

STATE OF MICHIGAN
COURT OF APPEALS

In re P. M. MARLOW, Minor.

UNPUBLISHED
December 19, 2017

No. 338107
Wayne Circuit Court
Family Division
LC No. 15-521305-NA

Before: METER, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the child will be harmed if returned to the parent). We affirm.

The child was removed from respondent's care at birth because she was born testing positive for opiates. Respondent admitted using heroin while pregnant with her. Children's Protective Services (CPS) was unable to verify respondent's address or assess the suitability of her home because she failed to comply with their investigation. In December 2015 respondent made admissions to a temporary custody petition alleging substance abuse and an unfit home environment. She was court ordered to participate in a treatment plan at the dispositional hearing in January 2016. One year later, petitioner filed a termination petition because respondent had not made progress on her treatment plan. Following a permanent custody hearing, the court terminated respondent's parental rights in March 2017.

Termination of parental rights was proper under MCL 712A.19b(3)(c)(i), (g), and (j) because the conditions that led to the adjudication continued to exist, respondent was unable to provide proper care and custody, and the minor child would be at risk of harm in respondent's care. At the time of the adjudication respondent had a serious drug problem and unsuitable living conditions. By the time of the termination hearing, there was no evidence respondent had addressed her drug issues or obtained suitable housing. Although respondent had enrolled in a methadone program three days before the best-interest hearing, she admitted to last using heroin right before she entered the methadone clinic, in March 2017. Respondent's substance use interfered with her ability to provide proper care of the child and put the child at risk of harm. Aside from her judgment being impaired while high on drugs, respondent came to visits smelling of smoke even though the child had asthma and the smoke exposure could have compromised the child's breathing.

Although respondent claims that there was no evidence that her issues were not rectifiable within a reasonable time, there was no indication that she could swiftly resolve her issues given that she was on drugs and pills for over 15 years and had not been able to remain drug free for any significant length of time. Moreover, respondent's delay in addressing her substance addiction demonstrated her lack of commitment to the child and her insensitivity to the amount of time the child had been in foster care. Respondent insisted that she delayed participation in the methadone treatment because she did not have identification. However, this was something that could have been resolved early in the case.

In her brief on appeal respondent argues that the agency failed to make reasonable efforts toward reunification of respondent and her child. Because this issue was not raised before the trial court, review is limited to plain error affecting substantial rights. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011).

Under MCL 712A.19a(2), “[r]easonable efforts to reunify the child and family must be made in *all* cases” except those involving certain aggravated circumstances not present in this case. *In re Mason*, 486 Mich 142, 152, 158-159; 782 NW2d 747 (2010). Absent reasonable efforts to provide services aimed at reunification, termination of parental rights may be premature. *Id.* See also MCL 712A.19a(8)(c); *In re Newman*, 189 Mich App 61, 66-70; 472 NW2d 38 (1991). However, while the DHHS has a responsibility to provide services, “there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App at 248.

Respondent claims that therapy was never provided to her and that she was not promptly referred for treatment. The trial court specifically found that reasonable efforts toward reunification were made. The trial court's record supports this finding. The record shows that respondent was referred to parenting classes, substance abuse treatment, and individual therapy but was terminated from services for failing to comply. When she went to parenting classes, she came to class late. Every month the agency compiled and provided respondent a list of housing resources to help her find housing, but there was no indication she had made any progress. The caseworker offered to re-refer respondent to substance abuse treatment even after the termination petition was filed. Thus, it was not that reasonable efforts were not made, but that respondent failed to participate in the services provided.

Respondent argues that she wanted inpatient substance abuse treatment, which was not provided to her. However, her insurance provider would not cover the cost of inpatient treatment and there was no indication that inpatient services were necessary. Respondent's psychological evaluation indicated that substance abuse services were imperative because she was dependent on heroin. She needed a program that could assist her in detoxing. Respondent testified that she completed a three-day detox program at Harbor Light in September 2016 but that detox did not work for her because she immediately returned to abusing drugs. Moreover, respondent was referred to a long-term treatment facility following detox but chose not to go. The trial court did not clearly err in concluding that the DHHS satisfied its statutory obligation to make reasonable efforts toward reunification, and termination was not premature. See *In re Mason*, 486 Mich at 152. Thus, there is no merit to respondent's argument that petitioner failed to make reasonable efforts to rectify the conditions that caused the child's removal.

The trial court also did not err in its best-interest determination. “Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5) and MCR 3.977(E)(4). “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews a trial court’s finding that termination is in the child’s best interests for clear error. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

Respondent’s significant substance abuse issues compromised her ability to provide a safe home environment for the child. Moreover, the child has severe special needs, including autism, cognitive and speech impairments, GERD, eating issues, tongue tie, sensitive skin, and microcephaly. As the trial court noted, the child requires an attentive caregiver to meet her demanding needs of supervision, daily care, and regular medical appointments. Respondent has not demonstrated that she could be such a caregiver. She was inappropriate at visits, falling asleep when she showed up, and she never demonstrated a commitment to this child who required more care than an average child.

Although respondent argues that she had a close bond with the child, the evidence suggested otherwise. Respondent did not visit on a consistent enough basis to create a strong bond with her child. There was no testimony about any bond between respondent and the child. Moreover, the child was placed in a foster home with a foster mother who was willing to adopt her. Her foster mother had many supports to assist with the rigors of the child’s demanding care due to her special needs. Thus, the trial court did not err in its best-interest determination.

Affirmed.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Douglas B. Shapiro