STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 18, 2011

In the Matter of BROWN, Minors.

No. 298910
Gratiot Circuit Court
Family Division
LC No. 08-007374-NA

In the Matter of T. L. BROWN, Minor.

No. 299039
Gratiot Circuit Court
Family Division
LC No. 08-007374-NA

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondent father appeals as of right the trial court order terminating his parental rights to his two sons, B. E. Brown and T. L. Brown, under MCL 712A.19b(3)(c)(*i*) and (*ii*), (g), and (j). Respondent mother appeals as of right the order terminating her parental rights to T. L. Brown under the same subsections. We affirm.

The children were removed in October 2008. A caseworker found eleven-year-old B. E. Brown outside without supervision, adequate clothing, or access to shelter. Nineteen-month-old T. L. Brown was not immediately taken for medical attention when he developed a fever, and he had been left for long periods unattended in a baby swing. Services including Families First and Early Head Start had been provided.

Respondents made admissions, and a case service plan (CSP) and parent agency agreement were adopted in December 2008. Respondents were provided psychological evaluations, individual therapy, and parenting classes, and respondent father received drug screens and substance abuse treatment. Participation in AA was also required for the father. The trial court found that respondents cooperated with these services and visited consistently, but they failed to improve sufficiently to have the children returned. Respondent father's anger remained a significant barrier, and respondent mother's cognitive limitations would prevent her from being able to care for the children without full-time help.

On appeal, respondent father claims that clear and convincing evidence did not support termination under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), or (j). We disagree. Termination of

parental rights requires a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re B & J*, 279 Mich App 12, 18; 756 NW2d 234 (2008). The trial court must then order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). Trial court findings are reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous "if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

In the present case, the evidence was clear and convincing to prove the statutory subsections with respect to both parents. While respondents participated well in services and clearly loved their children, they failed to make sufficient improvements to be able to provide a safe home. A parent must benefit from services sufficiently in order to be able to provide a safe, adequate home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). The evidence supported the trial court's finding that this did not occur here. Respondents were provided intensive, one-to-one parenting instruction with feedback, several parenting classes, nutrition and budgeting classes, and individual therapy. Respondent father also received substance abuse services. Previously, respondents had assistance from Families First, EHS, and maternal and infant support services. That these services were insufficient was clear from the testimony and reports of the evaluating psychologist, caseworker, therapist, and other service providers. The children had special needs; B. E. Brown had attention deficit hyperactivity disorder and could not function in a chaotic environment, while T. L. Brown had asthma requiring daily breathing treatments. Respondent father worked many hours and was uncomfortable with the nurturing/caretaking role. Respondents' therapist opined that respondent mother could not parent independently, while respondent father's parenting skills were "very, very poor." While respondents worked very hard, the therapist felt that no amount of services would result in substantially more change. The record supported this conclusion and the trial court did not clearly err in finding clear and convincing evidence under MCL 712A.19b(3)(c)(*i*) and (*ii*), (g), and (j).

Respondent mother also argues that she was denied the effective assistance of counsel because her attorney failed to seek accommodation for her developmental disability and depression under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. Such accommodation should be sought when the CSP is adopted or soon afterward. *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Here, no motion for a new trial or for an evidentiary hearing was filed concerning the alleged ineffective assistance of counsel. Review is thus limited to mistakes apparent from the record. *People v Shively*, 230 Mich App 626, 628 n 1; 584 NW2d 740 (1998). Applying by analogy the standards from criminal cases, a parent claiming ineffective assistance must show that counsel's performance was defective, and that the deficient performance was prejudicial and deprived the parent of a fair trial. *People v Lloyd*, 459 Mich 433, 446; 590 NW2d 738 (1999). To show prejudice, the appellant must show that, but for counsel's error, there is a reasonable likelihood that the result would have been different. *Shively*, 230 Mich App at 628.

The record here does not support respondent mother's argument that counsel was ineffective for failing to raise the ADA claim in the trial court. As noted, respondent mother was provided with many services, including counseling and one-to-one parenting instruction, yet she

was unable to improve to the point where the children could be left alone in her care. Thus, trial counsel did not make a prejudicial, outcome-determinative mistake by failing to raise the ADA issue. "The ADA does not require petitioner to provide respondent with full-time, live-in assistance with her children." *Terry*, 240 Mich App at 27-28. Here, respondent father would not be available as a full-time parent while still continuing to support the family, and his plan to work fewer hours or quit his job was not realistic. Petitioner also attempted to explore the possibility of relatives helping to care for the children. The record does not support respondent mother's claim of ineffective assistance of counsel.

Lastly, respondents both claim that the trial court erred in failing to affirmatively find that termination was in the children's best interests as is now required by MCL 712A.19b(5). The court used the former language in its opinion, finding that termination was not clearly contrary to the children's best interests. We find no error requiring reversal under the circumstances of this case. The court's order clearly found termination to be in the children's best interests. Courts speak through their orders and not their oral or written opinions. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Gazella*, 264 Mich App at 677. Moreover, the record clearly and convincingly showed that termination was in the children's best interests. While respondents loved their children and tried their best, the children would continue to be at risk in respondents' care. The trial court opinion contained numerous findings supporting this conclusion.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello