STATE OF MICHIGAN

COURT OF APPEALS

In re T. J. J. PATTERSON, Minor.

UNPUBLISHED
July 21, 2016

No. 331271
Kalamazoo Circuit Court
Family Division
LC No. 2013-000572-NA

Before: MURRAY, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(*ii*) (failure to rectify other conditions causing the child to come within the court's jurisdiction), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm).[1] We affirm.

Mother first argues that there was insufficient evidence to find a statutory ground for termination of her parental rights. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). This Court reviews the trial court's determination for clear error. *Id.*; 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). "To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong . . . ." *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999) (quotation marks and citation omitted). Further, this Court gives "deference to the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App at 459.

With respect to MCL 712A.19b(3)(j), termination is proper when "[t]here 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." The likelihood of harm to the child under (j) may be physical or emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

[1] The trial court declined to terminate under MCL 712A.19b(3)(c)(*i*) (conditions that led to the adjudication continue to exist).

Here, while the trial court found that mother loved the child and that mother would not intentionally harm him, it ultimately found that mother would unintentionally harm the child by missing a medical appointment, improperly feeding him, or ineffectively caring for one of his medical conditions if he were returned to mother's custody. The child's pediatrician had significant concerns that mother would not be able to care for the child given his high special needs. Mother, regardless of the reason, missed six medical appointments between September 2015, and the start of the termination trial in December 2015. It is undisputed that the child is medically fragile and has intensive needs. Throughout this lengthy case, mother's parenting time remained supervised because there was a concern about her ability to recognize an emergency. Given the child's high degree of needs and the evidence regarding mother's inability to meet those needs, there is a reasonable likelihood, based on mother's conduct or capacity, that the child would be harmed if he were returned to mother's care and custody. Therefore, we are not left with a definite and firm conviction that a mistake has been made, *In re HRC*, 286 Mich App at 459, and the trial court did not clearly err in finding that there was sufficient evidence to establish this statutory ground, *In re VanDalen*, 293 Mich App at 139.

Given that (j) was established by clear and convincing evidence, we need not address the additional grounds for termination. See *In re HRC*, 286 Mich App at 461 ("Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision."). However, we note that for similar reasons termination was also proper under (g). Moreover, mother's cognitive abilities and her parenting skills in relation to those abilities and the child's needs established (c)(*ii*).

Mother also argues on appeal that termination was not in the minor child's 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*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (citations omitted). The minor child—not the parent—is the focus of the best-interest stage. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). In making its determination, the trial court may consider factors such as "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. This Court reviews the trial court's decision regarding the children's best interests for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

Here, in finding that termination was in the child's best interests, the trial court acknowledged that mother loved the child. However, the trial court ultimately found that the child needed a home where his special needs were met, that he needed permanence, and that he needed someone who knew and was able to execute a doctor's plans. As previously noted, the child's pediatrician had significant concerns that mother would not be able to care for the child given his high special needs. Further, the child's young age increased his need for stability and permanence, and he was in foster care since being released from the hospital. Given the child's age, need for stability and permanence, and unique medical needs, which mother was not able to meet, termination was clearly in his best interests. Moreover, mother's affection and any bond between mother and the child do not overcome this conclusion. Therefore, the trial court did not

clearly err in finding that termination was in the child's best interests. *In re Moss*, 301 Mich App at 90.

Finally, mother argues that the trial court clearly erred in finding that petitioner made reasonable efforts to reunify the family. Because mother did not raise an objection to petitioner's efforts until her closing arguments at the termination trial, this issue is unpreserved. See *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Accordingly, we review this unpreserved issue for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App at 135.

Generally, "when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). "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). A trial "court is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child's home." *Id.* at 104 (quotation marks and citation omitted). "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, 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). "Not only must respondent cooperate and participate in the services, she must benefit from them." *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014).

Here, mother was offered numerous services such as a psychological evaluation, counseling sessions, supervised parenting, a parenting coach, transportation assistance, training on feeding the child, and an infant CPR course. Moreover, caseworker Heather Spence testified that additional services were put in place to account for mother's cognitive ability. According to Spence, mother's psychological evaluation indicated that mother was in the low percentile of functioning, and this fact was taken into account by providing more hands-on parenting education. Spence testified that parents are traditionally placed in a group setting with 25 to 30 other individuals but that mother was placed "in the Supportive Visitation Program, which provided her with a one-on-one parenting coach that meets with her for 12-consecutive weeks and offers individualized parenting education during visits." Spence further testified that this setting would help mother better understand the material.

The crux of mother's argument on appeal is that there were five total caseworkers, which caused a lack a coordination and communication. Specifically, mother argues that her Family Support Partner, Rubontay Johnson, was never asked to help her with feeding issues associated with the child's feeding tube, which would have been the perfect hands-on learning opportunity. However, Spence testified that the referral to Johnson was made for support and that doctors were in place to teach mother how to use the feeding tube. Although Spence testified that she was the fifth caseworker assigned to the case, Brittany Wilson, who made the referral to Parent-to-Parent (i.e., the agency that Johnson worked for), reported that the program was for peer support. Thus, Spence's testimony is consistent with the purpose of the original referral. Moreover, Spence testified that "the visit coach [i.e., Miranda Elliot] was able to help [mother] with learning to feed appropriately and that kind of thing, and be just an extra source of coaching during those times of parenting time." Accordingly, mother had opportunities to learn about the

feeding tube from the doctors, and she had other hands-on opportunities. While mother completed the Supportive Visitation Program and attended some of the medical appointments, she failed to benefit from them. See *In re TK*, 306 Mich App at 711. Further, while the trial court stated that "Johnson was a fantastic witness . . . [and] wish[ed] there would have been a little more communication," it found that more communication would not "have solved the problem." Because mother was referred to Johnson for support and because there were doctors in place to teach mother about the feeding tube, mother's argument, that the number of caseworkers and lack of communication (i.e., the alleged failure to instruct Johnson to help with the feeding tube) made the reunification efforts unreasonable, is without merit. As previously noted, mother was offered numerous services, which took into account her and her situation. On this record, mother has not established plain error with respect to the reasonableness of the reunification efforts. *In re VanDalen*, 293 Mich App at 135.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Patrick M. Meter