

STATE OF MICHIGAN
COURT OF APPEALS

In re AVERY/MISENER, Minors.

UNPUBLISHED
October 22, 2015

No. 326360
Ingham Circuit Court
Family Division
LC No. 13-001594-NA

Before: M. J. KELLY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her children pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

Respondent first argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence.¹ We disagree.

The trial court found by clear and convincing evidence that there were grounds to terminate of respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i), which provides in pertinent part:

(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:

* * *

(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

¹ We review orders terminating parental rights for clear error. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); MCR 3.977(K). Clear error exists “if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

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.

The initial disposition occurred on January 22, 2014. Termination occurred a little over a year later on February 11, 2015. Thus, more than 182 days elapsed between initial disposition and termination. The conditions that led to adjudication were a lack of stable housing, substance abuse issues, mental health issues, a lack of financial resources, and an inability to provide care for the children. Respondent's mental health issues included a history of depression, bipolar disorder, borderline personality disorder, and alcoholism. Further, respondent had a history with Child Protective Services (CPS) dating back to 2011 when CPS substantiated her for physical neglect of her daughter. The record shows that respondent was provided numerous services before the children were removed due to continuing neglect.

Respondent was ordered to comply with and benefit from a case services plan that required her to achieve mental health stability, achieve a drug- and alcohol-free lifestyle, develop and utilize appropriate parenting skills, obtain stable and appropriate housing, and obtain financial stability. However, she failed to substantially comply with the ordered case services plan.

Although respondent argues that she was making progress with addressing her housing situation and her substance abuse issues, the record showed that she missed numerous drug screens and continued to lack permanent and stable housing. At the time of the termination hearing, respondent was living at a shelter that was only appropriate for children on a temporary, not a long-term basis. Further, although respondent reported to Michaelena Cleland, the foster care worker assigned to the case, that she was at the top of the waitlist for subsidized housing, nothing on this record indicates how long she would be on the waitlist, whether she would be able to obtain housing suitable for the children, and whether she would be able to maintain that housing going forward. Thus, at the time of termination, respondent had not rectified her unstable housing barrier.

The testimony also established that respondent did not have an income source from September of 2013 until June of 2014. Further, at the time of the termination respondent was unable to provide any proof of financial support. Accordingly, respondent had not rectified her lack of income barrier.

Respondent was referred for a psychological evaluation, which she completed. The psychologist reported that respondent denies and minimizes common problems and weaknesses, depends excessively on others for support and guidance, had limited coping skills, avoid introspection, glosses over negative aspects of her personality, has minimal competencies for dealing with the everyday demands of life, and has displayed a pattern of inconsistency and poor judgment. The psychologist also reported that respondent fails to plan ahead for her children's needs and will have difficulty placing their needs first.

The psychologist recommended that respondent receive therapy, trauma based group therapy, a healthy support network, and parenting training. Cleland testified that services were arranged for respondent based on the recommendations. However, a Community Mental Health (CMH) crisis service specialist testified respondent was not eager to begin psychotherapy and that she was offered, but never participated in, therapy services. Further, the specialist reported that respondent missed approximately 30 scheduled appointments. The specialist also testified that on approximately five occasions, respondent would appear without an appointment and report that she was suicidal. Respondent's CMH case was closed on two occasions because of non-participation.

Although respondent contends that her inability to participate in mental health treatment was because of her pregnancy, the testimony showed that she could have continued at least some of her prescription medication during her pregnancy. Her prescribing doctor testified that he did not know if she continued with the prescribed medication because he did not see her after June 20, 2014. He said that her case was closed when she missed a scheduled appointment in July of 2014. He added that although respondent's file was reopened, it was quickly reclosed in January of 2015 after respondent missed an initial appointment and cancelled a second appointment. Accordingly, whether that medication would have been sufficient to stabilize respondent is impossible to assess because respondent stopped attending her medication reviews after she was taken off a variety of her medications. The testimony showed that although respondent's mental health was stabilized by taking medication, she would then stop and her condition would quickly deteriorate. Ultimately, the record shows that respondent's mental health and emotional health issues were ongoing at the time of termination.

Additionally, the testimony established respondent remained unable to consistently parent her children. Cleland testified that respondent was offered supervised parenting time, but respondent missed numerous visits, which caused the children anxiety as well as confusing and disappointing them. She stated that respondent's interactions with the children were sometimes appropriate, but that they were also inappropriate at times because she would yell at the caseworkers, swear at the children, fail to notice if the children were pushing each other, and she had difficulty in supervising both children at once. Thus, the deficiencies in respondent's parenting skills were not rectified at the time of termination.

Accordingly, based on this record, the trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i). Because only one statutory ground must be established by clear and convincing evidence, we need not address whether the trial court clearly erred in finding the other grounds were proved. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). However, we have considered those findings and conclude that the trial court did not err in holding that the grounds for termination set forth in MCL 712A.19b(3)(g) and (j) were also proved by clear and convincing evidence.²

² Respondent appears to argue that she was not provided with reasonable reunification efforts because she did not receive parent/infant services, was not referred for a

Respondent next argues that termination of her parental rights was not in the children's best interests.³ We disagree.

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Respondent argues that the trial court failed to properly consider the parent-child bond between her and her children. However, the parent-child bond is not the sole consideration when making a best interests determination. “In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home[.]” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted).

Moreover, although respondent loves her children, the parent-child bond was tenuous. Respondent's participation in the case services plan was sporadic and erratic. She missed numerous mental health treatment appointments, missed parenting time, missed drug screens, lacked stable housing, and lacked financial security. After more than a year of services, respondent was unable to provide stability or permanence for her children.

Indeed, the children were visibly anxious when in respondent's presence. Respondent's three-year-old daughter suffered from reactive attachment and generalized anxiety disorders because respondent left her in the care of others for extended periods. The testimony showed that the child was emotionally and socially delayed by about a year and she had multiple symptoms indicative of severe stress, including nightmares.

psychiatric evaluation, and was not referred for individual therapy. “Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan.” *In re HRC*, 286 Mich App at 462. However, although the Department of Health and Human Services “has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). In this case, respondent was provided with drug screens, CMH services, a psychological evaluation, supervised parenting time, and additional services. However, she missed numerous appointments and failed to show a benefit from the services provided. Accordingly, to the extent that respondent argues that she was not provided with reasonable reunification efforts, we conclude her argument is without merit.

³ We review for clear error a trial court's decision regarding whether termination is in the child's best interests. *In re JK*, 468 Mich at 209; MCR 3.977(K).

Although she made progress when respondent's parenting time was suspended, once parenting time was reinstated, the child experienced significant developmental regression. It is clear that, in order to be rehabilitated, respondent's daughter requires consistent care and permanency. Respondent's son was removed when he was about three months old, formed a bond with his foster mother, and looked to his foster mother to meet his needs. In contrast, he had a tentative bond with respondent and was anxious in her presence. Further, when respondent's parenting time was suspended, he was able to sleep without night terrors. Accordingly, on these facts, the trial court did not err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro