

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 31, 2012

In the Matter of C. J. DULECKI, Minor.

No. 307434
St. Clair Circuit Court
Family Division
LC No. 10-000344-NA

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No. 307481
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Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to a minor child under MCL 712A.19b(3)(c)(i), (c)(ii), and (j). We affirm.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds listed in MCL 712A.19b(3) has been established by clear and convincing evidence. See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it also finds that termination is in the child's best interests. MCL 712A.19b(5). A trial court may consider evidence on the whole record in making its best-interests determination. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). This Court reviews the decision to terminate parental rights for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009); MCR 3.977(K).

I. DOCKET NO. 307434

The trial court did not clearly err in finding that statutory grounds were established to terminate respondent mother's parental rights. The conditions that led to petitioner's intervention were respondent mother's marijuana abuse and involvement in a domestically violent relationship with her boyfriend, Brandon Williams, which created an inappropriate and harmful home environment for her son, who was 13 at the time of the termination hearing. The court ordered respondent mother to (1) maintain safe, suitable housing; (2) provide financial

statements; (3) obtain a legal income source sufficient to support the family for a minimum of three months; (4) comply with psychological evaluations and follow all recommendations; (5) maintain sobriety; (6) provide random drug screens, with any screens not taken or found to be too diluted to be deemed positive; and (7) complete and benefit from parenting classes. Williams was not to reside with respondent mother or have any contact with the minor child. Respondent mother also participated in individual therapy, substance-abuse therapy, anger-management and domestic-violence counseling, and life-skills instruction.

It is undisputed that respondent mother complied with court-ordered services. However, the record shows that she did not adequately benefit from the services. It is not enough to merely go through the motions of a treatment plan; a parent must benefit from the offered services and acquire sufficient parenting skills so that the child is no longer at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158; 774 NW2d 698 (2009), vacated on other grounds 468 Mich 1037 (2010). The issues of respondent mother's poor parenting choices and inability to maintain a safe and stable home environment continued to exist.

The two salient issues before the trial court were whether respondent mother continued to abuse marijuana and whether she remained in a relationship, which was undeniably domestically violent, with Williams. Respondent mother stated that, in the last 10 years, she had only used marijuana between January and April 2010. She denied smoking marijuana after April 2010 and adamantly denied that she had ever smoked marijuana with her son. Respondent mother's son disclosed to relatives, caseworkers, and service providers that respondent mother and Williams smoked marijuana daily. The minor child further testified that he began smoking marijuana at the age of 11, he regularly smoked with respondent mother and Williams, and respondent mother told him not to tell anyone that they smoked marijuana together. He was angry that respondent mother denied smoking marijuana with him because it made him seem to be a liar.

The fulcrum upon which the outcome of this case rested was the credibility of the minor child, Williams, and respondent mother. In child protection appeals, this Court gives deference to the trial court's ability to discern the weight of the evidence and assess witness credibility, giving regard to the trial court's special opportunity to observe the witnesses. MCR 2.613(C); MCR 3.902(A); *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The referee did not clearly err in finding the minor child's and Williams's testimony credible regarding respondent mother's substance abuse. Williams's testimony corroborated, in certain respects, the testimony of respondent's son.¹ Williams indicated that he smoked marijuana with respondent mother after he was released from jail in February 2011. They

¹ The record showed that Williams did not have any contact with the child after the child was removed from respondent mother's care and was not in the courtroom when the child testified. Thus, it was unlikely that they had an opportunity to conspire to give false testimony against respondent mother.

smoked together regularly through June 6, 2011. According to Williams, respondent mother passed random drug tests by using someone else's urine and, in fact, he gave money to her for this purpose on several occasions in 2011, despite a no-contact order. In addition, police and caseworkers saw marijuana in plain view (in an ashtray on a coffee table in front of the television) in respondent mother's home in June 2010, respondent mother's domestic-violence therapist testified that respondent mother admitted that she had a substance-abuse issue with marijuana, and various drug screens tested positive or were diluted after April 2010. The referee found respondent mother's explanations for these screens to be not credible.

Respondent mother argues that, even if it occurred, occasional marijuana use is not sufficient grounds to terminate parental rights. This argument misses the mark. One of the issues before the trial court was not merely whether the tests were negative or positive but why respondent mother was not forthcoming about them. Respondent mother's lack of candor demonstrated that she had not addressed her substance-abuse problem, and her therapist explained that a substance-abuse issue was an obstacle to good parenting. Moreover, the referee reasonably focused on the fact that respondent mother's unwillingness to acknowledge the drug tests for being what they were called into question respondent mother's credibility on other crucial aspects of her testimony, such as her continued relationship with Williams, which did provide grounds for terminating her parental rights. It is clear from a careful review of the record that respondent mother denied wrongdoing and shifted blame to others, which kept her from making the progress necessary to maintain her parental rights. Indeed, professionals working with respondent mother consistently cited her denial of issues as a driving problem in her case. Further, the referee did not clearly err in concluding that respondent mother's testimony and the minor child's directly opposing testimony could not be reconciled, which rendered their relationship conflicted and ultimately unworkable at the time of the termination hearing or within any reasonable time.

The trial court also did not clearly err in finding that respondent mother's testimony regarding the status of her relationship with Williams was not credible. It is undisputed that the minor child was subjected to domestic violence between respondent mother and Williams during the two years Williams resided in the family home, and Williams admitted that he was convicted of domestic violence against respondent mother in 2009. Respondent mother denied that she had an ongoing relationship with Williams since the filing of the petition in June 2010, and she denied having any contact with Williams in 2011. Williams's testimony, however, contradicted this assertion.

In addition, respondent mother's life-skills coordinator testified that respondent mother did not appear to understand the impact of her domestic-violence history on her son and minimized the degree of domestic violence involved. He explained that a client's minimization or denial of issues had an impact on treatment success.

Respondent mother's conduct leading up to the termination hearing also underscored the trial court's findings that she continued to deny, deflect, or minimize her underlying anger issues. Respondent mother testified at the termination hearing that she had benefited from services and had no tolerance for any type of violence. Nonetheless, there was credible evidence that she was increasingly verbally abusive to caseworkers and service providers and questioned their credibility. Following the September 29, 2011, hearing, the relative foster parent asked to be

removed as the child's caregiver because respondent mother sent her inappropriate and threatening text messages. The foster parent reported that respondent mother had caused her and her family a lot of stress and that she feared for her life.

Reading the record as a whole and giving deference to the referee's determinations regarding witness credibility, this Court is not left with a definite and firm conviction that a mistake was made in terminating respondent mother's parental rights. She failed to rectify the conditions that brought the child within the court's jurisdiction. While she complied with her treatment plan, she did not benefit from services, as evidenced by her entrenched denials of her continued relationship with Williams and substance-abuse issues. The referee properly found the testimony of the child, Williams, and service providers credible. The court did not rely solely on a "minimally informed source," as argued by respondent mother. After more than six months of services, respondent mother was unable to provide the child with a suitable and stable home environment, free from domestic violence and substance abuse. The trial court properly concluded that there was no reasonable likelihood that respondent mother would be able to resolve her issues within a reasonable time.

There was also clear and convincing evidence that the child would likely be mentally and emotionally harmed if returned to respondent mother's care. After months of services, respondent mother lacked insight, continued her drug abuse, tampered with drug screens, and continued her relationship with Williams.

The court also properly concluded that termination of respondent mother's parental rights was in the child's best interests. MCL 712A.19b(5). Despite the bond between respondent mother and her son and their obvious love for each other, there was clear evidence that respondent mother would not be able to provide a safe and stable environment for her son in the near future because of her adamant and persistent denials of her issues with a domestically violent relationship and substance abuse. There was sufficient evidence that their bond had deteriorated as a direct result of respondent mother's unwillingness to candidly deal with her issues. The child testified that he preferred living with the relative foster parent because it was nice and quiet, free from arguing and things getting broken. In June 2011, the child told the caseworker that he was scared to return home because he felt that respondent mother had not changed and would continue to lie. He did not believe that it was helpful to try to discuss and resolve issues with respondent mother unless someone else was present. He further stated that joint therapy sessions were not beneficial because respondent mother would just deny everything.

Additionally, the court did not clearly err in finding that termination, rather than guardianship, was in the child's best interests. The child reported that he was comfortable in the relative foster parent's home. However, he was often placed in the middle of disputes between respondent mother and other relatives, such as his father and his grandmother. The relative foster parent feared for her life because of respondent mother's threatening behavior just weeks before the termination hearing. Respondent mother's continued presence in the child's life would deprive him of needed stability.

II. DOCKET NO. 307481

The trial court also did not clearly err in finding that statutory grounds were established to terminate respondent father's parental rights. At the time of the child's removal from respondent mother's care, respondent father was incarcerated. Respondent father admitted that he had four prior felony convictions and that his involvement with drugs was the underlying motive. Respondent father was imprisoned in 1994 for approximately two years. He was in prison again in 2004 for 18 months and released in 2006. Respondent father also was cognitively impaired because of a traumatic brain injury he sustained after a neighbor stabbed him in the head during a dispute. Petitioner filed a child protective proceeding petition in July 2010, alleging that respondent father failed to provide the minor child with financial, physical, or emotional support. Respondent father admits that he has not lived with his son since he was five years old. Also, respondent father admitted below to having had a substance-abuse problem, indicating that he would leave the family home three or four days at a time to abuse drugs. Respondent mother testified that respondent father failed to pay \$10 each month in child support and that, for all practical purposes, she was always a single parent.

Respondent father was ordered to comply with and benefit from a treatment plan, which included taking parenting classes, participating in random drug/alcohol screens and a substance-abuse assessment, undergoing individual and substance abuse-counseling, obtaining suitable housing, and obtaining a legal source of income. There was clear and convincing evidence that respondent father failed to complete his treatment plan. The foster-care worker testified that respondent father did not complete any of the services to which he was referred except for a psychological evaluation. A parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child. *In re Trejo*, 462 Mich at 360-363.

Despite petitioner's efforts for more than 182 days, the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the child's age. Respondent father admitted that he had a longstanding substance-abuse problem. The referee found no evidence that respondent father had fully resolved this problem. The referee also found clear and convincing evidence that respondent father had been unable to provide an appropriate home and environment for his son in the past and that there was no reasonable expectation, based upon his past conduct, that he would be able to do so in a reasonable time in the future. We find no clear error with respect to these findings.²

The proofs similarly showed that the trial court did not clearly err in finding that the minor child would be at risk of harm if returned to respondent father's care, in light of respondent father's past drug abuse and other conduct that led to multiple incarcerations and his failure to address his issues.

² We note that respondent father was unable to adequately parent the child while he was incarcerated and his release date at the time of the termination hearing was unknown.

Respondent father argues that he was unable to fully participate in services because of his incarcerations and his traumatic brain injury. This argument disregards pertinent evidence. Although respondent father was incarcerated at the time of adjudication on September 16, 2010, he was released and remained out of jail for approximately nine months. Between incarcerations, he was referred twice to parenting classes but did not comply. He failed to attend court proceedings, without an excuse. At one point his attorney requested to be discharged from the case because of lack of contact from respondent father. The caseworker also stated that she had minimal contact with respondent father for months. There was also sufficient proof that respondent father was unwilling to participate in counseling services. Further, respondent father's limitation because of his brain injury did not absolve him of the obligations to complete counseling and other court-ordered services.

Respondent father also contends that he was unable to complete various services because the services were offered in St. Clair County, and respondent father lived in Macomb County. However, respondent father told the caseworker that he had the financial means to either ride the bus or purchase a car but that he simply preferred not to travel to St. Clair County.

Finally, respondent father claims that termination of his parental rights was not in the child's best interests. Respondent father argues that he is recovering from his traumatic brain injury and is able to take care of his son. Respondent father argues that this Court should excuse his noncompliance with the court-ordered treatment plan because of his brain injury, yet in the next breath asserts that he has sufficiently recovered and that the trial court clearly erred in finding that his brain injury prevented him from properly caring for his son. At any rate, respondent father also admitted below that the child was doing well in the structured environment provided by the child's aunt. The trial court reasonably concluded that the child needed stability and permanency that respondent father was unable to provide and that the child's best interests were served by termination of respondent father's parental rights.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder