STATE OF MICHIGAN

COURT OF APPEALS

In re REID/GILES, Minors.

UNPUBLISHED
November 29, 2016

No. 332758
Oakland Circuit Court
Family Division
LC No. 2002-669765-NA

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

PER CURIAM.

Respondent mother appeals as of right an April 19, 2016, order terminating her parental rights to the minor children AR (d/o/b 1/24/2011) and LG (d/o/b 10/11/2005) pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

On February 26, 2014, petitioner, the Department of Health and Human Services (DHHS), filed a petition requesting that the circuit court exercise temporary jurisdiction over AR and LG and two siblings and to remove the children from respondent's custody. The petition alleged that in 2011, respondent had "allowed her boyfriend, Barry Waters, who she knew was a sex offender, to reside in her home," Waters sexually abused AR and AR's sibling "on multiple occasions in the home of [respondent]," and after a criminal investigation, the Oakland County Prosecutor charged Waters. Respondent subsequently failed to take AR and the sibling for sexual-abuse counseling. In February 2014, respondent took the children to a party hosted by respondent's uncle, "a registered sex offender who was released from prison on January 31, 2014," after serving approximately 34 years for two first-degree criminal sexual conduct (CSC) convictions. At the party, the uncle sexually abused AR. The petition alleged that respondent knew of the uncle's previous CSC charges and failed to properly supervise the children in his presence. Respondent also regularly attended church with the uncle and allowed AR "to sit next to and interact with [the uncle]" In February 2014, respondent struck AR with a belt several times, "leaving multiple red abrasions and bruising" on AR's left arm. On February 26, 2014, the circuit court authorized the petition.

At an April 4, 2014 pretrial hearing, respondent pleaded no contest to the petition's allegations and the court exercised jurisdiction over the children. The circuit court ordered respondent to complete parenting classes and counseling recommended by her psychological evaluation, participate in substance abuse treatment and random drug screens, maintain

appropriate housing and legal employment, resolve her legal issues, attend supervised parenting times, and regularly contact the caseworker.

In January 2016, petitioner filed a supplemental petition requesting termination of respondent's parental rights pursuant to MCL 712A.19b(3)(g)(c)(*i*), (g), and (j). The petition noted that respondent had completed most of the services in her treatment plan. However, respondent continued to deny responsibility for having physically disciplined AR, or failing to protect AR and the sibling from sexual abuse.

At a termination hearing, respondent testified that the children arrived in foster care because she had "made some bad decisions as . . . far as drug abuse." But respondent repeatedly denied knowing why the children had been taken away, "because it wasn't [her] fault what someone" else did to the children. When AR was approximately 13 years of age, someone else molested her. Respondent admitted that her uncle had sexually touched AR, but denied that she could have anticipated that her uncle would sexually abuse AR. Respondent also repeatedly denied knowing why her uncle had gone to prison for more than 30 years, or feeling entitled to ask this question about a family member.

Respondent testified that in January 2016, she obtained a two-bedroom apartment in Pontiac. Respondent's 20-year-old daughter assisted in paying half of respondent's rent. Respondent never worked; she had a learning disability, received Social Security disability benefits, and believed that "God will provide money and housing." Respondent had a child-abuse conviction because she spanked AR with a belt.

Erica McClure, a caseworker, testified that respondent's treatment plan consisted of maintaining proper housing and a legal income source, participating in a psychological evaluation, attending substance abuse treatment, drug screens, and parenting times, and completing and benefitting from parenting classes and individual counseling. Respondent participated in substance abuse treatment and submitted negative drug screens. Respondent consistently denied McClure's requests to inspect respondent's residences. Respondent obtained a two-bedroom apartment in December 2015, but had not yet relocated there. Respondent did not have employment, but received Social Security benefits. Regarding respondent's plan to care for the children, respondent repeatedly told McClure "that God will provide income."

Respondent completed parenting classes, but demonstrated no benefit. Respondent attended nearly all of her parenting times, sometimes interacted appropriately with the children, but repeatedly ignored suggestions to bring the children food, and often became upset at the children and the caseworkers. Since the proceeding began, respondent regularly attended therapy, but still did "not take responsibility for her past and . . . doesn't understand why she's there." During psychological evaluations, respondent characterized AR as evil and sneaky, denied trusting the girls, and did not understand the extent of the children's needs that respondent "caused by the chronic trauma that she has put them through."

McClure testified that LG "had her worst meltdowns before[]"and after the parenting times. LG was in a foster care placement that met her needs. McClure recommended that the circuit court terminate respondent's parental rights in light of the minimal improvement in her parenting skills.

Magan Echols testified that she worked as AR's caseworker. AR had posttraumatic stress disorder (PTSD) and a full-range intelligence quotient (IQ) score of 52. A therapist described AR as demanding consistent attention. On several occasions, AR displayed aggression at her special education facility. According to Echols, AR's repetitive behaviors, including repeating the same questions, likely would cause respondent to behave with hostility toward AR. Echols recommended that the circuit court terminate respondent's parental rights to the children, given respondent's extensive "history of services and . . . not following through on the services," the unlikelihood that respondent could protect the children, and the children's strong needs for permanency and stability.

At the conclusion of the termination hearing, the circuit court explained in a bench ruling that clear and convincing evidence supported termination of respondent's parental rights. The court explained that two years' had passed and respondent did not make progress sufficient to rectify all of the previous history with the abuse and the poverty. Respondent failed to secure adequate income to care for the children, she lived a transient life, and, until recently, was involved with drug abuse. Furthermore, the prior sexual abuse had been ongoing, long-term abuse, which showed that respondent was not able to protect the children. The court reasoned that respondent "blames everybody else" and refused to accept responsibility. In addition, respondent was unable to pay for living arrangements on her own and would not be able to provide the intensive long-term care and support that AR needed, explaining that respondent "simply doesn't have the insight." The court also found that LG was "very troubled" and did not do well before and after parenting time.

After the court found grounds to terminate respondent's parental rights, the court held an additional hearing and then found that termination was in the children's best interests. The court entered a written order on April 19, 2016. This appeal ensued.

II. STANDARD OF REVIEW

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review for clear error a circuit court's decision to terminate parental rights. MCR 3.977(K). A decision qualifies as clearly erroneous when, "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 202, 209-210; 661 NW2d 216 (2003).

III. STATUTORY GROUNDS FOR TERMINATION

Respondent challenges in several respects the sufficiency of the statutory grounds supporting termination. She contends that petitioner and the circuit court knew about her cognitive impairments, but failed to make reasonable efforts to reunify her with the children in light of her cognitive deficits, most significantly by failing to account for those cognitive limitations in referrals for individual therapy and parenting classes. Respondent argues that because she did not receive reasonable accommodation of her cognitive deficits, the circuit court clearly erred in terminating her parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j).

A circuit court may order termination of parental rights under MCL 712A.19b(3)(c)(*i*) if the record clearly and convincingly establishes:

> 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.

Clear and convincing evidence established that approximately 20 or 21 months had elapsed between the circuit court's entry of an initial dispositional order and the termination hearing. In April 2014, respondent admitted that, in 2011, she allowed her boyfriend, a sex offender, to live with her and the children, the man repeatedly sexually abused AR and a sibling, and she failed to take the girls to sexual-abuse counseling. Respondent also admitted that, in 2014, she exposed the children to contact with respondent's uncle, who had spent more than 30 years in prison for CSC-I convictions, and he sexually abused AR. Also in 2014, respondent hit AR with a belt. After the circuit court exercised jurisdiction over the children, it ordered respondent to complete parenting classes and counseling recommended by her psychological evaluation, participate in substance abuse treatment and random drug screens, maintain appropriate housing and legal employment, resolve her legal issues, attend supervised parenting times, and regularly contact the caseworker.

Clear and convincing evidence established that the conditions leading to the children's adjudications continued to exist in February and March 2016. According to respondent's caseworker, McClure, respondent participated in substance abuse treatment and regularly submitted negative drug screens to the extent that McClure disbelieved that respondent had a substance abuse issue. But respondent consistently denied McClure's requests to inspect her residences. Respondent obtained a two-bedroom apartment in December 2015, but had not yet relocated there. Respondent did not have employment because she was receiving Social Security benefits. Her plan to care for the children was to rely on God to provide enough income.

Respondent completed parenting classes, but demonstrated no benefit from the classes. She attended nearly all of her parenting times, and sometimes interacted appropriately with the children, but repeatedly ignored suggestions to bring the children food, and often became upset at the children and the caseworkers. Since the proceeding began, respondent regularly attended therapy, but still did "not take responsibility for her past and . . . doesn't understand why she's there." During psychological evaluations, respondent characterized AR as evil and sneaky, denied trusting the girls, and did not understand the extent of the children's needs stemming from her exposure of the children to chronic trauma. McClure testified that LG lived in a foster care placement that met her needs, but experienced substantial meltdowns before and after parenting time visits with respondent.

Furthermore, Echols explained that AR had numerous challenges and she recommended that the circuit court terminate respondent's parental rights to the children, given respondent's

extensive history of services, her failure to pursue services, the unlikelihood that she could protect the children, and the children's strong needs for permanency and stability.

The record clearly and convincingly established that the concerns regarding respondent's emotional and physical neglect of the children still existed at the time of the termination hearing. See *In re LE*, 278 Mich App 1, 28; 747 NW2d 883 (2008). Respondent testified that the children arrived in foster care because she had abused drugs, but repeatedly denied knowing why petitioner had taken away the children, explaining that "it wasn't [her] fault what someone" else did to the children. Respondent testified that in January 2016, she obtained a two-bedroom apartment in Pontiac. But she stated that she never worked because she had a learning disability, received Social Security disability benefits, and believed that God would provide housing and money. According to respondent, she loved her children and knew how to care for them, but she had a child-abuse conviction because she spanked AR with a belt.

Furthermore, the record clearly and convincingly established the unlikelihood that respondent might improve her parenting skills within a reasonable time. AR had spent approximately two years as a temporary court ward, LG had spent her entire life in foster care, respondent made minimal progress toward improving her ability to protect the children or other parenting skills, and the children urgently needed permanency and stability.

In sum, the circuit court did not clearly err in finding clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*i*). Because there was one ground for termination, we need not address the additional grounds upon which the trial court based its decision. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

IV. SERVICES

Before a court may contemplate termination of a parent's right to her child, the petitioner generally "must exert 'reasonable efforts' to maintain the child in her . . . care, MCL 712A.18f(1), (4)," and "make 'reasonable efforts to reunite the child and family.' MCL 712A.19a(2)." *In re Hicks/Brown*, ___ Mich App ___, ___; ___ NW2d ___ (2016) (Docket No. 328870); slip op at 6. In cases involving a parent who suffers disabilities or limitations, the petitioner must "take into account the . . . limitations . . . and make any reasonable accommodations," before a court may find "that reasonable efforts were made to reunite the family." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000).

In *In re Hicks/Brown*, ___ Mich App at ___; slip op at 16, this Court described the following guidelines for determining whether a respondent suffering from a cognitive impairment received reasonable efforts at reunification:

> [W]e take this opportunity to clarify what a court and the DHHS must do when faced with a parent with *a known or suspected* intellectual, cognitive, or developmental impairment. In such situations, neither the court nor the DHHS may sit back and wait for the parent to assert his or her right to reasonable accommodations. Rather, the DHHS must offer evaluations to determine the nature and extent of the parent's disability and to secure recommendations for tailoring necessary reunification services to the individual. The DHHS must then

endeavor to locate agencies that can provide services geared toward assisting the parent to overcome obstacles to reunification. [Emphasis in original.]

"In the event that reasonable accommodations are made but the parent fails to demonstrate sufficient benefit such that he or she can safely parent the child, then the court may proceed to termination." *Id*.

In *In re Hicks/Brown*, ___ Mich App at ___; slip op at 16, this Court held that the petitioner and the circuit court inadequately failed to accommodate the respondent's cognitive impairment. Despite that by November 2011 several DHHS workers suspected that the respondent had a cognitive impairment necessitating special assistance in completing the elements of her treatment plan, the DHHS and the court failed to arrange "psychological and psychiatric evaluations to determine whether reasonably accommodated services were necessary . . . until May 2013—13 months after [the child] came into care—to secure these evaluations." *Id*. at ___; slip op at 17. Additionally, the DHHS and the circuit court "failed to make adequate efforts to provide respondent with parenting time, effectively denying her contact with her daughter for eight months." *Id*. Although the respondent's psychological evaluation revealed that she "fell into the low and extremely low range on various assessments," the DHHS neglected to reconsider the respondent's service plan after her evaluation. *Id*. The evaluation reported that the respondent "could read but lacked comprehension of the material perused and could not write in complete sentences." *Id*. The DHHS and the circuit court ignored a recommendation in the psychological evaluation to administer "a measure of adaptive functioning to determine specific strengths and weaknesses with regard to activities of daily living." *Id*. And the DHHS failed to seek "to have respondent placed in any of the programs geared toward the cognitively impaired until several months after [respondent's counsel] objected in August 2014." *Id*.

In this case, on July 9, 2014, the circuit court ordered respondent to complete parenting classes and counseling recommended in her psychological evaluation, participate in substance abuse treatment and random drug screens, maintain appropriate housing and legal employment, resolve her legal issues, attend supervised parenting times, and regularly contact the caseworker. Respondent began participating in services in January 2015. In February 2015, she underwent her second psychological evaluation since June 2014.

At the February 2015 evaluation, respondent reported having attended school through the ninth grade, and "received special education services." Respondent's "recent and remote memory appeared intact," as did her "ability to stay focused." Respondent's intelligence testing results placed her in the category of mental deficiency. Respondent's reading achievement subtest placed her reading level at the second-grade level. "According to results obtained on two subtests . . . [respondent's] IQ is in the Extremely Low Range." "Her ability to define commonly used words was in the Extremely Low Range." "Her fluid reasoning (the capacity to think logically and solve problems in novel situations, independent of acquired knowledge) was slightly higher, in the Borderline/Slow Learner Range." In light of "these two subtests, as well as her reading score of the achievement test, it appears that [respondent] is functioning cognitively at the age level of an 8-year-old." Respondent's "responses reveal that she presents with an intense mistrust of others, which has led to her tendency to withdrawn from social relationships." The evaluation summarized that "[h]er operational judgment is impaired as

evidenced by her consistent failure to protect her children from physical, sexual, and emotional abuse," and her "capacity for insight appears minimal, as she does not recognize or take full responsibility for circumstances surrounding her past and current Protective Services involvement." Respondent denied a history of mental illness.

The February 2015 psychological evaluation concluded that respondent continued

> to minimize her responsibility for factors that contributed to the abuse and neglect her children have suffered while in her care. Without . . . acceptance of culpability and willingness to obtain necessary assistance to help better her life circumstances, the likelihood that the children would experience further abuse and neglect in [respondent's] care is high.

The evaluation recommended that petitioner assist respondent "in securing an appropriate, safe, independent home for herself and her children." Because the evaluation suspected that psychiatric factors might "have contributed to her failure to maintain a suitable, safe home environment," it recommended that she "receive a psychiatric evaluation" and individualized therapy. The evaluation also recommended that respondent's "cognitive deficits should be taken into consideration when developing treatment goals and utilizing therapeutic techniques," and in-home "services could be beneficial with helping [respondent] in learning life skills, such as money management, household upkeep, and organization."

Respondent and the respondent in *In re Hicks/Brown* both had low full-range IQ scores. *In re Hicks/Brown*, ___ Mich App at ___; slip op at 1. Unlike the respondent in *In re Hicks/Brown*, who had marked difficulty communicating and memory impairment, *id*., respondent successfully interacted with service providers, caseworkers, and the circuit court, and possessed a functioning memory. Despite respondent's participation in, and completion of, her individualized treatment plan, clear and convincing evidence proved that she had failed to gain insight into her responsibility to protect the children. Also unlike the respondent in *In re Hicks/Brown*, who untimely received referrals to appropriate services, *id.* at ___; slip op at 16-18, DHHS and the circuit court timely provided respondent with appropriate services reasonably designed to improve her parenting skills.

Moreover, the record does not support respondent's contention that DHHS failed to provide individual therapy and parenting classes reasonably geared to her cognitive deficiency. The record indicates that respondent participated in her parenting classes. The record also establishes that respondent attended all of her individual-therapy sessions, but remained convinced that she had done nothing wrong in exposing the children to sexual abuse. Respondent also suggests that petitioner and the circuit court failed to assist her with housing and income, but the testimony of the caseworkers agreed that respondent received Social Security benefits and timely assistance in locating housing.

Respondent correctly notes that DHHS and the circuit court did not refer her for a psychiatric evaluation, as the 2015 psychological evaluation had recommended. However, DHHS referred respondent for counseling to address symptoms of depression and respondent underwent two psychological evaluations. The absence of a psychiatric evaluation did not render unreasonable the many other services that DHHS provided respondent during the child protective

proceedings that occurred between 2002 and 2016. Because DHHS offered respondent many services between April 2014 and April 2016, and respondent participated in and appeared to understand all of the most recent services, we conclude that DHHS and the circuit court reasonably accommodated respondent's cognitive impairment and offered her reasonable services toward reunification. Because clear and convincing evidence established that respondent "fail[ed] to demonstrate sufficient benefit such that . . . she can safely parent the child," the circuit court correctly proceeded to termination. *In re Hicks/Brown*, ___Mich App at ___; slip op at 16. Given our resolution of this issue, respondent cannot show that she was denied the effective assistance of counsel when, during the proceedings in the lower court, counsel did not object to the services that were offered. See *People v Ericksen,* 288 Mich App 192, 201; 793 NW2d 120 (2010) ("Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel.").

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Stephen L. Borrello