

STATE OF MICHIGAN
COURT OF APPEALS

In re PRIMM, Minors.

UNPUBLISHED
January 26, 2017

No. 333427
Kent Circuit Court
Family Division
LC Nos. 14-054044-NA; 14-
054045-NA

Before: MURPHY, P.J., and METER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to her minor children, AP and BP¹, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and (g) (failure to provide proper care and custody). We affirm.

Respondent and the children lived with respondent's boyfriend and in November 2014, the police responded to a call reporting a domestic violence incident between respondent and her boyfriend. When the police arrived, they noticed bruises and abrasions on AP's body, and respondent indicated that the marks were caused when she hit AP with a belt for misbehaving. On November 19, 2014, a petition was filed, alleging that respondent neglected or refused to provide proper or necessary care necessary for the children's health or morals, or had subjected the children to a substantial risk of harm to their mental well-being, or abandoned the children without proper custody or guardianship. It also alleged that the home or environment was an unfit place for the children to live by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of the parents. Specifically, the petition alleged that respondent had a history of substance abuse, that respondent abused AP, and that respondent did not have adequate housing. The children were removed from respondent's care and placed in foster care.

Respondent was provided with a variety of services but ultimately did not make much progress toward rectifying her barriers. She continued to test positive for marijuana throughout the duration of the case. A termination hearing was held on May 18, 2016, and it was requested

¹ AP's legal father was Michael Palmer, and BP's father was unknown. The children's fathers did not have any contact with the children and could not be located for this case.

that the court terminate respondent's parental rights.² The principal concerns regarding respondent were substance abuse, emotional stability, housing,³ excessive corporal punishment on AP, and parenting skills. The evidence established that respondent failed to make sufficient progress regarding these goals. Following the termination hearing, the trial court found that grounds for termination of respondent's parental rights to the children were established under MCL 712A.19b(3)(c)(i) and (g). The court also found that termination was in the children's best interests.

First, respondent argues that the petitioner failed to make reasonable efforts to rectify the conditions that caused the children's removal. Specifically, respondent argues that she should have been offered more intensive services to rectify her substance abuse issues. According to respondent, her services were obviously not sufficient to address her issues because she continued to use marijuana throughout the duration of the case.

"Generally, when a child is removed from the parent's custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). Termination is not required if "[t]he state has not provided the child's family . . . with the services the state considers necessary for the child's safe return to his or her home, if reasonable efforts are required." MCL 712A.19a(6)(c); see also *In re Rood*, 483 Mich 73, 104; 763 NW2d 587 (2009) (CORRIGAN, J). Whether the evidence is sufficient to justify termination of parental rights depends in part on the reasonableness of the services provided. *In re Fried*, 266 Mich App 535, 541-543; 702 NW2d 192 (2005). "While 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).

Here, the DHHS made reasonable efforts to reunify respondent and her children. Respondent was provided with a substance abuse assessment and a psychological evaluation. She was referred to individual counseling, intensive outpatient treatment, and group counseling, including an Early Recovery Group program and a Relapse and Recovery group. Further, respondent was provided with a therapist⁴ who addressed mindfulness and grounding techniques to combat respondent's addiction. Respondent was also provided with a peer recovery coach and a program developed for women with mental health or substance abuse diagnoses whose

² It was also requested that the trial court terminate the parental rights of Palmer and BP's unknown father.

³ The record supports that respondent was unable to secure housing by the time of the termination hearing because there was no available housing. The trial court stated that respondent could not be blamed for the lack of available housing and did not take the issue into account when determining whether her parental rights should be terminated.

⁴ Respondent attempts to argue on appeal that her therapist was not certified in substance abuse therapy. However, there is nothing on the record to suggest that her therapist was unqualified in any way, and respondent has not offered anything on appeal to support that the therapist was not qualified.

children were involved in the child welfare system. Respondent was also provided with drug screens. Respondent was also provided services to help address the underlying causes of her substance abuse and therapy through the YWCA to address her emotional stability, and anxiety issues. Moreover, respondent reported that she used marijuana to cope with her anxiety and depression, and she was referred to a physician to discuss anxiety and depression medications. Respondent was ultimately prescribed medication to help with her anxiety and to reduce her cravings for marijuana. Respondent also addressed anxiety and depression in her Arbor Circle and YWCA therapy sessions.

Additionally, the record supports that respondent did not fully participate in all of the services offered to her. Respondent's caseworker recommended that respondent attend NA or AA at least five times a week. However, there is nothing on the record to support that respondent ever attended a session of NA or AA. Respondent also missed several sessions of her substance abuse treatment. Further, for portions of the case, respondent did not adequately communicate with her caseworker, and the caseworker testified that the lack of communication made it difficult to address respondent's barriers. Respondent was also dishonest about her marijuana use. Respondent repeatedly reported that she was not using marijuana, despite the fact that her drug screens were consistently positive for THC. Respondent did not fully take advantage of the services that were offered.

Based on these circumstances, there was no plain error in the reasonable efforts made to reunite respondent with her children. Respondent's failure to benefit from the services offered did not negate the fact that petitioner made these services available. *In re Frey*, 297 Mich App at 248 (rejecting the respondents' argument that the DHHS failed to make reasonable efforts where the respondents failed to demonstrate sufficient benefit from services targeted to address their substance abuse issues).

Next, respondent argues that the trial court erred in finding that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the ages of the children. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's determination for clear error. "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, 296-297; 690 NW2d 505 (2004).

"The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence." *VanDalen*, 293 Mich App at 139. Termination is proper under MCL 712A.19b(3)(c)(i) where the conditions that led to adjudication continue to exist. This Court has held that termination is proper where "the totality of the evidence amply supports that [the respondent] had not accomplished any meaningful change in the conditions" that led to the adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Here, the conditions that led to adjudication were substance abuse, emotional stability, housing, excessive corporal punishment on AP, and parenting skills.

The record supports that, at the time of termination, respondent had not rectified her barriers to reunification. First, the record supports that respondent had not rectified her substance abuse or emotional stability issues at the time of termination. Respondent was offered a variety of services to address her substance abuse, but she continued to test positive for THC throughout the duration of the case, including during the month preceding the termination hearing. She also tested positive for cocaine in February 2016. Respondent admitted that she had an issue with substance abuse but denied using drugs, maintaining that the drug screens were inaccurate. The record also supports that respondent's emotional instability was tied to her substance use. Respondent's caseworker testified that she was concerned that respondent was not taking her anxiety medication—which was also prescribed to reduce respondent's cravings for marijuana—consistently. Moreover, one of respondent's therapists reported that respondent used marijuana to escape from her negative emotions and that respondent was attempting to use other coping mechanisms instead. However, respondent continued to use marijuana as a coping mechanism until the termination hearing. Therefore, the record supports that respondent had not rectified her substance abuse and emotional stability issues at the time of termination.

Regarding parenting skills, the record supports that respondent exhibited appropriate hands-on parenting skills in a controlled environment but needed intervention outside of the controlled environment. Respondent's caseworker was concerned that respondent would not take appropriate action to protect the children without supervision. Respondent also missed a number of AP's therapy sessions between January and April 2016—the months leading up to the termination hearing—which was very upsetting for the child. Respondent's caseworker was also concerned that respondent minimized the extent of her corporal punishment, and respondent did not believe that her marijuana use impacted the children. Thus, the record establishes that respondent did not accomplish “any meaningful change” with respect to substance abuse, emotional stability, or parenting skills. *Williams*, 286 Mich App at 272.

Further, the record does not support that respondent would be able to rectify her barriers within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i). When determining what constitutes a reasonable time for the conditions to be rectified, we must focus on how long it will take a respondent to improve and how long the involved children can wait. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). We have held that the Legislature did not intend children to be left in foster care indefinitely. *Id.* at 647.

In this case, the children had been in foster care for around 18 months. Respondent was offered numerous services to help alleviate her substance abuse, emotional stability, and parenting issues. Although respondent participated in services and made some progress, the record supports that she did not sufficiently benefit in any area. Given the length of time already provided and respondent's lack of progress, there is no indication that respondent would rectify the barriers even if given more time. Therefore, the trial court did not clearly err in finding that

respondent would be unable to rectify the conditions that led to adjudication within a reasonable time.⁵

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Amy Ronayne Krause

⁵ Respondent does not challenge the trial court's decision regarding MCL 712A.19b(3)(g). Moreover, because we conclude that there was no error in finding grounds for termination of parental rights under subsection (c)(i), we need not consider whether there were alternative grounds under MCL 712A.19b(3)(g). *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009) (finding that, where "at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision").