

STATE OF MICHIGAN
COURT OF APPEALS

In re CALDWELL/BARRINGTON, Minors.

UNPUBLISHED
June 20, 2017

No. 335173
Macomb Circuit Court
Family Division
LC Nos. 2012-000186-NA
2012-000187-NA
2012-000188-NA
2012-000189-NA

Before: FORT HOOD, P.J., and CAVANAGH and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court order terminating her parental rights to her four minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (c)(ii) (conditions other than those leading to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood, based on conduct or capacity of parent, that child will be harmed if returned home to the parent). For the reasons discussed below, we affirm.

Although the family's extensive history with Child Protective Services (CPS) dates back to 2002, the events transpiring between 2011 and 2016 are most pertinent to this appeal. On December 30, 2011, CPS opened an investigation after respondent's youngest daughter was born with drugs in her system. During a welfare check in April 2012, CPS discovered the children in the home unsupervised while respondent slept in a back bedroom. The condition of the home was deplorable. Food, clothing, and other debris littered the floor, and human feces had been ground into the carpeting. Respondent was asleep and access to her bedroom was barricaded with chairs. A petition was filed and the children were removed from respondent's care. Services were offered to work toward reunification. As relevant to this appeal, in October 2015, the trial court denied the first petition to terminate respondent's parental rights. Respondent was then given additional time to address, among other things, her substance abuse and mental health issues. When petitioner concluded that respondent's progress was insufficient, it again sought to terminate her parental rights. After a two-day termination hearing in September 2016, the trial court entered an order terminating respondent's parental rights to her four children. It is this order that is the subject of the present appeal.

Respondent first argues that the trial court erred when it found that statutory grounds for termination were established by clear and convincing evidence. We disagree.

To terminate parental rights, the trial court must find that at least one statutory ground for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).¹ This Court reviews the trial court’s factual findings and final decision concerning termination of parental rights for clear error. *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent’s parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), which permit termination of parental rights when the following conditions are established, by clear and convincing evidence:

(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.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, 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.

¹ To the extent that respondent suggests that her constitutional right to parent her children has been infringed upon, “the liberty interest of the parent no longer includes the right to custody and control of the children[]” once clear and convincing evidence has been presented to support a statutory ground for termination. *In re Trejo*, 462 Mich at 355. *In re Trejo* was superseded by statute on other grounds as observed in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

* * *

(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 record evidence established that the children had been in care for four years. During that time, the trial court denied the first petition to terminate parental rights and permitted respondent additional time to work toward reunification. Between the denial of the first petition and the second termination hearing, respondent had nearly 12 months to participate in and benefit from a treatment plan and then demonstrate that she was in a position to properly parent her children. A revised Parent Agency Agreement (PAA) included referrals for parenting classes, substance abuse treatment, counseling, and drug screens. Respondent failed to participate consistently in the treatment plan. To the extent that she did participate, she failed to benefit from the services offered.

Throughout the four years the children were in care, respondent failed to adequately address her substance abuse issues. In the year preceding the second termination hearing, respondent missed 43 of 51 required drug screens and she tested positive for marijuana on the screens with which she did comply. Respondent also tested positive on one occasion for methadone, and on another for amphetamines. Respondent was also arrested in February 2016 and jailed on retail fraud charges. She was unsuccessfully discharged from the associated probation on September 7, 2016 for failing to comply with the required drug screens. Respondent did check herself into Sacred Heart Rehabilitation Center for a three-week inpatient program in April 2016. This was one of many inpatient programs through which respondent had sought treatment during the four years preceding termination of her parental rights. Although respondent completed the three-week program, she continued to test positive for controlled substances, and on September 1, 2016, self-reported that she was still using marijuana.

The record also confirms that respondent continues to struggle with her mental health issues. In 2012, she was diagnosed as suffering from bipolar disorder, substance abuse, attention deficit hyperactivity disorder (ADHD), and post-traumatic stress disorder (PTSD). After the denial of the first termination petition, respondent was re-referred for counseling at the Clinton Counseling Center. At the time of the second termination hearing in September 2016, the foster care supervisor, Melanie Williams, testified that respondent had only attended four sessions. Respondent was also referred to another facility, New Oakland Family Centers, for treatment, but failed to attend the intake appointment scheduled for March 2, 2016. We acknowledge that at the termination hearing respondent produced a document indicating that she had visited Clinton Counseling Center approximately 30 times. However, Williams testified that while the document was present in her files, she was unsure what it pertained to, and did not understand it to represent proof of respondent's attendance at Clinton Counseling Center. The prosecutor informed the trial court at the termination hearing that the challenged documentation "[doesn't] indicate where [it's] from, who [it's] from, what [it's] about. It's no indication at all that there's been therapy involved." While the trial court allowed respondent's counsel to reference the challenged documentation during cross-examination of Williams, it does not appear from the record that it was in fact admitted into evidence. Respondent later confirmed in her testimony that she obtained the documentation shortly before the termination hearing from Clinton

Counseling Center, and that she attended 13 counseling appointments. Even if we accept that respondent was attending therapy to the degree she represents, the record clearly evinces that her personal challenges were greatly impeding her ability to be a fit parent to her children. In the few months preceding the filing of the second petition and the ensuing hearing, respondent was arrested for retail fraud, moved in and out of her mother's Romeo home, lost employment opportunities, failed multiple drug screens, and was continuing to use marijuana.

During the nearly additional year respondent was given to work on her treatment plan, respondent was also unable to obtain and maintain suitable housing and a legal source of income. Respondent made attempts to secure housing, but she frequently returned to her mother's home in Romeo. Respondent's mother was a recovering heroin addict and the last time petitioner investigated the home, it was deemed unsuitable because, in the words of Williams during her testimony at the termination hearing, it was in "deplorable" condition and "substance abuse" was a concern. Consequently, on the basis of the foregoing, we conclude that there was clear and convincing evidence to terminate respondent's parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), and the trial court did not clearly err in its decision.² The evidence supported a finding that despite a multitude of services over a four-year period, respondent had not adequately addressed her substance abuse and mental health issues. Put another way, respondent simply could not demonstrate that she was in a position to properly parent her children or that she would be able to do so within a reasonable time.

Respondent next argues that because she was enrolled in an inpatient rehabilitation program at the time of the termination hearing, Odyssey House, she was addressing the barriers to reunification and, therefore, termination of her parental rights was premature. The record reflects that this program contemplated a six-month to one year participation in Saginaw, Michigan, and the children, residing in Macomb County, Michigan, had already waited four years for respondent to provide a safe, secure and stable environment. We also note that in the preceding four years, respondent was given significant opportunity to overcome the barriers to reunification. Considering her extensive history with (1) unsuccessful inpatient rehabilitation programs and (2) overcoming her mental health and substance abuse challenges, we are not persuaded that respondent's enrollment in another inpatient program shortly before the termination hearing renders the trial court's determination with respect to the statutory ground for termination clearly erroneous.

² Regarding respondent's other claims of error with regard to the additional statutory grounds for termination of parental rights, we note that a trial court must only find one statutory ground by clear and convincing evidence to terminate a respondent's parental rights. See *In re Utrera*, 281 Mich App 1, 24; 761 NW2d 253 (2008) (noting that after one statutory ground for termination had been established by clear and convincing evidence this Court need not address additional grounds for termination). Accordingly, we decline respondent's invitation to address the trial court's findings on the additional statutory grounds.

Respondent also argues that petitioner did not make reasonable efforts to promote reunification.³ In support of this argument, respondent acknowledges in her brief on appeal that referrals were made and services were offered. She contends, however, that “these services were riddled with inconsistencies, errors, and barriers,” and, therefore, petitioner’s efforts were not reasonable. We disagree.

Before a trial court may contemplate termination of a parent’s parental rights, the petitioner must make reasonable efforts to reunite the family. MCL 712A.19a(2). However, “while [petitioner] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondent[] to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Respondent argues that she cannot be faulted for failing to comply with requested drug screens. She contends that she was unable to comply because she did not have transportation and her home in Romeo, Michigan was not conveniently located to public transportation so that she could use it to travel to and from the testing facility in Roseville, Michigan. The record reflects that petitioner did provide respondent with bus passes. Petitioner also attempted to change facilities to accommodate respondent, but the only other one available was in Lapeer, Michigan. Respondent claimed that this facility was similarly too far for her to travel. While we acknowledge respondent’s argument that transportation issues impeded her ability to comply with her mandatory drug screens, the record also reveals that respondent tested positive for drug use in the drug screens that she did comply with, and she admitted to continued substance abuse as recently as September 1, 2016. On this record, we are not persuaded that respondent’s argument regarding transportation issues in some way renders the trial court’s ultimate decision to terminate her parental rights clearly erroneous.

Respondent also contends that there was an unreasonable delay in reinstating her parenting time following the trial court’s denial of petitioner’s initial petition to terminate her parental rights in October 2015. On October 6, 2015, the trial court denied the first petition to terminate respondent’s parental rights. At that time, it reinstated parenting time, but ordered that it initially take place in a therapeutic setting. The record reflects that it did take time for petitioner to arrange for Dr. Patrick K. Ryan to observe the parenting time. The first visit resumed on November 17, 2015. Of particular note, respondent failed to attend the next scheduled visitation on November 21, 2015. Dr. Ryan observed the visits on three occasions and then recommended that the visits be supervised by petitioner. Therefore, the record simply does not support respondent’s allegation that petitioner unreasonably delayed the reinstatement of her parenting time.

Similarly, there is no support in the record for respondent’s assertion that petitioner unreasonably delayed implementing the revised PAA. Respondent contends that because of the

³ Respondent initially contends that the trial court did not even make a finding regarding reasonable efforts. This is inaccurate. In its September 27, 2016 order, the trial court specifically found that “reasonable efforts were made to preserve and unify the family.”

delay, she did not know what was expected of her. Although there appeared to be a slight delay in resolving the PAA issues, this appears to be a product of some administrative confusion. By December 8, 2015, any confusion was resolved and the trial court ordered that respondent's PAA agreement include parenting classes, supervised therapeutic visits, individual therapy, substance abuse counseling, and random drug screens. Thereafter, respondent was afforded ample opportunity, approximately nine months, to demonstrate compliance with the treatment plan.

Respondent further contends that she should not be faulted for failing to attend mental health treatment, because some of the issues were due to respondent's insurance lapsing. Specifically, respondent asserts that the referral to CARE of Southeastern Michigan⁴ was not submitted and accepted until August 2016, a little more than a month before the termination hearing. However, the record confirms that respondent was originally referred to Clinton Counseling Center on October 15, 2015, and was discharged due to noncompliance on April 6, 2016. Respondent was also referred to another facility, New Oakland Family Centers, for mental health services and was scheduled for an intake appointment on March 2, 2016, but petitioner did not receive confirmation that she complied with this referral and attended the intake appointment. Even duly considering respondent's contentions regarding the lapse in her insurance coverage, the record does not support respondent's assertion that petitioner failed to make reasonable efforts to promote reunification.

Finally, respondent asserts that the trial court clearly erred in finding that termination of her parental rights was in the children's best interests. We disagree.

Once a statutory ground for termination has been established, "the trial court must find that termination of parental rights is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (citations omitted). Whether termination of parental rights is in the child's best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews for clear error a trial court's finding that termination of parental rights is in the child's best interests. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

The trial court may consider several factors when deciding if termination of parental rights is in a child's best interests, including "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 Olive/Metts*, 297 Mich App at 40 (citations omitted). The trial court may also consider psychological evaluations, the child's age, and the parent's continued involvement in domestic violence. See *In re Jones*, 286 Mich App at 129 (considering in the best interests analysis (1) a psychological evaluation regarding the respondent, (2) the respondent's parenting skills during parenting time, (3) the respondent's history of involvement in domestic violence situations and (4) the age of the child and the respondent's bond with the child).

⁴ The acronym CARE stands for "Community Assessment Referral and Education."

The trial court did not clearly err when it found that termination of respondent's parental rights was in the best interests of the four minor children. At the time of the termination hearing, the children had been in foster care for four years. During this time, respondent was offered a multitude of services that she either did not meaningfully participate in or benefit from. In addition to struggling with substance abuse and mental health issues, respondent could not obtain and maintain suitable housing and a legal source of income. Respondent was simply not able to safely parent her children and respond to their needs. We recognize that respondent contends that the bond between her and the children weighed in favor of preserving her parental rights. While the testimony established that the children loved their mother, they were also bonded to the maternal aunt and uncle who had cared for them during the past four years and were doing well in their home. Further, the evidence established that respondent's lack of reliability and consistency was having a negative impact on her children. For example, the record contains evidence that visitation with respondent was detrimental to the children's well-being. Specifically, after parenting time with respondent, the children experienced heightened anxiety and they exhibited negative behaviors. After having been in foster care for four years, the children needed stability, consistency, and permanency. Achieving these goals was particularly critical considering that three of the four children had special needs. The oldest daughter suffered from depression and anxiety disorders. She had been discovered cutting herself. Another daughter had displayed signs of PICA, a condition that caused her to chew and gnaw on her wooden bed frame. Respondent's son, diagnosed with autism, required a parent reliable enough to provide for his special needs. Considering these circumstances, termination of respondent's parental rights was warranted to ensure the consistency and permanency necessary to foster the children's continued growth and development.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Amy Ronayne Krause