

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AJENELL LATE'A FA-BRICE
JETTIE HOGGS, YAJINTAVIA LAVERNE
SH'LENE HOGGS, MIANGEL MONIQUE-
YAJNDEJA HOGGS, and NEVAEH
MONAE'SHONDEJA HOGGS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

EBONY L. MATHIS,

Respondent-Appellant,

and

WELTON Y. HOGGS,

Respondent.

In the Matter of AJENELL LATE'A FA-BRICE
JETTIE HOGGS, YAJINTAVIA LAVERNE
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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WELTON Y. HOGGS,

Respondent-Appellant,

UNPUBLISHED

February 24, 2009

No. 286974

Saginaw Circuit Court

Family Division

LC No. 07-030934-NA

No. 286975

Saginaw Circuit Court

Family Division

LC No. 07-030934-NA

and

EBONY L. MATHIS,

Respondent.

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

In these consolidated appeals, respondents Ebony Mathis and Welton Hoggs appeal as of right the July 14, 2008 trial court order terminating their parental rights to the minor children, Ajenell, Yajintavia, Miangel, and Nevaeh, pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist). We affirm.

I. Basic Facts And Procedural History

This family became involved with protective services in 2006. In an effort to keep the children in the home, assistance was offered for several months, including Families First guidance, substance abuse treatment and housing support. In early 2007, Yajintavia was frequently absent from school due to an untreated skin condition. In February 2007, Mathis left inpatient substance abuse treatment and failed to follow through with outpatient treatment. During this same time period, the children's father, Hoggs, was incarcerated in the Saginaw County jail after he pleaded guilty to possession of narcotics.

In March 2007, an order was entered permitting the removal of the children and allowing for their placement in protective custody. The children were removed from Mathis's home and placed with their paternal grandmother. While conducting a home study, petitioner became concerned with the placement. Consequently, in April 2007, the children were placed with their maternal grandmother. During the first several weeks that the children were placed with their grandmothers, Mathis was offered, but failed to take advantage of, a liberal visitation arrangement.

At a May 2007 hearing, Mathis and Hoggs entered pleas of admissions to several allegations in the petition. The trial court found that the admissions were sufficient to bring the children within the court's jurisdiction; thereafter, the children were made temporary wards of the court. After the May 2007 hearing, Mathis refused to comply with the services offered and she visited her children only once during the reporting period between May and July 2007. Hoggs was released from jail in July 2007. Shortly after his release, he went to Mathis's home to rekindle their relationship. A fight ensued that escalated to a physical altercation. Mathis stabbed Hoggs with a knife causing a laceration that required 17 stitches. Mathis was arrested and placed in the Saginaw County Jail. At an August 2007 dispositional review hearing, the trial court noted that neither parent had made any progress with the treatment plan. Consequently, the trial court ordered continued placement of the children.

At a November 2007 permanency planning hearing, foster care worker Gary Roth testified that Hoggs had participated in some services, including a psychological evaluation and

counseling with Reverend Billy Thompson, an institutional chaplain and limited licensed psychologist. The trial court also noted that Mathis had begun participating in services. Mathis had entered a transitional living center, begun participating in individual counseling with Dedrea Owens-Carter, attended substance abuse treatment, and resumed visiting the children. The petitioner requested that the parents be given more time to comply with the treatment plan.

After the November 2007 hearing, Mathis faltered. Early in the month, she was evicted from the transitional living center for curfew violations. Mathis was then admitted to an inpatient program, and her initial drug screen tested positive for both cocaine and alcohol. In December 2007, Mathis was discharged from inpatient substance abuse treatment for threatening other residents. Homeless, she then moved into the Bay County Women's Shelter. Sometime during this reporting period, Mathis was prescribed Paxil to assist in modulating her moods. She also reported continued participation in counseling with Dedrea Owens-Carter and attendance at a 12-step program.

Hoggs, during late 2007, similarly appeared to digress. In December 2007, Hoggs tested positive for cocaine, marijuana, and benzodiazepines, and during a visit with the children later that month, he appeared under the influence of drugs or alcohol. After the visit, a screen was requested. Hoggs represented that he would submit to a screen; however, he failed to follow through. Eventually, in January 2008, Hoggs provided a urine screen. The results suggested that the sample had been diluted. During this time, Hoggs was participating in counseling with Reverend Thompson. Reverend Thompson recommended that Hoggs attend substance abuse therapy.

In February 2008, Mathis pleaded guilty to the charge of aggravated assault arising out of the stabbing of Hoggs in July 2007. She was placed on probation in March 2008.

In late March 2008, a petition was filed seeking termination of Mathis's and Hoggs's parental rights. In addition to other claims, the petition alleged that Hoggs had failed to benefit from the services offered. Hoggs had failed to make sufficient progress in his counseling, had continued to test positive for illegal substances, and had failed to offer a viable care plan for his children. Similarly, the petition alleged that Mathis had failed to adequately address her substance abuse issues, continued to test positive for controlled substances, lacked suitable housing for her children, failed to verify participation in a 12-step program, and failed to offer a viable care plan for her children. The filing of the termination petition resulted in a suspension of Mathis's and Hoggs's visitation with their children.

After the filing of the petition, another referral was made for Mathis to receive outpatient treatment. She began on April 29, 2008, but was discharged from the program on May 23, 2008, after testing positive for cocaine on two occasions and missing a number of sessions. With respect to Hoggs, on April 2, 2008, petitioner requested that Hoggs present for a urinalysis. Hoggs failed to appear for the drug test and then on April 4, 2008, he indicated to the worker that he had forgotten all about the drug screen. To the worker, it appeared at this time that, even without the demands of caring for the children, Hoggs was overwhelmed. Indeed, Hoggs never contemplated being the primary caregiver to his children in the event of reunification. He saw either his mother or new girlfriend as the primary caregivers.

At the June 2008 termination of parental rights hearing, clinical therapist Dedrea Owens-Carter testified that she began working with Mathis in August 2007. The goals of the treatment plan included substance abuse counseling, relapse prevention, decision-making skills, and addressing issues of depression and anxiety. Although the referral was generated in June, they did not actually begin sessions until August 2007. Mathis made some progress during the sessions; however, Owens-Carter believed that lack of medication for Mathis's depression impeded the progress she could have made. According to Owens-Carter, Mathis was unable to get her medication because her Medicaid benefits were canceled after her "DHS case was closed." In November 2007, Mathis was on her medication; however, when she was no longer on it in December 2007, Mathis noticed a difference in how she felt.

Owens-Carter noted that evidence of Mathis's progress was the fact that she recently obtained housing for herself. The therapist, however, noted that Mathis would need assistance to obtain housing that was suitable for four children. Owens-Carter testified that, on one occasion, she took Mathis for a drug screen and the efforts were fruitless because the screening center did not have an authorization on file. Owens-Carter recognized that Mathis had an outburst at inpatient substance abuse treatment that resulted in her discharge from the program in December 2007, but Owens-Carter felt that this could be attributable to Mathis's lack of anxiety medication. Owens-Carter further opined that Mathis was in need of anger management counseling. Owens-Carter acknowledged that Mathis had relapsed one week before the start of the termination of parental rights hearing. Owens-Carter opined that, although Mathis had made some progress, she still had work to do. Mathis had not completed any one objective of her treatment plan. She had not made any progress in relapse prevention. Mathis needed to be in substance abuse treatment. Further, she had made no progress with obtaining employment. In Owens-Carter's opinion, Mathis would require at least an additional six months of treatment before she would be ready to parent her children. This treatment would include an inpatient substance abuse program for at least six months. Owens-Carter acknowledged, however, that Mathis had been unsuccessful in two inpatient programs already.

After Owens-Carter testified, Reverend Thompson testified that he had known Hoggs for approximately a year to 18 months. Hoggs met regularly with Reverend Thompson to work on issues of substance abuse and depression. Reverend Thompson did not know how long it would be before it could be said that Hoggs had adequately addressed his issues. It could be years before Hoggs had a handle on things. Reverend Thompson concluded that Hoggs could not independently care for himself let alone his children. He required employment and housing. Hoggs did not disclose to Reverend Thompson that he had tested positive for cocaine in December 2007. Reverend Thompson opined that Hoggs was motivated and his mother was a good support system for respondent. Reverend Thompson concluded that Hoggs had not successfully completed therapy with him.

After Reverend Thompson's testimony, outpatient therapist Kelly Bryan testified that she started working with Mathis in April 2008 on an outpatient basis. She was unable to testify regarding any of Mathis's inpatient admissions. When Mathis began, the plan was for her to meet with Bryan twice per week. In the five weeks since the relationship began, Mathis attended only three sessions. Mathis was therefore discharged from the program in May 2008 for lack of attendance and positive drug screens.

Next, foster care worker Gary Roth testified that he was assigned to this family's case in March 2007. Services for Hoggs included counseling and drug screens. Hoggs had no viable plan for his children. Leaving the children in the care of Hoggs's mother, with whom he lived, was not a viable plan. Roth explained that in May 2008 and April 2008, Hoggs tested positive for benzodiazepines. Roth acknowledged that, with respect to the May test, Hoggs had a valid prescription that he presented at the time of testing. However, in April 2008, Hoggs did not provide a prescription that would validate the positive drug screen. Roth explained that Hoggs received substance abuse treatment from January 2008 through May 2008. He attended either 15 or 17 sessions. Roth recommended termination of Hoggs's parental rights. He explained that, at this time, Hoggs's children could not be returned to him and there was no reason to believe that they could be returned within a reasonable time. In Roth's opinion, Hoggs had no concept of what it would take to parent his children. In Roth's opinion, termination of parental rights was also in the children's best interests. The children became anxious after they visited their parents. When the visits were suspended, the children appeared to be doing better.

With respect to Mathis, Roth testified that services provided to Mathis included counseling with Owens-Carter, substance abuse treatment, drug screens, psychological evaluation, and parenting time. Roth was satisfied that the services offered to Mathis were appropriate. After Mathis was recently terminated from the outpatient program, she had not sought any other substance abuse treatment. She, however, was continuing to meet with Owens-Carter. Mathis was required to attend AA/NA and represented that she was in compliance with this requirement. However, despite being asked, Mathis never provided any documentation confirming her attendance in an AA/NA type program. Roth also explained that there was a disruption in Mathis's Medicaid benefits, but this did not occur until the filing of the permanent custody petition in March 2008. Roth was not made aware until recently, within the last three weeks, that Mathis was not receiving her anxiety medication, Paxil. Roth acknowledged that, when Mathis went to give a drug screen on March 25, 2008, she was prohibited from doing so because the authorization had lapsed. However, he explained that this was only a recent occurrence as she was able to complete a screen in January 2008. Between January and March 2008, he did not request a drop and he did not know why. Mathis also had not created a long-term care plan for her children. In Roth's opinion, Mathis had not adequately addressed her substance abuse issues. She had not made any significant progress and she had been given adequate time to do so. In Roth's opinion, termination of Mathis's parental rights was in the children's best interests. They had been in care for a year.

The trial court found that the conditions that led to adjudication, Mathis's and Hoggs's substance abuse and the related inability to provide proper care for the children, continued to exist at the time of the termination hearing. Consequently, the trial court found that Mathis's and Hoggs's parental rights should be terminated pursuant to MCL 712A.19b(3)(c)(i). The trial court thereafter concluded that there existed no evidence that, despite grounds for termination, termination would not be in the children's best interests. The children had been in care for over a year. Their needs were paramount; consequently, the trial court found that the children had waited long enough for stability and permanence. The trial court entered its order terminating parental rights.

II. Statutory Grounds For Termination

A. Standard Of Review

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.¹ We review for clear error a trial court's decision terminating parental rights.² 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.³ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁴

B. Termination of Mathis's Parental Rights

Mathis contends that petitioner failed to make reasonable efforts to help her reunite with the children. Where services are provided, the petitioner need only offer reasonable services; it is under no duty to provide every conceivable service to work toward reunification.⁵ Failure to make reasonable efforts may prevent a petitioner from establishing statutory grounds for termination of parental rights.⁶

After a review of the record, we conclude that the trial court did not err when it found that petitioner made reasonable efforts toward reunification. The agency provided numerous services to Mathis. Before the children were removed, Families First gave the family assistance. Also, Mathis was provided substance abuse treatment, which proved to be unsuccessful. After the children were removed, the evidence established that Mathis was offered a psychological evaluation, parenting time, financial assistance, substance abuse treatment, counseling, and drug screens. The caseworker testified that all reasonable services were offered to Mathis.

Nevertheless, Mathis contends that, because she was not provided medication to cope with her anxiety and depression, she was not able to make progress with her treatment plan. However, the record does not support Mathis's assertion that petitioner failed to make reasonable efforts in this regard. Although the record is conflicting, it appears that, at one point, Mathis received Paxil, a medication designed to modulate her moods. This medication apparently was covered by Medicaid. When the permanent custody petition was filed, and reunification was no longer the stated goal, funding through the Family Reunification Program ceased, resulting in a cut-off of the related Medicaid funding. The caseworker testified that he did not become aware that Mathis was not receiving her Paxil until three weeks before the start of the termination

¹ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

² MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

³ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁴ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁵ MCL 712A.18f(4); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

⁶ *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991).

hearing. When reunification is no longer the stated goal, it cannot be said that cutting services directed at reunification is unreasonable. In any event, it would appear that, during the majority of the time before the filing of the termination petition, Mathis was receiving Medicaid benefits and therapy to address her mood issues. Consequently, we cannot conclude that the trial court erred when it found that reasonable efforts were made toward reunification.

Mathis further argues that petitioner failed to make the necessary referrals for her to undergo drug screens, which would have assisted her in monitoring her own progress. Apparently, on one occasion, Mathis's therapist took her to a facility to submit to a screen but was prohibited from doing so because of a lapse in the referral. Because it appears that Mathis's ability to provide a screen was only denied on one occasion, and the caseworker immediately rectified the situation upon learning of it, we reject Mathis's assertion that petitioner failed to make reasonable efforts to assist her in providing drug screens.

Finally, Mathis argues that it was unreasonable for her caseworker to refer her to an outpatient substance abuse treatment program in Saginaw when he knew that she was living in a homeless shelter in Bay City and, thus, could not possibly comply with the services. However, according to the caseworker's testimony, he did not refer Mathis for treatment in Saginaw until she had moved out of the Bay City Shelter and was once again living in Saginaw. There, she had access to a bus line, which could transport her to the treatment. Mathis's allegations that petitioner failed to make reasonable efforts toward reunification are simply unsupported by the record.

C. Termination of Hoggs's Parental Rights

Hoggs argues that the statutory ground for termination of his parental rights was not established by clear and convincing evidence. We disagree.

Hoggs' parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i). The children were brought into care because their parents were not able to provide proper care and custody for various reasons, which included incarceration, substance abuse, and lack of parenting skills. Although Hoggs had been released from jail and had made some progress, the expert testimony of his own treating therapist confirmed that, at the time of termination, which occurred some 16 months after the children came into care, Hoggs was not able to parent his children. Indeed, Hoggs' therapist opined that he was unable to independently care for himself, let alone four children. Further, Hoggs had no employment and did not have a viable long-term care plan for his children. Based upon this record, the trial court did not err when it concluded that the conditions that led to adjudication continued to exist at the time of the termination hearing. Moreover, based on the expert testimony that it could take years for Hoggs to adequately address his issues, the trial court did not err when it concluded that the conditions that brought the children into care would not be rectified within a reasonable time. The trial court did not clearly err when it terminated Hoggs' parental rights pursuant to MCL 712A.19b(3)(c)(i).

We note that in the conclusion to his brief, Hoggs contends the trial court erred in its best interest determination.⁷ However, Hoggs has waived this issue because he did not properly present it in his question presented⁸ and he failed to present any argument or supporting authority.⁹

Affirmed.

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Donald S. Owens

⁷ See MCL 712A.19b(5).

⁸ MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

⁹ MCR 7.212(C)(7); *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).