

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* KROPFF, Minors.

UNPUBLISHED  
September 13, 2016

No. 331364  
Wayne Circuit Court  
Family Division  
LC No. 13-512702-NA

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Before: CAVANAGH, P.J., and SAAD and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals by right an order terminating her parental rights to the minor children under MCL 712A.19b(3)(a)(ii) (parent deserted child for 91 or more days and has not sought custody), (c)(i) (conditions that led to the adjudication continue to exist), (g) (without regard to intent, failure to provide proper care or custody), and (j) (reasonable likelihood of harm to child if returned to parent). We affirm.

A petition for removal of the children was filed on May 10, 2013, alleging unstable mental health and substance abuse issues, and that respondent had overdosed twice in an attempt to commit suicide with her children in the home and with no plan for their well-being. At a subsequent trial on June 28, 2013, respondent testified that she had been hospitalized for mental health issues and had abused prescription drugs which impaired her ability to parent the children. The court found a factual basis to take jurisdiction of the children.

Thereafter, respondent argues, the Department of Health and Human Services (DHHS) failed to make reasonable reunification efforts. We disagree.

Generally, reasonable reunification efforts must be made to reunite the parent and child unless certain aggravating circumstances exist. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), quoting MCL 712A.19a(2). “When a child is removed from a parent’s custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child.” *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). Although the DHHS “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). Whether reasonable efforts for reunification have been made is a factual finding by the trial court, which this Court reviews for clear error. *In re Mason*, 486 Mich at 152. “A finding of fact is clearly erroneous 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; 690 NW2d 505 (2004).

The children were removed on May 10, 2013, and jurisdiction was assumed over the children on June 28, 2013. On July 26, 2013, a parent/agency agreement was prepared which required stable housing, a legal source of income, completion of parenting classes, random drug screens, a substance abuse assessment, supervised parenting time in a therapeutic setting, as well as psychological and psychiatric evaluations. However, no efforts toward reunification were made by the foster care worker assigned to this case by the DHHS.

On October 25, 2013, a new foster care worker was assigned to the case. By October 30, 2013, referrals were made for parenting classes and individual counseling, and the psychiatric and psychological evaluations were scheduled for November 21, 2013. At the dispositional hearing held on November 14, 2013, the foster care worker reported that, despite the delay in services, visitation had started timely and respondent had visited the children regularly. However, a primary problem with scheduling services and visitation was that respondent had moved to Flint and the children were living with a relative care giver in Lenawee County. Nevertheless, referrals and services were then in place.

From that point on, the record shows that it was respondent who failed to comply with the parent/agency agreement. Respondent tested positive for marijuana immediately following the November 14, 2013 hearing. And she was not present at the January 21, 2014 dispositional hearing, at which time the court was advised that respondent was “early terminated” from all services in December 2013 for failure to participate. She had only visited the children twice since the last hearing; the last time on December 14, 2013. By January 12, 2014, she had relapsed and was in a psychiatric ward after having a mental breakdown. The court acknowledged the early failures of the DHHS worker but noted that, when given the chance, respondent had not complied with the services. Due to respondent’s hospitalization, the court ordered services put on hold until she was able to participate. The permanency plan was still reunification.

At the next hearing, on April 14, 2014, the court was advised that respondent had been released from the hospital but now her whereabouts were unknown. She had only visited the children twice, she had discontinued her substance abuse counseling after three sessions, and she had only taken eight drug screens. The court held that reunification was still the goal, but that respondent needed to “step it up according to the plan.”

The next hearing was on July 22, 2014, and respondent was not present. The foster care worker reported that she met with respondent on July 14, 2014, and respondent had been visiting the children regularly since the last hearing. Respondent had told the worker that she was doing her drug screens, but that information was not confirmed because respondent had not signed a release. At the time of the hearing, however, the foster care worker did not know respondent’s whereabouts because, according to her boyfriend, respondent disappeared after attending a concert.

Respondent did appear at the permanency planning and dispositional hearing held on September 29, 2014. Respondent had not maintained contact with DHHS workers, had not

returned telephone calls made by the foster care worker, had not participated in services or been compliant with services like drug screening, and had not visited the children since the last hearing that was held in July. Respondent's aunt, who had custody of the children, testified that respondent visited the children less than twelve times in 2014 and had called the children when she was on drugs which made the children question why she was "acting silly on the phone." The court did not order the filing of a permanent custody petition, but told the agency it was free to do what it wanted. The court instructed respondent that she was "skating on thin, thin ice" and warned her that "[i]f this keeps up, you're going to have your parental rights terminated." The court also instructed respondent that she was to maintain contact with the foster care worker every day, provide drugs screens as requested, and visit the children every week.

On January 8, 2015, at the next hearing, it appeared that respondent had been participating in individual counseling at Catholic Charities since October 14, 2014. The new foster care worker reported that, because of delays at the agency, she had not been able to start new services until December 2014. This three-month delay is attributed to the DHHS. The court ordered substance abuse therapy, an updated psychiatric evaluation, and family counseling.

At the April 7, 2015 dispositional hearing, four months after the new services were in place, the foster care worker reported that respondent had not visited the children regularly, had tested positive for opiates at the last hearing, had tested positive for marijuana at the prior hearing, and had not complied with most of her drug screens. Furthermore, although respondent told the worker that she was participating in counseling at Catholic Charities, the therapist reported that respondent was on the verge of termination because she had only participated in one session since January 2015.

At the dispositional hearing on July 28, 2015, it was learned that respondent had given birth to a new baby who was born positive for methadone and morphine. A petition had been filed in Genesee County for removal of the new baby. Respondent had been court-ordered out of that home, and the baby was returned to his father. It was further learned that respondent had obtained prescriptions from different places for methadone and other narcotics in May, June and July. The court held that all services would be continued.

On August 11, 2015, the court authorized a supplemental petition for permanent custody. Respondent did not appear at the pretrial, but was present for the hearings on the petition which were held from September 21, 2015 through January 25, 2016, and resulted in the termination of respondent's parental rights.

In summary, there were two periods, totaling about six months, where the DHHS failed in its obligation to make reasonable reunification efforts. The first period occurred directly after the children were removed and was attributable to the fact that the worker who was assigned to the case was negligent. The second delay occurred after respondent reappeared at the September 29, 2014 hearing and was attributed to delayed paperwork at the DHHS. However, this case began on May 10, 2013, and respondent's parental rights were terminated on January 25, 2016, about two years and seven months later. Services were available to respondent for about two years. The record shows that the court acknowledged the delays, the DHHS took responsibility for its delays, and extra time was given to respondent so that she would have ample opportunity to comply with the parent/agency agreement with the goal being reunification.

But the record also shows that during the two years in which services were available, respondent: relapsed, disappeared, did not comply with services or make any effort to overcome her drug addictions, continued to obtain drugs illegally, took drugs throughout her latest pregnancy, and found numerous excuses not to visit her children. Respondent never accepted her responsibility to comply with and benefit from the services that were offered so that she could be reunified with her children. The DHHS was not responsible for the fact that respondent moved to Flint after her children were removed. Nevertheless, the agency made every effort to accommodate her both with services and visitation. We conclude that the responsibility for the termination of respondent's parental rights cannot be placed on the DHHS's failure to make reasonable efforts for reunification. The record clearly shows that respondent was provided with the necessary services for a period of time that was more than sufficient for her to rectify the conditions that led to the removal of the children.

Further, petitioner met its burden of establishing at least one statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j), which provide:

(a) The child has been deserted under either of the following circumstances:

\* \* \*

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

\* \* \*

(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 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.

\* \* \*

(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.

\* \* \*

(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.

We review for clear error a trial court's determination that a ground for termination has been established. MCR 3.977(K); *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

Here, again, the children had been out of respondent's custody since May 10, 2013, and her parental rights were not terminated until January 25, 2016. During these proceedings she never consistently visited the children and had even missed visits for three complete months in August, September, and October of 2015, as well as all but one visit in July of 2015. Respondent had failed to participate in most services provided or substantially benefit from the ones she did perform. The children were removed from respondent's care because of her mental health and substance abuse issues. Yet at the time of the termination hearing, respondent still had not resolved these issues. She had never complied with the requirements to do regular drug screens and test negative, and to attend substance abuse and mental health counseling. She continued to test positive for drugs and obtained them illegally. Her latest child, born during these proceedings, was born positive for methadone and morphine and was also removed from her care. Respondent never showed that she had a suitable home for her children and never had a legal source of income. She had not complied with the requirements of the parent/agency agreement. A parent's failure to comply with a service plan is evidence that the parent will not be able to provide a child with proper care and custody and that the child may be harmed if returned to the parent's home. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014). Therefore, there was clear and convincing evidence to support termination of respondent's parental rights pursuant to at least one of the statutory grounds.

In conclusion, although there were some delays in services by the DHHS, the record shows that reasonable efforts were made and sufficient time was provided to respondent to secure reunification, but respondent failed to participate in or benefit from the services that were provided. Therefore, the trial court did not clearly err in finding clear and convincing evidence to support the statutory grounds for termination.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Henry William Saad  
/s/ Karen M. Fort Hood