

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 19, 2012

In the Matter of E. J. PARSONS, Minor.

No. 307083
Kent Circuit Court
Family Division
LC No. 10-051203-NA

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (j) and (l). For the reasons stated in this opinion, we affirm.

Respondent gave birth to the minor child on April 6, 2010, and the hospital made a referral to Children's Protective Services (CPS) at the minor child's birth because respondent's parental rights to two sons were terminated in December 2002 pursuant to MCL 712A.19b(3)(b)(ii) (failure to protect) and (j) (reasonable likelihood of harm if child is returned to parent's home). On April 26, 2010, CPS filed a petition alleging respondent's previous termination of parental rights, failure to properly control her diabetes, history of depression, a psychological evaluation performed in 2000 that concluded respondent was unable to properly parent without considerable support, and past domestic violence. CPS requested termination of respondent's parental rights at the initial disposition, or alternatively, that respondent be ordered to participate in reunification services. The trial court authorized the petition, and the minor child was placed in the care of the Department of Human Services (DHS). Respondent admitted to an amended petition that removed the request for immediate termination of her parental rights on June 7, 2010, and the trial court took jurisdiction over the minor child. Respondent was ordered to comply with a service plan.

On June 1, 2011, DHS filed a petition for termination of respondent's parental rights. The termination hearing commenced on July 27, 2011, and concluded on August 4, 2011. After hearing testimony, the trial court took the matter under advisement, and on October 12, 2011, issued a written opinion terminating respondent's parental rights.

I. STATUTORY GROUNDS FOR TERMINATION

On appeal, respondent first argues that the trial court clearly erred in finding clear and convincing evidence to prove the statutory grounds for termination.

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), (j) and (l), which provide in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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:

(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.

* * *

(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.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

In regard to §§ 19b(3)(c)(i) and (c)(ii), respondent was diagnosed with major depressive disorder and a dependent personality. She was a brittle diabetic who did not control her diabetes during pregnancy, and the minor child was born prematurely and placed in the care of a paternal uncle and his wife upon release from the hospital. The initial conditions leading to adjudication on June 7, 2010, were respondent's emotional instability, failure to manage her diabetes and maintain her physical health, lack of parenting skills, and lack of a proper support system. Additional conditions which the trial court ordered rectified at the December 8, 2010 hearing were the cleanliness and safety of respondent's home, and respondent's need for training in domestic violence prevention, assertiveness, and financial management. More than 182 days elapsed between the June 7, 2010 initial disposition and conclusion of the termination hearing on August 4, 2011, and between the December 8, 2010 hearing at which respondent was ordered to rectify the additional conditions and conclusion of the termination hearing on August 4, 2011. Respondent was given an adequate time period of 16 months to rectify these conditions, and was referred to and participated in numerous services. Several review hearings were held between the initial disposition and termination hearing.

At the termination hearing, the evidence showed respondent failed to stabilize her emotional health, become able to safely and appropriately parent the minor child, maintain a safe and suitable home for the minor child, and be aware of how to assertively prevent the potential for domestic violence and protect herself and the minor child. Therefore, we conclude that the trial court did not err in finding "respondent failed to understand how her decisions and failure to appropriately manage her mental health impact her daughter" and "failed to demonstrate that she can provide a safe, stable, non-neglectful home for her child." Therefore, the trial court did not clearly err in concluding there was clear and convincing evidence to prove the statutory grounds for termination set forth in §§ 19b(3)(c)(i) and (c)(ii).

In regard to § 19b(3)(g), although respondent had never had custody of the minor child, the evidence showed she failed to provide proper care. Her poor parenting and lack of care and protection for her children in 2002 was indicative of the lack of care and protection she would provide the minor child in this case. *In re Powers*, 208 Mich App 582, 588-593; 528 NW2d 799 (1995), superseded in part on other grounds *In re Jenks*, 281 Mich App 514, 517-518 n 2; 760 NW2d 297 (2008); *In re LaFlure*, 48 Mich App 377, 391-392; 210 NW2d 482 (1973). A trial court need not wait until a child is harmed or neglected, but may assert jurisdiction solely on the basis of anticipatory neglect. *In re Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1977). In addition, the conditions of adjudication and additional conditions discussed above all demonstrated a lack of ability to provide the minor child with proper care. Therefore, we conclude that the trial court did not clearly err in concluding there was clear and convincing evidence to prove the statutory grounds for termination set forth in § 19b(3)(g).

While the trial court need not have considered returning the minor child to respondent's care pursuant to § 19b(3)(j) because the minor child was never in her care, the evidence noted in discussion of §§ 19b(3)(c)(i), (c)(ii) and (g) above clearly demonstrates that the minor child was likely to suffer harm if placed in respondent's care. Therefore, we conclude that the trial court

did not clearly err in concluding there was clear and convincing evidence to prove the statutory grounds for termination set forth in § 19b(3)(j).

In regard to § 19b(3)(l), respondent's parental rights to two children were terminated in 2002 under MCL 712A.19b(3)(b)(ii) and (j) after her three-year-old child was sexually abused and her infant suffered permanent injuries from being shaken. Respondent did not deny that her parental rights to her two children were terminated in 2002. Therefore, we conclude that the trial court did not clearly err in terminating respondent's parental rights under § 19b(3)(l).

Accordingly, the trial court did not clearly err in concluding that the at least one statutory ground for termination was proved by clear and convincing evidence. *In re Sours Minors*, 459 Mich at 632.

II. REASONABLE REUNIFICATION EFFORTS

Respondent next asserts the trial court erred in terminating her parental rights because petitioner did not make reasonable reunification efforts.

Whether petitioner made reasonable reunification efforts is a question of fact that we review for clear error. MCR 3.977(K). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich at 209-210.

When a child is removed from a parent's custody, petitioner is required to make reasonable efforts at reunification. MCL 712A.18(f)(1), (2), (4). The failure to make reasonable efforts at reunification may prevent petitioner from establishing the statutory grounds for termination. See *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991).

In this case, respondent cites the following as indicative of petitioner's failure to make reasonable reunification efforts: petitioner did not want to allow adequate time for respondent to rehabilitate because her parental rights to two children had been terminated previously; caseworkers were unprepared, unfamiliar with the facts of respondent's case, and inconsistent in their recommendations; and caseworkers failed to evaluate respondent's ability to care for the minor child in respondent's home, and rarely visited respondent's home.

The record in this case demonstrates that respondent was referred to and accessed numerous services during the 16-month proceeding. Respondent received one-on-one assistance from a parent mentor, and the caseworker requested additional time for respondent to receive additional services at the first permanency planning hearing instead of changing the goal to termination. Accordingly, the evidence does not support respondent's assertion that petitioner was reluctant to allow her adequate time to complete services because of her previous termination.

With regard to effective case management, the record submitted on appeal showed the caseworkers understood respondent's reunification goals and made appropriate referrals for services designed to assist her in reducing the barriers to reunification. The caseworkers did not always have all information at hearings, but respondent was not always truthful and complete in sharing information with them, and occasionally service providers were unable to report on

respondent's progress due to her inconsistent attendance. Also, certain actions remained solely under respondent's control and caseworkers had no ability to impact her compliance, such as whether she took anti-depressants as prescribed, regulated her sleep and carbohydrate intake, cleaned her home, and attended counseling.

With regard to whether termination was premature because respondent was not provided visits with the minor child in her home, the weight of evidence supporting termination was not impacted by whether or not in-home visits occurred. The trial court denied respondent's request for unsupervised in-home visits because she had made a threat of suicide. The caseworker, parent mentor, and court-appointed special advocate (CASA) volunteer all visited respondent's home and observed her parenting, and unanimously agreed that respondent remained unable to parent the minor child without supervision and that the condition of respondent's home was not consistently safe and suitable. Holding visits in respondent's home rather than at the agency would not have altered respondent's parenting ability, and did not impact whether the statutory grounds for termination were established. Therefore, we conclude that the trial court did not clearly err in determining that petitioner made reasonable efforts toward reunification.

III. BEST INTERESTS

Respondent also argues that the trial court erred in determining that termination of her parental rights was in the best interests of the minor child.

We review the trial court's best-interest determination for clear error. MCR 3.977(K). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo Minors*, 462 Mich at 353.

Specifically, respondent argues termination was not in the minor child's best interests because continued visits were beneficial to both the minor child and respondent, and respondent was making progress in services while the minor child was placed in a relative's care. Respondent notes MCL 712A.19a(6)(a) and (c) allow the trial court to delay initiation of termination proceedings beyond the time of permanency planning under certain circumstances, including where petitioner has not provided adequate services or where the child is in the care of relatives.¹

¹ MCL 712A.19a(6)(a) and (c) provide:

(6) If the court determines at a permanency planning hearing that a child should not be returned to his or her parent, the court may order the agency to initiate proceedings to terminate parental rights. Except as otherwise provided in this subsection, if the child has been in foster care under the responsibility of the state

The record in this case demonstrates that petitioner provided respondent with reunification services over a 16-month period, but respondent attended inconsistently, and there was no reasonable expectation she would progress sufficiently to properly care for the minor child within a reasonable time. Moreover, the minor child was cared for by her father's relatives with whom respondent reported some conflict and with whom she was not as comfortable after her separation from the minor child's father.

In light of these facts, we conclude that the trial court did not err in finding termination of respondent's parental rights was in the minor child's best interests. Although the CASA volunteer testified that continuing visits would be beneficial to both the minor child and respondent even if respondent's parental rights were terminated, the trial court did not clearly err in determining that the permanence of a safe, stable home, and attachment to parents who would properly care for and protect her was in the minor child's best interests.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck

for 15 of the most recent 22 months, the court shall order the agency to initiate proceedings to terminate parental rights. The court is not required to order the agency to initiate proceedings to terminate parental rights if 1 or more of the following apply:

(a) The child is being cared for by relatives.

* * *

(c) The state has not provided the child's family, consistent with the time period in the case service plan, with the services the state considers necessary for the child's safe return to his or her home, if reasonable efforts are required.