STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
November 2, 2010

In the Matter of PARRIS/BRADFORD, Minors.

Nos. 296634
Macomb Circuit Court
Family Division
LC Nos. 2008-000444-NA
2008-000447-NA

In the Matter of PARRIS/BRADFORD, Minors.

No. 296636
Macomb Circuit Court
Family Division
LC Nos. 2008-000444-NA
2008-000447-NA

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

In these consolidated appeals, respondent father appeals by right an order terminating his parental rights to the two minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). Respondent mother appeals from the same order terminating her parental rights to the children pursuant to those subsections, as well as MCL 712A.19b(3)(a)(*ii*). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). The children were removed in July 2008 after Sterling Heights police officers conducting a welfare check on the children discovered the mother intoxicated and unable to care for the children. She admitted to taking two Vicodin but refused a drug screen. The children were filthy, and a pornographic movie was playing in a room to which the children had access. The father was not there because he was on conditional bond after being arrested on charges of third-degree child abuse regarding the older child, JMP. The family had been living at a motel since November 2008 when the father lost his job. Department of Human Services (DHS) history with the family included the mother's positive alcohol screen when the younger child, DJB, was born in 2007 and a very serious incident on April 2, 2008, when then 3½-year-old JMP was found wandering in a McDonald's parking lot. When asked where his mother was, the child responded, "Mama night night." The father told authorities that the mother suffered from a seizure disorder. She was not on medication and failed to be evaluated for the

disorder. DHS offered services to the family after the April 2008 incident, but it was obvious that nothing had changed.

Respondents pleaded no contest to the allegations in the petition on August 18, 2008 and the court ordered they comply with a treatment plan. Both respondents were largely noncompliant for most of the proceedings. Neither completed parenting classes until June 2009, even though they were originally referred in September 2008. Although respondents completed the classes, they did not attend the particular program that they were asked to take. Additionally, they did not benefit from the classes, as neither parent could tell the foster care worker anything that was learned in class. Respondents delay in completing the classes demonstrated they did not understand what the children needed.

Neither respondent complied with drug screens from October 2008 until April 2009. Even after April 2009, respondents missed calls and drops. The mother would fail to call altogether, while the father would often call, but then fail to drop. The father's hair follicle test was positive for cocaine in April 2009. The test dated back 45 days. Contrary to respondent's contention, he was never a confidential informant for the Sterling Heights Police Department. Even if he had been a confidential informant, that would not justify his drug use. The father tested positive for benzodiazepines on May 15, 2009, May 18, 2009, and June 25, 2009, and he did not provide valid prescriptions for the drugs. As for the mother, she presented herself to CARE[1] in July 2009, admitting that she had a problem with benzodiazepines and requesting inpatient care; however, she was administratively discharged from Turning Point in August 2009, after failing to complete the program. Although referrals for substance abuse assessments were made soon after the children were removed in July 2008, neither parent submitted to a substance abuse assessment until May 2009. Because the CARE assessment was self-reporting and neither parent admitted to having a problem, no additional referrals were made for substance abuse treatment. This is especially troubling in light of the fact that both parents continued to test positive for substances.

Referrals for psychological testing were also made soon after the children were removed in July 2008, but respondents did not meet with Dr. Ryan until April 23, 2009. Dr. Ryan recommended that both respondents attend parenting classes and individual therapy. These referrals had already been put into place at the inception of the case. Respondents did not attend individual therapy. Incredibly, the father told the foster care worker that Dr. Ryan told him that he did not need therapy. The DHS worker advised the father on more than one occasion of the importance of attending therapy, but he failed to do so. For her part, the mother was hospitalized in March 2009 following a suicide attempt in February 2009. She was supposed to follow up with mental health services, but she never provided the DHS worker with documents verifying she did so.

The parents did not visit with the children. Although the father was initially denied visits with JMP while the criminal child abuse charges were pending, those charges were ultimately

[1] CARE (Community Assessment Referral & Education) is a local agency that assesses and refers for treatment individuals engaging in problematic use of alcohol or drugs.

dismissed. The father never secured documents necessary to prove he could have contact with his older son. Instead, DHS workers learned this information for themselves. Even after the no contact order was lifted, the father failed to visit. Respondents failed to appear at their older son's ear surgery on September 15, 2008, even though they insisted on being allowed to be there. From the outset of the case, the mother was given supervised visitation and was provided with bus passes. She missed visits on August 19, 2008, September 2, 2008, September 9, 2008, September 16, 2008, and September 23, 2008. The father could have visited with both children at the September 23, 2008, visit. After that, workers could not locate respondents. The father did call asking for a visit in December 2008. On one occasion the children were out of state on vacation. A tentative visit was scheduled for December 18, 2008, but the father failed to call to confirm. The mother last visited with the children on August 12, 2008. The father had not seen the children since they were taken into care in July 2008.

At no time during the case did the mother prove that she had any source of income. As for the father, the DHS worker was confused because the father would say he was receiving unemployment benefits, but would then claim he was earning income. It was not until September 2009 that the father provided any documentation of income. The worker was still confused about whether the father was receiving unemployment benefits. She was concerned with the father's inconsistent statements.

The DHS worker assessed respondents' trailer in July 2009 and found that it was not appropriate for the children because it needed maintenance, including having wiring problems. Respondents acknowledged that the home needed work. The worker's recent attempts at unannounced visits were unsuccessful.

The foregoing evidence demonstrates that respondents were completely noncompliant with their parent-agency agreement (PAA) from August 2008 through April 2009. Until that time there was no attempt whatsoever to avail themselves of services. Even after they engaged in services, their efforts were minimal. They each reported that they had no substance abuse problems, even though their positive drug screens demonstrated otherwise. They also failed to follow through with individual counseling. The mother claims she was receiving treatment, but she failed repeatedly to provide the relevant information that the DHS worker needed to assess her progress. The father made no attempt to receive individual counseling at all. Housing and income remained an issue for both. Additionally, respondents' relationship with one another was problematic and indicative of their overall inconsistency. At an April 15, 2009, meeting, the mother declared that the father was abusive and that she was leaving him. However, a week later they appeared together on April 22, 2009, presenting themselves as a couple. Although not part of a written order, the DHS worker recommended domestic violence intervention with a counselor. The father scheduled a visit with the counselor but failed to call or appear. The DHS worker made an unannounced visit at the trailer on the morning of December 2, 2009, and was told by a man there that respondents had already left, implying that the mother was, in fact, still living with the father. The chaos of their relationship and their housing was further proof to the worker that they lacked stability and consistency. The worker did not believe that respondents could care for the children. Her opinion may have been different had respondents acted promptly and engaged in services.

This evidence clearly showed that the conditions leading to adjudication continued to exist and that respondents were unable to provide the children with proper care or custody. It

was doubtful that they would be able to do so within a reasonable time considering the children's young ages. Additionally, the children would be at risk of harm if returned to respondents' care. There was a history of the children being improperly supervised, placing them in danger. The evidence also demonstrates that, with regard to the mother only, the children had been abandoned. The mother last attended a court hearing in April 2009. She took no steps to seek custody of the children.

The father argues that the referee erred in considering Dr. Ryan's reports. The father admits that he failed to preserve the issue by objecting in the lower court. Unpreserved claims of evidentiary error are reviewed for plain error affecting substantial rights. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). Dr. Ryan's report indicated that the father admitted a history of recreational cocaine use. Based on the testing administered, Dr. Ryan believed that the father needed to attend parenting classes in order to "be on the same page" as the mother and learn to be consistent. Dr. Ryan could "not actively rule out any major psychopathology" and stated that an appropriate treatment program would include therapy and substance abuse counseling. The father's argument simply has no merit. The rules of evidence do not apply during the dispositional phase of child protective proceedings. See MCR 3.973(E)(1) and MCR 3.977(H)(2). The father does not contend that he was denied the right to review the report or the right to cross-examine Dr. Ryan. Psychological reports such as the ones utilized in this case are prevalent in child neglect cases.

Having found statutory grounds for termination proven by clear and convincing evidence, the trial court also had to determine whether termination of respondents' parental rights was in the children's best interests. MCL 712A.19b(5). Dr. Ryan assessed the children in August 2009. At that time, JMP was 4½ years old, and DJB was 2½. Both had speech and language problems. Dr. Ryan wrote that JMP's behavior and cognitive function were the likely result of "chronic stressors" and that he would be at risk of developing ADHD and "bi-polar-like" syndrome. The child would likely need long-term intervention and "[w]hoever will be taking are of this youngster will definitely need to be a highly proactive individual who for lack of a better term will need to be on the ball 100% of the time." DJB would also need constant intervention, as he appeared to be at least mildly retarded. He was also highly anxious, and Dr. Ryan suspected that he would have difficulties with attachment and bonding. "Again, it is my sense that the parents are not up to this task at this point, and given my report, I suspect that they will not come up to speed at any time in the near future."

The DHS worker testified that, aside from speech and language delays, the children were doing well over-all. Their need for consistency was critical. She did not believe that respondents could care for the children. Her opinion may have been different had respondents acted promptly and engaged in services.

Most telling was respondents' total lack of effort visit the children. The mother's last visit occurred in August 2008. The father never visited the children after their removal in July 2008. These were young children. More than a year had passed since they had seen either parent. During that time, respondents made no true effort to comply with the PAA or participate in reunification services. The children should not have to wait longer for respondents to show an

interest in obtaining custody. They are entitled to permanence and stability. The trial court did not clearly err in finding that termination of respondents' parental rights was in the children's best interests.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Jane M. Beckering