STATE OF MICHIGAN

COURT OF APPEALS

In re NELSON/SMITH/PEARSON/WALKER, Minors.

UNPUBLISHED
December 22, 2016

No. 332809
Kent Circuit Court
Family Division
LC No. 14-052583-NA;
14-052584-NA;
14-052585-NA;
14-052586-NA

Before: SERVITTO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor children, SN, KS, SP, and MW, under MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (c)(*ii*) (other conditions exist), and (g) (failure to provide proper care and custody). We affirm in part and remand for articulation of the best interests factors regarding respondent-mother.

On appeal, mother argues that termination was improper because there was insufficient evidence to establish a statutory ground for termination, petitioner did not provide reasonable reunification efforts, and termination was contrary to the minor children's best interests. The issue relating to reasonable efforts is unpreserved, and this Court's "review is therefore limited to plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (quotation marks and citation omitted). "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," *id*. at 139, and "[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 76, 90; 836 NW2d 182 (2013). This Court reviews the trial court's determination regarding the statutory grounds and the children's best interests for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); 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 the (c)(*i*), mother's initial dispositional order was entered on October 13, 2014, and the termination hearing began on March 9, 2016. Thus, "182 or more days [had] elapsed since the issuance of an initial dispositional order." See MCL 712A.19b(3)(c). The conditions that led to mother's adjudication were mother's homelessness and lack of resource availability. Given that mother had employment and housing at the time of the termination hearing, it may seem at first blush that the conditions that led to adjudication were rectified. However, mother's housing was inconsistent throughout the case. Mother did not obtain housing until February 2015 and then she was subsequently evicted. Mother then obtained housing in October 2015, but she had been behind on rent owed to Community Rebuilders since July 2015 when she was evicted from her previous housing. Mother was behind on rent up until the first day of the termination hearing. And, although the physical housing was appropriate, mother's mother, who had a history of failing to protect mother from sexual abuse, and her boyfriend were staying with mother. The boyfriend was not on the lease, which was a violation of the Community Rebuilder program, and a background check could not be completed on the boyfriend due to mother's failure to provide his name or date of birth. Based on mother's eviction during the proceedings, the amount of time she spent without housing during the case, the fact that she was behind on rent for a significant period of time, and the additional people staying with mother, the trial court's finding that mother did not make a meaningful change as to her housing was not clearly erroneous. *In re VanDalen*, 293 Mich App at 139.

With respect to mother's resource availability, the record demonstrated that mother left or was fired from numerous jobs and that she was not working as much as she could. Mother became frustrated and walked off a shift, which resulted in her getting fewer hours. Mother reported that she was only working weekends to participate in services, but the caseworker testified that it was unnecessary for mother to only work weekends. In addition, there were multiple occasions where mother was unable to budget for providing one meal a week for the children during parenting time. Given mother's inconsistent pattern of jobs, her minimal hours, and failure to budget for one meal a week for the children on multiple occasions, the trial court's finding that mother did not make a meaningful change as to her resource availability was not clearly erroneous. *In re VanDalen*, 293 Mich App at 139.

Further, the record demonstrates that there was not a reasonable likelihood that mother would rectify the conditions within a reasonable time considering the children's ages. According to the updated case service plan, on February 10, 2016, mother "reported that she is tired of working with services, that her case has taken too long, and that she is not willing to continue for three more months if termination does not occur." Moreover, mother was inconsistent with her participation, and the children were removed from her care on July 26, 2014[1]—approximately 21

[1] SP was initially placed with her father; however, she was eventually removed from his care as well.

months before the termination order was entered. See *Matter of Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991) (explaining that the language in (c)(*i*) indicates "that the Legislature did not intend that children be left indefinitely in foster care"). The young children could not wait indefinitely for mother to rectify the barriers. Based on mother's history of housing and employment, her statements reported in the case service plan, and the length of the case, there was not a reasonable likelihood that mother would rectify the conditions within a reasonable time considering the children's young ages. In sum, although mother made some progress in housing and resource availability, the totality of the evidence demonstrates that mother did not achieve a meaningful change in those areas, and there was not a reasonable likelihood that she would accomplish such a change in a reasonable time. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009) ("Although respondent mother embarked on a commendable effort to treat her addiction several months before the termination hearing, the totality of the evidence amply supports that she had not accomplished any meaningful change in the conditions existing by the time of the adjudication."). 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.

Moreover, other conditions existed under (c)(*ii*). The trial court found that mother's other conditions included her mental health, emotional stability, sexual abuse issues, domestic violence, and parenting skills. Here, mother failed to make progress with respect to her own emotional and mental health. Mother was discharged from her individual counseling through Arbor Circle for lack of attendance and progress, she failed to timely act on the referral to Network 180 for mental health services, and she misrepresented her attendance at Network 180 to the caseworker. Further, mother stopped taking her medication without consulting her doctor, and her failure to engage in individual counseling prevented her from being re-prescribed medication. Mother failed to fully understand and acknowledge the sexual abuse and trauma that her children experienced. Mother also struggled meeting the needs of her children during parenting time. Mother indicated that she was overwhelmed with respect to the children and parenting time, and, during one of the parenting times, KS left the building without mother noticing. The caseworker believed that mother would have difficulty keeping track of all of the children when doing things such as taking the children out in public or to a doctor's appointment and that it was difficult for mother to keep track of them in the contained setting at the office during parenting time. These other conditions continued to exist. And, despite receiving notice, a hearing, and a reasonable opportunity to rectify the conditions, the length of time that this case was pending demonstrates that the other conditions would not be rectified within a reasonable time considering the children's young age. Moreover, mother's history, her statements reported in the case service plan, and her failure to address her own emotional and mental health, support this conclusion. Thus, 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.

With respect to MCL 712A.19b(3)(g), termination is proper when "[t]he parent, without regard to intent, fails to provide proper care and 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." "A parent's failure to participate in *and benefit from* a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710 (emphasis added).

Here, without regard to intent, mother failed to provide proper care and custody of the children. In addition to the evidence described above for the other statutory grounds, the children had significant dental decay when they came into care. Further, mother's failure to participate in her own counseling prevented her from engaging in SN's and KS's counseling. Mother was dismissive of KS's actions, but KS suffered childhood trauma and had reactive attachment disorder. Further, mother failed to benefit from the services in which she participated. See *id*. (using respondent's failure to benefit from her service plan as evidence supporting (g)). Mother attended parenting classes but still struggled to attend to the children's individual needs during parenting time. Finally, based on the length of time that this case was open; mother's less-than-full participation; and mother's history, which included medical neglect of KS in 2009 and failure to provide the necessary medications for MW's severe skin condition, there was not a reasonable expectation that mother would be able to provide proper care and custody within a reasonable time considering the children's ages. Thus, 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.

In reaching this conclusion, we acknowledge that "[t]he 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). Although there is "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 challenges the sufficiency of petitioner's efforts and alleges that it made an untimely referral for counseling and failed to make a psychiatric referral. We disagree. Mother initially was engaged in counseling through Arbor Circle, but she was discharged from that service for lack of participation and attendance. The caseworker testified that a referral to Network 180 for mental health treatment was made in September 2015, which was right after mother was discharged from Arbor Circle. The record evidences that the Network 180 counseling was delayed because mother initially failed to act on the referral and misrepresented to the caseworker that she had been to Network 180. In addition, mother allowed her Medicaid coverage to lapse, which caused further delay. The referral was timely, but mother's actions delayed her own participation.

Further, mother's argument that she should have been referred elsewhere for psychiatric evaluation and medication because her primary care doctor would not prescribe her medication until she engaged in counseling is without merit. Mother was initially on medications prescribed by her doctor, but she voluntarily went off her medications without consulting her doctor. Mother stopped taking the medication in April 2015 and did not re-engage with her primary care doctor for medication until January 2016 or February 2016. However, mother's primary care doctor encouraged her to participate in therapy before he would re-prescribe medication. There was testimony that such a requirement would help a patient develop insight about their condition, help the patient become aware of the symptoms, and increase the efficacy of medication. Again, the record demonstrates that mother's actions prevented progress in this area. See *In re TK*, 306

Mich App at 711 (explaining that the respondent must also benefit from the services); *In re Frey*, 297 Mich App at 248 (explaining that a respondent has the responsibility to participate in the services offered). Finally, mother's participation in the services related to her mental health was poor. 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.

"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). The minor child—not the parent—is the focus of the best-interest stage. See *In re Moss*, 301 Mich App at 87. 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). Moreover, MCR 3.977(I)(1) states in relevant part, "The court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." See also MCL 712A.19b(1) (stating in relevant part, "The court shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated"); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000) (explaining that "the court must state its findings and conclusions regarding any best interest evidence on the record or in writing").

Here, although the trial court addressed the children's best interests with respect to their respective fathers, the trial court failed to articulate its best-interest findings for the children regarding termination of mother's parental rights. We remand for the trial court to do so. MCL 712A.19b(1), MCR 3.977(l)(1) and *In re Trejo*, 462 Mich at 356, all contain language that the trial "must" or "shall" state on the record or in writing its findings of fact and conclusions of law regarding the best interests factors for each parent, including whether the bond present between respondent-mother and the children can overcome the conclusion that her parental rights should be terminated.

Affirmed in part and remanded in accordance with this opinion. We retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause

Court of Appeals, State of Michigan

ORDER

In re Nelson/Smith/Pearson/Walker Minors

Docket No. 332809

LC No. 14-052583-NA; 14-052584-NA; 14-052585-NA; 14-052586-NA

Deborah A. Servitto
Presiding Judge

Cynthia Diane Stephens

Amy Ronayne Krause
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall be completed within 28 days of the Clerk's certification of this order, and they shall be given priority on remand until they are completed. As stated in the accompanying opinion, the trial court shall articulate on the record or in writing its best interest findings for the children regarding termination of appellant mother's parental rights. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 22 2016
Date

Jerome W. Zimmer Jr.
Chief Clerk