STATE OF MICHIGAN

COURT OF APPEALS

In re RANDALL, Minors.

UNPUBLISHED
July 21, 2016

No. 330320
Macomb Circuit Court
Family Division
LC Nos. 2013-000169-NA;
2013-000170-NA

Before: SHAPIRO, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(*i*) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm to child if returned to the home of the parent). Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

This case began on May 1, 2013, when two of respondent's children were removed from her care because respondent was homeless and without income to provide for the children.[1] Respondent received a treatment plan and services were offered to her in order to address issues relating to housing, income, emotional health, and parenting skills. Respondent's participation in services was poor, her history of visitation with the children was sporadic, and, despite more than two years of proffered services, respondent failed to address the barriers to reunification.

A termination hearing was held on July 28, 2015. Respondent did not attend the termination hearing.[2] The evidence presented at the hearing established that respondent did not have suitable housing for the children, she remained without income to support the children, she

[1] Respondent has several other children not at issue in this case. Most of her other children are adults and the only other minor child is a 17-year-old participating in "another planned permanent living arrangement" (APPLA).

[2] On appeal, although the issue does not appear in her statement of the questions presented, respondent argues briefly that the termination proceedings were void for lack of jurisdiction because respondent was not properly served with a summons for the termination hearing. Contrary to this argument, the record shows that respondent was personally served on July 14, 2015, two weeks before the hearing. See MCL 712A.19b(2).

had not visited the children for six months, and she had not benefited from services. Given this evidence, the trial court concluded that statutory grounds for termination had been met under MCL 712A.19b(3)(c)(*i*), (g), and (j), and that termination was in the children's best interests. Consequently, the trial court entered an order terminating respondent's parental rights on August 5, 2015. Respondent now appeals as of right.[3]

I. STATUTORY GROUNDS FOR TERMINATION

On appeal, respondent first argues that the trial court clearly erred by finding that clear and convincing evidence existed to establish that statutory grounds for termination had been met. According to respondent, she did participate in some services, including a parenting class, and she is capable of caring for her children in the future. Further, given her low reading level and emotional instability, respondent argues that she was in need of more specialized services aimed at reunification, which petitioner failed to provide. Absent suitable services tailored to her specific needs, respondent maintains that termination was premature and that statutory grounds for termination had not been shown by clear and convincing evidence.

Before parental rights may be terminated, the trial court must find that the petitioner has proved at least one statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). This Court reviews for clear error the trial court's determination that statutory grounds for termination have been established. MCR 3.977(K); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). 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 at 209-210.

In this case, respondent's parental rights were terminated under MCL 712A.19b(3)(c)(*i*), (g), and (j), which provide that the court may terminate a parent's parental rights if the court finds, by clear and convincing evidence, one 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 dispositional order, and the court, by clear and convincing evidence, finds . . .
>
> (*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.
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[3] On appeal, although the issue does not appear in her statement of the questions presented, respondent contends that the trial court may have failed to appropriately inform her of her right to appeal as set forth in MCR 3.977(J)(1). Given that respondent filed a timely appeal as of right, we fail to see what relief we could offer, even assuming some error by the trial court. We will not consider this argument further.

> (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.
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> (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.

Given these statutory grounds for termination, we see nothing clearly erroneous in the trial court's decision. Proceedings were initiated in this case in May of 2013 because respondent lacked housing and income. Despite services for more than two years, at the time of the termination hearing in July of 2015, respondent still lacked income and suitable housing. The most recent evidence was that she was sleeping on a cot in office space at a church, a living arrangement which she acknowledges was not suitable for the children. Plainly, the conditions which led to the adjudication continued to exist at the time of termination. MCL 712A.19b(3)(c)(*i*). Further, given respondent's failure to benefit from more than two years of services, the trial court did not clearly err by concluding that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(*i*). See also *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014).

These same facts also support the conclusion that respondent failed to provide proper care and custody for the children and that there was no reasonable expectation that respondent would be able to do so within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). See also *In re White*, 303 Mich App at 710. Likewise, respondent's inability to provide suitable care, and her failure to comply with the service plan, demonstrate a reasonable likelihood that the children would be harmed if returned to respondent's care. MCL 712A.19b(3)(j). See also *In re White*, 303 Mich App at 711. Consequently, the trial court did not clearly err by finding that clear and convincing evidence existed to support termination under MCL 712A.19b(3)(c)(*i*), (g), and (j).

In contrast to this conclusion, respondent contends that, before her rights could be terminated, she was entitled to additional time and more specialized services to address the numerous barriers to reunification. Relevant to this argument, under MCL 712A.19a(2), except in certain circumstances which do not apply in this case, "[r]easonable efforts to reunify the child and family must be made in all cases[.]" *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). When petitioner fails to provide reasonable efforts toward reunification, termination of parental rights may be considered premature. *Id.* At the same time, when services are offered to a parent, "there exists a commensurate responsibility on the part of respondents to participate in the services that are offered" and to benefit from those services. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Any claim that a parent needs special accommodations must be raised in a timely manner in the trial court, at the time the service plan is adopted or soon afterward, "so that any reasonable accommodations can be made." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). A parent who has failed to raise the issue in a timely manner

may not defend against termination proceedings based on the assertion that petitioner failed to provide appropriate accommodations. *Id.* at 25-27 & n 5.

In this case, the record does not support respondent's claim that petitioner failed to provide reasonable services toward reunification. At various hearings, reports from two agencies and the testimony of the workers were entered into the record detailing the efforts made toward reunification by the agencies and by respondent over the course of more than two years. For example, these efforts included parenting classes, the provision of bus tickets to attend visitation and services, and referrals for counseling, housing assistance and employment assistance. Respondent failed to avail herself of most of these services and, although she completed parenting classes, workers opined that she had not benefited from the classes as evinced by her poor visitation attendance and her interactions with the children. While respondent now claims that she needed more specialized help, psychological testing in early 2015 revealed that respondent had an IQ within the normal range, that she read at a high school level, and that she did not have any cognitive difficulties which would necessitate additional assistance.[4] Indeed at a hearing in May of 2014, respondent denied needing any additional help understanding matters and denied needing any special services. Further, while respondent now claims that her mental instability required special assistance, testing did not show any problems rising to the level of a mental disorder and, in any event, respondent was referred for counseling, which would have addressed any mental health concerns, but she failed to participate. On the whole, given the numerous services made available to respondent over the course of more than two years, the trial court did not clearly err in its conclusion that petitioner made reasonable efforts toward reunification. Instead, the evidence demonstrates that it was respondent who failed to avail herself of, and to benefit from, the proffered services. Her failure to benefit from services supports the trial court's determination that statutory grounds for termination had been proven by clear and convincing evidence. See *In re White*, 303 Mich App at 710-711; *In re Frey*, 297 Mich App at 248.

II. BEST INTERESTS

Respondent also argues that termination was not in the children's best interests. According to respondent, the children had a bond with respondent before she stopped visiting them and this bond could be "restored," there was little likelihood of adoption, the older child stated that he did not want his mother's rights terminated, two years is not a long time to be in foster care given the children's ages, and the children are resilient and can "bounce back" from their two year separation from respondent. Respondent also notes that the children are not close

[4] We note that, while the testing in 2015 showed that respondent did not have special needs, there were some concerns about respondent's reading comprehension early in the case, as a result of which the trial court ordered the caseworkers to comply with the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. For this reason, respondent received extra help from the caseworkers, such as having the caseworkers read materials aloud to respondent. Thus, to the extent it was necessary, reasonable efforts were made to accommodate respondent's needs.

in age and that they are not placed in the same foster home. In these circumstances, respondent asserts that the trial court erred by failing to evaluate the children's interests individually.

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court must find that termination is in the child's best interests before it can order termination of parental rights. MCL 712A.19b(5). We review the best interests determination for clear error. *In re White*, 303 Mich App at 713. Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 88-90; 836 NW2d 182 (2013).

When evaluating the best interests of the children, the court may consider a wide variety of factors, including the bond between parent and child and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). The court may also consider the parent's parenting ability, the parent's history of visitation with the child, the parent's compliance with her case service plan, the possibility of adoption, and the advantages of a foster home. *In re White*, 303 Mich App at 713-714. The court is required to consider the best interests of each child individually when their needs significantly differ; but, the court is not required to set forth duplicative analysis when the needs of the children overlap. *Id.* at 715-716.

In this case, when concluding that termination was in the children's best interests, the trial court discussed respondent's waning bond with the children as well as respondent's poor history of visitation and the negative effect this has had on the children. The court also emphasized respondent's failure to comply with and benefit from her case service plan, the children's need for permanency and stability after more than two years out of respondent's care, and the opinion of the psychologist who recommended termination after meeting with respondent and the children. Contrary to respondent's arguments on appeal, the court also appropriately considered the children's needs individually when those needs differed. For example, the court discussed the children's respective placements and the older child's behavioral issues. The trial court also considered the possibility of alternative or relative placements, noting that no such arrangements were available. On the whole, given the evidence presented, we see nothing clearly erroneous in the trial court's conclusion that termination was in the best interests of the children, and the trial court did not clearly err by terminating respondent's parental rights. See MCL 712A.19b(5).

Affirmed.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause