

STATE OF MICHIGAN
COURT OF APPEALS

In re COON/SCHINKE, Minors.

UNPUBLISHED
December 13, 2016

No. 332557
Oakland Circuit Court
Family Division
LC No. 2014-817500-NA

Before: JANSEN, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

Respondent L. Coon appeals as of right the trial court's order terminating her parental rights to her two minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent's parental rights were previously challenged in a child protective proceeding for failure to protect her older child, AMC, from physical abuse by his father. In that proceeding, the court terminated the parental rights of AMC's father, but returned AMC to respondent's care after she completed the court-ordered treatment plan. Respondent subsequently became involved in a relationship with D. Schinke, and the couple had a child together, CES. In February 2014, petitioner sought jurisdiction over both children based on allegations that Schinke physically abused AMC, and that respondent failed to protect him. Schinke was criminally charged and convicted of child abuse for his conduct against AMC. Respondent and Schinke both entered pleas of no contest to the petition to allow the court to exercise jurisdiction over the children.

Respondent's court-ordered treatment plan required her to participate in individual therapy and parenting classes, and to establish suitable housing as well as a legal source of income. Respondent completed therapy and parenting classes, but failed to demonstrate improved parenting skills during visitation. Respondent was disengaged from the children during visits, and she continued her relationship with Schinke even though his probation prohibited him from having contact with AMC. Consequently, petitioner filed a supplemental petition to terminate respondent's parental rights. Following separate evidentiary hearings to determine the existence of a statutory ground for termination and the children's best interests, the trial court terminated respondent and Schinke's parental rights. Only respondent has appealed that decision.

Respondent first argues that the trial court erred in finding that sufficient evidence established a statutory ground for termination. We disagree.

In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one of the grounds for termination set forth in MCL 712A.19b(3) exists. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000), superseded in part by statute on other grounds as recognized by *In re Moss*, 301 Mich App 76, 83 (2013). The trial court's decision is reviewed for clear error. *Id.* at 356-357. A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). "[T]his Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which permit termination under the following circumstances:

(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.

Petitioner presented sufficient evidence to support each of these statutory grounds.

Respondent failed to accept responsibility for AMC's injury at Schinke's hands, and she continued to minimize the abuse. Respondent acknowledged that AMC was prone to aggressive and violent behavior, that he would hit respondent, and that he was influencing CES to hit respondent. However, she failed to provide mental health treatment for him and took him off his medication against medical advice. She offered an unrealistic plan to watch AMC 24 hours a day, seven days a week, or to enlist the aid of family members who were unable to manage his behavior. Respondent also suggested a plan in which she would have weekday custody of AMC and weekend visitation with CES (who would reside with Schinke), but she faltered when questioned about how she and Schinke made this plan. This evidence established that respondent failed to resolve the conditions that led to the adjudication. Respondent's failure to

demonstrate improved parenting skills or a commitment to managing AMC's problems proved that she was not reasonably likely to rectify these problems within a reasonable time.

The evidence supporting termination under § 19b(3)(c)(i) also supports termination under §§ 19b(3)(g) and (j). Additionally, respondent failed to demonstrate improved parenting skills during visitation. She failed to engage with her children during visitation, and she allowed Schinke to attend visitation with AMC, despite his probation order prohibiting such contact and the child's anxiety. Respondent also refused to attend AMC's Individual Education Plan meeting. The evidence supports the trial court's findings that respondent could not reasonably be expected to provide proper care and custody for her children, and that they were reasonably likely to be harmed if returned to her home.

Respondent faults petitioner for failing to provide sufficient services or to accommodate her learning disability in the services provided. "In general, 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 Fried*, 266 Mich App at 542. "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). Generally, a petitioner may satisfy the reasonable effort requirement by adopting and implementing a service plan. See MCL 712A.18f(3); *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010). If petitioner "fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). This Court held in *In re Terry*:

Any claim that the [petitioner] is violating the ADA must be raised in a timely manner, however, so that any reasonable accommodations can be made. Accordingly, if a parent believes that the [petitioner] is unreasonably refusing to accommodate a disability, the parent should claim a violation of her rights under the ADA, either when a service plan is adopted or soon afterward. The court may then address the parent's claim under the ADA. Where a disabled person fails to make a timely claim that the services provided are inadequate to her particular needs, she may not argue that petitioner failed to comply with the ADA at a dispositional hearing regarding whether to terminate her parental rights. In such a case, her sole remedy is to commence a separate action for discrimination under the ADA. At the dispositional hearing, the family court's task is to determine, as a question of fact, whether petitioner made reasonable efforts to reunite the family, without reference to the ADA. [*In re Terry*, 240 Mich App at 26.]

Respondent never indicated to petitioner or to any of her providers that her learning disability was a barrier to benefitting from the services. Moreover, the problems that respondent continued to exhibit despite receiving parenting classes and counseling were not related to an inability to comprehend material. Respondent did not make misguided efforts at relating to her children during visitation; she simply failed to try to interact with them.

Respondent also argues that her caseworker should have referred her to additional services if she was not benefitting. "While [petitioner] 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). Although respondent attended therapy and parenting classes, she did not make an effort to put into practice what she learned. Moreover, this case was respondent’s second round of rehabilitative efforts. Her children cannot wait indefinitely while she repeats therapy and parenting classes. Respondent also argues that petitioner failed to prove that parenting classes and individual therapy were necessary to her rehabilitation. However, the necessity of parenting classes and therapy was established by respondent’s psychological evaluation at the beginning of these proceedings. The evaluation indicated that she lacked insight into how her behavior affected her children, and that she lacked empathy for her children.

In summary, the trial court did not clearly err in finding that statutory grounds for terminating respondent’s parental rights were established under §§ 19b(3)(c)(i), (g), and (j).

Respondent also argues that the trial court erred in finding that termination of her parental rights was in the children’s best interests. We disagree.

Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination is in the child’s best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court’s best-interest decision is also reviewed for clear error. *In re JK*, 468 Mich at 209.

A court may consider a variety of factors in determining whether termination of parental rights is in a child’s best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). These factors include the existence of a bond between the child and the parent, the parent’s ability to parent, the child’s need for permanency and stability, the advantages of a foster home over the parent’s home, the parent’s compliance with his or her service plan, the parent’s visitation history with the child, the child’s well-being, and the possibility of adoption. *Id.* at 713-714. A child’s placement with relatives is an additional factor for the court to consider, and weighs against termination. *In re Mason*, 486 Mich at 164.

The trial court observed that there was little bond between respondent and CES. It noted that AMC was ambivalent about reunification and was in fear of Schinke, who respondent continued to see. It found that the children had been in care for a lengthy period of time and were in need of permanence. The court considered the children’s placements with relatives, but found that termination was nonetheless in the children’s best interests considering the progress they had made in their placements. Under these circumstances, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra