STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 26, 2012

In the Matter of Jacobs Minors.

No. 308180
Wayne Circuit Court
Family Division
LC No. 98-365436-NA

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating both parents' rights to the minor children. The order pertaining to S.G.D. was entered pursuant to MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (g), (i), and (j). The order pertaining to S.U. was entered pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (i).[1] We affirm.

Respondent has a long history of bipolar disorder and substance abuse. Her rights to three older children have been previously terminated.

Respondent first argues on appeal that the trial court erred by referencing prior terminations as a basis for terminating her parental rights without making findings regarding respondent's present fitness to parent. We disagree.

This Court reviews a trial court's finding that a ground for termination has been established by clear and convincing evidence for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); MCR 3.922(K). A finding is clearly erroneous, even when there is sufficient evidence to support it, if this Court is definitely and firmly convinced a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A trial court's ultimate decision must be more than merely "maybe or probably wrong" to be considered clearly erroneous. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). This Court reviews de novo the application and interpretation of statutes. *In re Mason*, 486 Mich at 152.

[1] The father is not a party to this appeal.

MCL 712A.19b governs termination of parental rights and sets forth the statutory grounds justifying termination. The grounds upon which respondent's parental rights were terminated are as follows:

> (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:
>
> (a) The child has been deserted under any of the following circumstances:
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> * * *
>
> (*ii*) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
>
> * * *
>
> (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.
>
> * * *
>
> (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.
>
> * * *
>
> (i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.
>
> (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.

Respondent argues that the trial court was required to make a finding of current parental unfitness on the part of respondent even with her record of prior terminations. MCL 712A.19b(3)(i) does not explicitly require such a finding. When a parent has had prior terminations due to serious and chronic neglect, the petitioner only needs to establish that prior attempts to rehabilitate the parent were unsuccessful. MCL 712A.19b(3)(i).

The record supports a finding that respondent had prior terminations due to serious and chronic neglect. Respondent's parental rights to her first child were terminated in 1998. That child tested positive for cocaine at birth. Respondent was homeless, fed the child sour milk, did not have the child immunized for hepatitis, and eventually left the child in the care of an unrelated 70-year-old man, after which time respondent could not be located. Respondent's parental rights to her second child were terminated in 2003. That child also tested positive for cocaine at birth. Respondent had not received prenatal care, had further trouble with drug abuse, and her history of bipolar disorder, which included several incidents of involuntary commitments to psychiatric hospitals, became apparent at that time. Respondent essentially abandoned that child as well. Respondent's parental rights to her third child were terminated in 2006. Both respondent and the child tested positive for drugs at the time of the child's birth. During these proceedings it came to light that respondent had used marijuana and cocaine for more than 17 years and had been selling them for about five years. It also became apparent that she had a history of refusing to take prescription medication to treat her mental illness.

The record also supports a finding that prior attempts to rehabilitate respondent were unsuccessful. Respondent received services from DHS from January 2008 until November 2011. Respondent's treatment plan included individual therapy, parenting classes, obtaining suitable housing, receiving income, substance abuse treatment, attendance at NA or AA meetings, psychological evaluation, psychiatric evaluation, participation in the clinic for child study, and drug screens.

In September of 2008, respondent tested positive for cocaine. By December, she had missed eight of 14 mandatory drug screens, did not have suitable housing, and was still unemployed. In early 2009, respondent relapsed. She entered a 90-day inpatient rehabilitation program and her treatment plan was revised to focus on sobriety and mental health treatment. By March of 2010, respondent was doing well enough that she was permitted unsupervised parenting time with S.G.D. By June of 2010 she had overnight visits and was compliant with her plan. Unfortunately, respondent soon slid back into noncompliance. In September of 2010, she failed to appear at a hearing and it was discovered that she had not completed mandatory drug screens for more than six weeks. She was also not taking her medication and had recently been diagnosed with a personality disorder. Later that month, respondent came to court and was ordered to produce a urine sample for a drug screen. She refused to provide a sample and became belligerent, threatening court personnel until she was taken into custody, where she pounded on the cell walls, made further threats, and used the cell sink to flood the floor she was on and the floor below. The court ordered respondent to be taken to the hospital and held for 72 hours for psychiatric care. At the hospital respondent had a positive pregnancy test.

Respondent recovered somewhat during her pregnancy, testing negative for drugs, although she did smoke during her pregnancy. However, from the time S.U. was born, on May 21, 2011, until the end of trial in November of 2011, respondent was largely noncompliant with her treatment plan. Although respondent complied with drug treatment, completed two child study clinics, received a psychological evaluation, and attended NA and AA meetings and parenting classes, she was inconsistent with drug screens, parenting visits, and individual therapy, and she never completed a psychiatric evaluation. Respondent also still had not secured stable housing or provided verification of income. She did not seem to fully grasp the extent of S.G.D.'s special needs, which stemmed in part from a chromosomal disorder and required

physical, occupational, and speech therapy. Respondent had difficulty parenting S.G.D. during visitation sessions. Further, respondent did not finish her substance abuse treatment in January of 2009, when she relapsed. She returned for treatment in July of 2009, but did not finish that program either. She completed only 16 out of 37 mandatory drug screens in 2011.

In light of this evidence, it was not clearly erroneous for the trial court to determine that efforts to rehabilitate respondent were unsuccessful. Despite respondent's sporadic efforts, she was never able to reach a point of being able to consistently care and appropriately provide for her children. The court also, contrary to respondent's contention, applied the correct law by focusing on the failure of rehabilitation efforts, although the court's determination implicitly acknowledged respondent's present unfitness to parent. Accordingly, the trial court's decision to terminate respondent's parental rights on the ground laid out in MCL 712A.19b(3)(i) was not clearly erroneous.

Furthermore, a single statutory ground is sufficient to support termination. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Respondent challenges the trial court's ultimate conclusion under only MCL 712A.19b(3)(i). Accordingly, even if respondent were correct, she could not prevail, since the other statutory grounds upon which the court based its order still stand.

Respondent next argues on appeal that the trial court erred by referencing respondent's chronic and untreated mental health issues as a basis for termination without referencing whether sufficient services were provided to respondent in her case service plan.

Any assertion that services are insufficient must be made in a timely manner so that reasonable accommodations may be made. See *In re Terry*, 240 Mich App 14, 26, 26 n 5; 610 NW2d 563 (2000) (holding that a parent with a disability cannot first raise the issue of insufficient services under the Americans with Disabilities Act at a dispositional hearing regarding termination of parental rights). Such an objection must be raised at the time the service plan is adopted, or it is waived. *Id.* Respondent did not object to her case plan or otherwise argue in the trial court that the services provided to her were insufficient. Accordingly, this issue is waived.

Regardless, the court did not err. First, we note that respondent cites MCL 712A.19b(3)(c)(*ii*) in support of her assertion that a parent must receive recommendations to rectify the conditions that caused the child to come within the court's jurisdiction and be given a reasonable opportunity to rectify those conditions. However, the trial court did not use MCL 712A.19b(3)(c)(*ii*) as one of the statutory grounds justifying termination. Respondent cites no other authority requiring that she be provided services.

Respondent correctly asserts that she was entitled to a case service plan. When an agency recommends a child be removed from a parent's custody, the parent must receive a case service plan. MCL 712A.18f(2). This plan must include efforts made by both the parent and the agency to return the child to the home and a schedule of services to be provided. MCL 712A.18f(3). However, such efforts to reunite the family need not be made under aggravating circumstances, including when the parent has had rights to the child's siblings involuntarily terminated. MCL 712A.19a(2)(c).

As noted, respondent's rights to three older children have been terminated. Therefore, respondent was not entitled to efforts toward reunification. See *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008) ("Services need not be provided where reunification is not intended.") The trial court even specifically noted that, due to respondent's earlier terminations, it did not need to work toward reunification. However, the court decided that it wanted to give the parents a chance. Even assuming that this decision, making reunification possible, triggered respondent's entitlement to services, the services provided to respondent to treat her mental health issues were sufficient. After S.G.D. was removed from respondent's care, respondent received a case service plan, which included, as discussed above, individual therapy, parenting classes, obtaining suitable housing, receiving income, substance abuse treatment, attendance at NA or AA meetings, psychological evaluation, psychiatric evaluation, participation in the clinic for child study, and drug screens. These services were made available to respondent for over three years. Respondent took advantage of some of these services. She entered inpatient drug rehabilitation programs on two separate occasions and attended her AA meetings. She also participated in individual therapy and saw a mental health physician. She even, at one point, had established suitable housing and was receiving income. This record supports a finding that sufficient services were offered to respondent.

However, respondent failed to utilize many of these services. She often failed to take her prescription psychiatric medications, she missed many drug screens, and she failed to complete a psychiatric evaluation. DHS also had to refer respondent to four different therapists because respondent repeatedly came out of compliance with her treatment plan, lost contact with the therapist, and had her case closed. By the time of trial, respondent had been kicked out of the shelter were she was staying, had not provided proof that she was receiving regular psychiatric care, continued to miss many drug screens, and was not regularly attending individual therapy sessions that had been scheduled for her. Based on respondent's failure to utilize many of the services that were offered, she cannot establish that she would have been better off with additional services. Accordingly, respondent's argument is unavailing.[2]

Respondent also argues that petitioner failed to show, by clear and convincing evidence, that respondent's mental health issues justified termination of her parental rights. Respondent did not raise this issue in her statement of questions presented, therefore, it is abandoned on appeal. MCR 7.212(C)(5); see also *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008) (holding that an issue not raised in the statement of questions presented will generally not be addressed by this Court on appeal). Regardless, there is clear and convincing evidence of respondent's chronic and untreated mental health conditions in the record.

[2] Respondent also argues her attorney was ineffective for failing to object to the sufficiency of services provided during lower court proceedings. Because services were not required and, even if they were required, they were sufficient, any objection would have been futile. Counsel is not ineffective for failing to make a futile objection. *People v Milstead*, 250 Mich App 391, 401; 648 NW2d 648 (2002), citing *People v Meadows*, 175 Mich App 355, 362; 437 NW2d 405 (1989).

Respondent has struggled with her bipolar disorder for more than 10 years, has been involuntarily admitted to psychiatric hospitals on multiple occasions, and has a history of failing to take her prescription medication. As discussed above, when the trial court ordered in September 2010 that respondent be taken into custody until she could provide a drug screen, she became belligerent, violent, and threatening, and had to be taken to a hospital for a psychiatric evaluation. Respondent was later diagnosed with a mood disorder and a personality disorder. Respondent also has serious substance abuse issues. She has two drug-related convictions, she tested positive for cocaine during her second, third, and fourth pregnancies, and four of her five children tested positive for cocaine at the times of their births. During a psychological evaluation, respondent was found to be cocaine- and polysubstance-dependent and to abuse cannabis. She failed to complete inpatient drug treatment programs on two occasions. This evidence supports the trial court's factual finding that respondent has chronic and untreated mental health issues interfering with her ability to parent and justifying termination of her parental rights.

Affirmed.

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