

STATE OF MICHIGAN
COURT OF APPEALS

In re CHANDLER, Minors.

UNPUBLISHED
December 20, 2016

No. 332614
Wayne Circuit Court
Family Division
LC No. 15-518900-NA

Before: GADOLA, P.J., and FORT HOOD and RIORDAN, JJ.

PER CURIAM.

Respondent appeals of right the trial court's order terminating her parental rights to her minor children pursuant MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (risk of harm if returned to parent). We affirm.

I. FACTS

Respondent's children, then ages one and two, were removed from her care and that of the children's father¹ in January 2015, based on allegations of homelessness, substance abuse, and domestic violence between respondent and the father. At that time, respondent and the father were living together with the children, sometimes in motels and sometimes in a car. The children were observed by witnesses to be dirty, hungry, and not well cared for. One of the children suffers from sickle cell anemia and had undergone three transfusions as of the time of the termination hearing. The other child has asthma. The children were removed from the care of respondent and the children's father and placed with the maternal grandmother throughout the proceedings.

In June 2015, the trial court assumed jurisdiction of the children. The trial court ordered that respondent comply with a treatment plan that called for her to, among other things, obtain suitable housing, complete a psychological evaluation, engage in substance abuse counseling and domestic violence counseling, submit to weekly drug screens, and visit regularly with the children. Respondent, however, failed to comply with the treatment plan. Three times the foster care worker referred respondent for a variety of services and each time respondent failed to

¹ The parental rights of the children's father were also terminated. He has not appealed.

participate. Meanwhile, respondent continued to live a chaotic lifestyle punctuated by domestic violence with the children's father. During the course of the proceedings before the trial court, respondent and the father were periodically arrested and jailed for domestic violence. As a result of the periodic incarceration, respondent was often unavailable to visit with the children or otherwise participate in services.

At the April 2016 termination hearing, the foster-care worker testified regarding respondent's lack of compliance with her treatment plan. She testified that although respondent claimed to have started a job that week, she had not yet provided the worker with verification of her employment. Respondent had not obtained suitable housing and information indicated that respondent was living with the children's father in a motel at the time of the hearing. She had been living at a shelter temporarily but had been asked to leave due to her behavior. Respondent had maintained regular contact with the foster care worker, but could not provide a telephone number or address so that the worker could reach her. Respondent had been referred for parenting classes three times but had failed to attend and the services were consequently discontinued. Respondent rarely participated in drug screens. At the time of the termination hearing, respondent had begun participating in substance abuse counseling and domestic violence counseling but was reported to not be benefiting from the counseling because she was continuing to miss drug screens and to engage in domestic violence with the children's father. The children's father had been jailed about three weeks before the termination hearing due to a domestic altercation with respondent. Respondent's substance abuse therapist reported the day before the termination hearing that "client is in an active relationship with her abuser." Respondent had visited with the children in the two months prior to the termination hearing, but before that had failed to visit with the children for several months due to incarceration, hospitalization, and because, according to respondent, she was "taking care of business." The foster care worker further testified that although respondent had not completed the ordered psychological examination, she had undergone a psychiatric evaluation in which she was diagnosed with bipolar disorder, and while hospitalized she also had been diagnosed with schizoaffective disorder.

Respondent testified that she had ended her relationship with the children's father in December 2015, contrary to the foster-care worker's testimony. Respondent had not obtained housing and testified that she was living in a Salvation Army shelter. She acknowledged that she had been terminated from a woman's shelter for failure to comply with the shelter rules, and testified that she hoped to return to the woman's shelter as soon as she was eligible. She was hoping to rent a house but needed to obtain enough money for a security deposit. Respondent testified that she had begun working but had not yet received a paycheck. She denied that she had a relationship with the children's father and also testified that she would not describe their relationship as violent. She also denied that she had used substances within the past several months.

At the conclusion of the termination hearing, the trial court found that the parents were engaged in continuing domestic violence, that respondent had been using substances until shortly before the termination hearing, that she had insufficient income to provide a home for herself and the children, and had a chaotic, unstable home life. The trial court found that clear and convincing evidence existed to terminate respondent's parental rights under MCL712A.19b(3)(c)(i), (g), and (j), and that termination was in the children's best interests.

II. ANALYSIS

A. STATUTORY GROUNDS

Respondent first argues that the trial court erred in finding a statutory basis for termination. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination enumerated in MCL 712A.19b has been proven by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). This Court reviews for clear error the trial court's determination that one or more of the statutory grounds for termination has been proven. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). We will find the trial court's decision to terminate to be clearly erroneous if, although there is evidence to support that decision, after reviewing the entire record we are left with a definite and firm conviction that a mistake has been made. *Id.* at 209-210.

In this case, the trial court found that the evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Those statutory sections provide as follows:

(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 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.

* * *

(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.

The trial court first found that termination was proper under MCL 712A.19b(3)(c)(i), finding that the conditions that led to adjudication continued to exist. That finding is supported by the record. At the time of adjudication in June 2015, respondent was chronically homeless

and often living in a car with the children and the children's father. Respondent was abusing substances and was continually involved in domestic violence with the children's father. The trial court ordered respondent to complete and benefit from the treatment plan, which directed respondent to participate in random drug screening, substance abuse counseling, domestic violence counseling, to obtain and maintain a legal source of income, to obtain suitable housing, to complete a psychological assessment and follow any recommendations, to participate in parenting classes, to participate in regular visits with the children, to maintain regular contact with petitioner, and to attend all court hearings.

At the time of termination, respondent continued to be homeless, was living in shelters, and apparently periodically was living with the children's father. Respondent provided the trial court with verification that she had just begun a job at \$9.25 per hour. Respondent was continuing to engage in domestic violence with the children's father. Respondent had failed to regularly participate in drug screens. Respondent had begun participating in substance abuse counseling and domestic violence counseling but was reported to not be benefiting from the counseling as she was continuing to miss drug screens and to engage in domestic violence with the children's father. Respondent had visited with the children in the two months prior to the termination hearing, but before that had failed to visit with the children.

The record also supports the trial court's finding that the conditions could not be rectified within a reasonable time considering the ages of the children. As the trial court noted, respondent appeared to be untruthful regarding the status of her relationship with the children's father and was reluctant even to admit that their relationship was violent. Respondent did not articulate a concrete plan for securing the necessary housing, which taken together with her inability to obtain suitable housing prior to the termination hearing is evidence that respondent would be unlikely to secure the necessary housing in a reasonable amount of time. Upon review of the entire record, we conclude that the trial court did not clearly err in finding that clear and convincing evidence supported a finding that the conditions leading to adjudication continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable time considering the age of the children. MCL 712A.19b(3)(c)(i).

Only one statutory ground need be established by clear and convincing evidence to warrant termination of parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Because the trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), we need not address whether the trial court clearly erred in finding grounds to terminate those rights under MCL 712A.19b(3)(g) and (j). In any event, the evidence described above shows respondent's substantial noncompliance with the treatment plan, which is evidence that she will not be able to provide a child with proper care and custody and that it is likely that the child will be harmed if returned to the parent's care. See *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014).

B. BEST INTERESTS

Respondent next contends that the trial court erred in determining that termination was in the children's best interests. When a trial court determines that a statutory ground for termination of parental rights has been established by clear and convincing evidence, the trial court is required to inquire whether termination is in the child's best interests. If so, the trial

court is required to order termination of parental rights. MCL 712A.19b(5). The petitioner must prove by a preponderance of the evidence that termination of parental rights is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining whether termination of parental rights is in a child's best interests, a trial court should assess a wide variety of factors that may include "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 White*, 303 Mich App at 713. We review for clear error a trial court's determination that termination of parental rights is in the best interests of a child. *Id.*

In determining that termination of respondent's parental rights was in the children's best interests, the trial court acknowledged that a bond existed between respondent and the children but observed that a much stronger bond existed between the children and the maternal grandmother. The court also noted the special health needs of the children and respondent's inability to provide adequate stability to address those health concerns. The trial court specifically considered the children's age and the benefit of the placement with the grandmother in contrast with respondent's chaotic life-style.

On appeal, respondent argues that because the children were placed with a relative, the court could have devised a plan for caring for the children short of termination. This Court has stated that "because 'a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a),' the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012), quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). But a court is not required to forgo termination simply because a successful relative placement has been made. See MCL 712A.19a(6)(a). Indeed, if a child is thriving in relative placement and is in need of stability and permanency, the circumstances of the placement can be evidence that termination is in the child's best interests, particularly when the child has special needs. We conclude in this case that the trial court did not clearly err in determining that termination of respondent's parental rights was in the children's best interests.

C. REASONABLE EFFORTS

Respondent also states, without support, that the trial court erred in not ordering that she be provided with "special services based upon her recognized disability . . ." We note that the time for a parent to assert the need for accommodation in services is when the court adopts a service plan. *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Respondent did not do so, leaving this argument unreserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Unreserved issues are reviewed for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008). Generally, an error affects substantial rights if it caused prejudice, that is, if the error has affected the outcome of the proceedings. *Id.*

According to the testimony of the foster-care worker, respondent was diagnosed with bipolar disorder at one facility and schizoaffective disorder at another. Although respondent now asserts on appeal that her "mental illnesses" constitute "a recognized disability" under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, respondent did not present evidence or argument to that effect before the trial court, and provides no support for that

assertion on appeal. Although respondent's counsel at trial asked the foster-care worker if she knew that respondent "had a mental health problem or some type of developmental disability," there was no evidence presented establishing that respondent suffered from a recognized disability under the ADA. Accordingly, respondent in this case has not shown plain error affecting a substantial right with respect to the services provided.

Affirmed.

/s/ Michael F. Gadola
/s/ Karen M. Fort Hood
/s/ Michael J. Riordan