err in finding that at least one statutory ground was established by clear and convincing evidence. As it relates to subsection (c)(*i*), the evidence presented by petitioner established, by clear and convincing evidence, that "[t]he 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." From KS's birth until the termination hearing, respondent remained unable to understand KS's heart condition. Despite the frequent and specific instruction regarding KS's condition, respondent struggled to be able to name it, much less understand it. She remained unable to articulate KS's medication and treatment needs and unable to recognize what behaviors were appropriate around KS in light of his condition. Further, to the extent respondent participated in services, she failed to benefit from the same. As we have recognized before, a parent's failure to participate in and benefit from services supports termination pursuant to MCL 712A.19b(3)(c)(*i*). *In re Frey*, 297 Mich App 242, 248; 842 NW2d 569 (2012).

Accordingly, we conclude that the trial court did not clearly err in finding that petitioner had established this statutory ground. Because only one statutory ground need be proven, *Trejo*, 462 Mich at 350, we need not address the additional grounds relied on by the trial court. Nevertheless, we would indicate that, for reasons similar to those described above, we also conclude that the trial court did not clearly err in finding that petitioner had established MCL 712A.19b(3)(c)(*ii*), (g), and (j) by clear and convincing evidence as well.

B. ADEQUACY OF SERVICES

Respondent's primary argument on appeal is that the trial court's order terminating respondent's parental rights should be reversed because petitioner failed to provide her with adequate services throughout the pendency of this matter. We disagree.

While it is generally true that reasonable efforts to reunify a child and a parent must be made in all cases, MCL 712A.19a(2), "[t]he time for asserting the need for accommodation in services is when the court adopts a service plan . . . ." *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Respondent did not object to the adequacy of services before the trial court. Furthermore, while she now claims that petitioner failed to account for her cognitive limitations in providing services, the record belies that assertion. After the child was born, hospital staff had multiple conversations with respondent regarding the child's need for care and how to meet that need. Multiple witnesses recalled explaining appropriate ways to care for the child on multiple

occasions as well as playing video tutorials for her. Further, while respondent's parenting time with the child was limited throughout this case due to the child's condition, petitioner provided respondent with repeated instructions to ensure the child's safety during the parenting times that were able to occur. Respondent was also provided access to parenting classes, but that service was eventually discontinued due to her failure to adequately participate, and she declined the opportunity to participate thereafter. As stated above, although it is true that petitioner has a responsibility to expend reasonable efforts to provide services to ensure reunification, it is equally true that parents have a commensurate responsibility to participate in and benefit from the services that are provided. *Frey*, 297 Mich App at 248. Moreover, to the extent respondent claims that these services were not tailored to her cognitive abilities, the record does not support her position. As an example, petitioner expressly chose not to require group counseling because, based on her psychological evaluation, that form of counseling would have been unsuccessful in light of her abilities. Instead, various individuals provided respondent with direct, one-on-one assistance and were willing to "explain and re-explain" the information in an attempt to assist respondent's understanding. Despite these attempts tailored specifically to respondent's abilities, these services were unsuccessful.

Accordingly, we conclude that, contrary to respondent's assertion, the record demonstrates that petitioner provided her with adequate services throughout the pendency of this matter.

C. BEST INTERESTS

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts* Minors, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5); MCR 3.977(E)(4). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Moss*, 301 Mich App at 90. Trial courts should consider all available evidence in making this determination. *Trejo*, 462 Mich at 356. Relevant factors to be considered include the bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of the foster home over the parent's home, and any other relevant factors. *Olive/Metts*, 297 Mich App at 41-42.

Here, there was a preponderance of evidence to support the trial court's best interests determination. As detailed above, the record demonstrates that respondent is unable to understand and care for KS in light of his heart condition. With the exception of limited parenting time, respondent and KS have been separated from birth and do not share a bond. On several occasions during parenting time, KS and respondent would demonstrate a lack of comfort with one another, and the child's foster mother would have to calm KS down. Indeed, KS's foster mother has been educated in caring for KS in light of his condition, has played a crucial role in ensuring KS's treatment for his heart condition, and has apparently expressed an interest in adopting KS in the event the opportunity presents itself. The record also demonstrates that petitioner has not found any suitable relative placement for KS at this time.

Accordingly, we conclude that the trial court did not err in finding that the termination of respondent's parental rights was in the child's best interests.

III. CONCLUSION

Accordingly, because the trial court did not clearly err in finding that petitioner had established at least one statutory ground by clear and convincing evidence, because the record does not demonstrate that petitioner failed to provide adequate services, and because the trial court did not err in finding that termination was in the child's best interests, we affirm the trial court's order terminating respondent's parental rights to the minor child.

Affirmed.

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