STATE OF MICHIGAN

COURT OF APPEALS

In re MCC, Minor.

UNPUBLISHED
February 20, 2018

No. 338740
Wayne Circuit Court
Family Division
LC No. 07-475445-NA

In re JLC, Minor.

Nos. 338807; 339412
Wayne Circuit Court
Family Division
LC No. 07-475445-NA

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

The circuit court terminated the respondent-parents' rights to their toddler son, but declined to terminate their rights to an infant son, following a lengthy child protective proceeding. The Department of Health and Human Services (DHHS) contends that termination of the parents' rights to the infant was supported by respondent-mother's extensive history of untreated mental health issues and episodes of violence, as well as respondent-father's failure to acknowledge these concerns. We agree and therefore reverse the circuit court's decision in that regard. Respondent-parents, on the other hand, challenge the termination of their rights to their toddler son. We discern no error in that regard and affirm.

I. BACKGROUND

Respondents have been together since the late 1990s. In 2000, they gave birth to their first child, TC, but quickly relinquished care to respondent-father's mother. TC somehow fell through the proverbial cracks and did not come to the attention of Child Protective Services (CPS) or the DHHS until she was 15. Although she was made a part of the current child protective proceedings, TC remains in her grandmother's care and the DHHS did not pursue termination of her parents' rights. In 2003, respondents had another son, QC. The DHHS took him into care and terminated respondents' parental rights in 2009, based on abandonment and neglect. Respondent-mother gave birth to KC in 2009, and her parental rights were terminated

14 months later. In 2011, respondents welcomed JC into the world. The DHHS immediately took him into care and the parents' rights were terminated when the child was four months old.

Mother gave birth to JLC on August 23, 2015. The DHHS immediately took JLC into custody. Respondents were living in an unsuitable home without a hot water heater. And mother had threatened hospital staff with violence. Given the DHHS's long relationship with respondents, the agency was well aware that mother had untreated mental health issues.[1] (Despite mother's longstanding, and obvious, mental health issues, father claimed he was unaware of her condition.) Mother's parent-agency agreement required her to submit to psychological and psychiatric evaluations. She delayed in submitting. The parent-agency agreement also required mother to participate in individual counseling, focusing on anger management. As respondents lacked transportation, the DHHS arranged for anger management therapists to come to their home. Two professional counselors, specially trained to deal with patients suffering from anger issues, quit because of mother's threats against them. The DHHS repeatedly changed the caseworker assigned to the matter because mother persisted in threatening the workers. Mother did not submit to a psychiatric evaluation until late in the proceedings and was ultimately diagnosed with bipolar disorder, post-traumatic stress disorder stemming from childhood sexual abuse, and borderline intelligence.

Mother gave birth to her sixth child, MC, on December 1, 2016. In the hospital, mother again threatened violence against the hospital staff. As a safety precaution, the hospital moved MC and listed him under an alias. The DHHS took MC directly into care upon his hospital release.

Throughout the proceedings, mother also exhibited violent outbursts in the court building. She physically and verbally assaulted JLC's foster parents. On another occasion, mother charged MC's foster father and slapped him in the face and chest. She often stormed out of the courtroom and was occasionally ordered to leave. As a result of mother's behavior, supervised parenting-time sessions were moved to a police station. During one visit, mother refused to feed MC soy formula, insisting that he did not need it. The child cried for 40 minutes, causing such a distraction that the police station refused to host additional visits. Ultimately, the court suspended mother's parenting time. Father chose not to attend without her.

Despite mother's diagnosis and extreme behavior, she insisted throughout the child protective proceedings that she did not suffer from mental illness. As a result, she never started medication to regulate her bipolar disorder. She also never completed individual counseling. And father refused to separate from mother to plan separately for his children. Father also failed to address the only other issue identified as to him—substance abuse. He appeared for only three out of 72 random drug screens and was unable to complete in-home substance abuse therapy given his significant other's violent behavior toward the therapists. As a result, the DHHS sought termination of respondent-parents' rights to both JLC and MC. Ultimately, the court found statutory grounds to terminate the parents' rights to both children. The court also found

[1] In 2009, mother was involuntarily committed and was diagnosed with "psychotic disorder."

termination to be in JLC's best interests. However, the court declined to terminate the parents' rights to MC and ordered the DHHS to continue services directed toward reunification.

II. BEST INTERESTS OF MC

In Docket No. 338740, the DHHS appeals the circuit court's determination that termination of respondent-parents' rights was not in MC's best interests. As noted, the court found statutory grounds supporting termination of both parents' rights. Specifically, the court found that termination of mother's parental rights was supported by MCL 712A.19b(3)(g) (failure to provide proper care and custody), (3)(j) (reasonable likelihood of harm to the child if returned to the parent's care), and (3)(i) (parent's rights to other children have been terminated based on serious neglect or abuse and prior attempts at rehabilitation have failed). The court cited only MCL 712A.19b(3)(i) in relation to the termination of father's rights.[2]

"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). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The lower court should weigh all the evidence available to it in determining the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Relevant factors include "the child's bond to the parent, the parent's parenting ability, [and] the child's need for permanency, stability, and finality. . . ." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, [and] the children's well-being while in care. . . ." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The parent's history of mental health issues is a proper consideration. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). Also relevant are the advantages of the child's foster placement over placement with the parent, *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009), and the length of time the child has been in care, *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 64; 874 NW2d 205 (2015). "With respect to the trial court's best-interests determination, we place our focus on the child rather than the parent." *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016), citing *Moss*, 301 Mich App at 87.

A circuit court "has a duty to decide the best interests of each child individually," *Olive/Metts*, 297 Mich App at 42, and the court complied with that duty here. This Court clarified this duty in *White*, 303 Mich App at 715-716:

> We conclude that this Court's decision in *In re Olive/Metts Minors* stands for the proposition that, if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children's best interests. It does not stand for the proposition

[2] As noted below in relation to respondents' challenge to the termination of their parental rights to JLC, the DHHS adequately supported these statutory grounds for termination.

> that the trial court errs if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child's best interests. [Emphasis in original.]

In this case, the best interests of JLC and MC did not significantly differ. Neither child could be returned to their parents' care for safety reasons. Respondents had lost custody of four other children, with their rights terminated to three. Mother was violent and suffered from mental illness, but had not benefitted from services provided in multiple child protective proceedings. Father refused to acknowledge mother's condition or to separate from her and did not adequately address his substance abuse issues. Both JLC and MC were removed from respondents' care at birth and had been placed in nonrelative foster care with families who wished to adopt.

The only difference between JLC and MC is a year in age and therefore a year in foster-care placement. This distinction provides no reasonable explanation for the court's decision to terminate respondents' parental rights to JLC and not MC. The factors supporting that termination was in JLC's best interest are strong; JLC would not be safe if returned to the home his volatile mother and submissive father. Services spread over nearly a decade have not rectified this situation. And additional attempts at services, which mother insists she does not need, will not render the home safe for MC. Accordingly, the circuit court erred in concluding that termination was not yet in MC's best interests.

III. REASONABLE EFFORTS

In relation to both children, respondents contend that the DHHS did not make reasonable efforts at reunification because it failed to provide specialized services to accommodate their disabilities under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. Respondents specifically cite their low IQs—67 and 70—and the resultant need for more hands-on assistance to comply with their service plans.

To preserve a challenge to the reasonableness or adequacy of reunification efforts, a respondent must object when the service plan is adopted or soon thereafter. *In re Frey*, 297 Mich App at 247; *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Respondents' service plan had been in place since shortly after JLC was taken into custody and was officially approved by the court in May 2016. Neither respondent objected to the service plan, nor requested additional or different services or accommodations at those times. Instead, father waited until May 16, 2017, to suggest that accommodated services might be required. Thus, the issue is not properly preserved for appellate review.

Generally, we would review respondents' appellate challenge for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). As the issue is unpreserved, however, our review is limited to plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* (citations and quotation marks omitted).

In Michigan, before a court may consider terminating parental rights, "the DHHS must exert 'reasonable efforts' to maintain the child in his or her parents' care, MCL 712A.18f(1) and (4), and make 'reasonable efforts to reunite the child and family,' MCL 712A.19a(2)." *In re Hicks/Brown*, 315 Mich App 251, 264; 890 NW2d 696 (2016), aff'd in part and vacated in part 500 Mich 79 (2017). "The reasonableness of the efforts provided affects the sufficiency of the evidence supporting the grounds for termination." *Hicks/Brown*, 315 Mich App at 264. There is a commensurate responsibility on the part of a respondent to participate in and benefit from the services provided. *Frey*, 297 Mich App at 248. "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *Terry*, 240 Mich App at 28 (quotation marks and citation omitted).

This Court, in *Hicks/Brown*, 315 Mich App at 282-283, explained what is required of the DHHS and a trial court "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. If no local agency catering to the needs of such individuals exists, the DHHS must ensure that the available service providers modify or adjust their programs to allow the parent an opportunity to benefit equal to that of a nondisabled parent . . . . And if the DHHS shirks these duties, the circuit court must order compliance. Moreover, consistent with MCL 712A.19a(6), if there is a delay in providing the parent reasonably accommodated services or if the evidence supports that the parent could safely care for his or her children within a reasonable time given a reasonable extension of the services period, the court would not be required to order the filing of a termination period merely because the child has been in foster care for 15 out of the last 22 months.
>
> We emphasize that these requirements are not intended to stymie child protective proceedings to the detriment of the children involved. However, "[t]he goal of reunification of the family must not be lost in the laudable attempt to make sure that children are not languishing in foster care while termination proceedings drag on and on." 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. If honest and careful evaluation reveals that no level or type of services could possibly remediate the parent to the point he or she could safely care for the child, termination need not be unnecessarily delayed. Yet, such assessment may not be based on stereotypes or assumptions or an unwillingness to make the required effort to accommodate the parent's needs. [Citations omitted.]

The DHHS did provide reasonable accommodations for respondents in an attempt to reunify parent and child. The DHHS almost immediately referred both respondents for

psychological evaluations and referred mother for a psychiatric evaluation. Respondents, particularly mother, delayed in securing these evaluations. While psychological testing revealed that respondents had low IQ scores, the testing psychologists observed that both respondents were coherent and understood the proceedings and the evaluations. Neither required explanation to understand the concepts explored in the exams. The psychologist described that mother was oriented, had intact recall and adequate memory, exhibited "good attention span" without distraction, and demonstrated "goal-directed" thinking. Mother's "perception, . . . her interpretation of external events and circumstances was good." According to the evaluator, mother's speech "was clear, coherent and spontaneous and had no difficulty comprehending questions." Indeed, mother had earned her GED and has been employed in the past. She declined the DHHS's offer of employment services.

Less than one year later, mother underwent a second psychological evaluation. Again, mother was fully able to understand the examination, was coherent, and showed no signs of deficit. Given mother's IQ, the evaluator opined that she may "have difficulty competently formulating and processing information, which includes making decisions comparable to her peers who are functioning within the average range and would benefit from additional help and support."

Respondents' actions prevented the DHHS from providing additional and more intensive support. The DHHS recognized respondents' transportation limitations and attempted to coordinate services in their home. Respondent's volatile temper and violent outbursts prevented these services, however. She twice frightened trained anger management therapists from her home. Respondents did not follow through with evaluations and therapy and therefore the DHHS could not readily determine what types of accommodations might assist them. And no foster care worker stayed on the case long enough to develop the type of relationship necessary to realize the need for special services. But this too was caused, in large part, by mother's threatening behavior. Moreover, mother repeatedly denied having any mental health issues that required treatment, let alone special accommodation, and father remained relatively silent throughout.

Based on this record, we discern no deficits in the level and types of services DHHS offered respondents before seeking termination. Accordingly, we reject respondents' request to deem the evidence inadequate to support the statutory grounds for termination.

IV. STATUTORY GROUNDS TO TERMINATE AS TO JLC

Respondents also challenge the evidentiary support for the statutory grounds underlying the court's termination of their parental rights to JLC. The court terminated mother's parental rights pursuant to MCL 712A.19b(3)(c)(*i*) (failure to rectify the conditions that led to adjudication), (g) (failure to provide proper care and custody), (j) (reasonable likelihood of harm if returned to parent's care), and (i) (parental rights to other children have been terminated based on serious neglect or abuse). The court terminated father's rights under MCL 712A.19b(3)(c)(*i*) and (i).

Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground

has been proven by the DHHS. MCR 3.977(A)(3); *Trejo*, 462 Mich at 350. We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "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." *Moss*, 301 Mich App at 80 (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

Termination is supportable under MCL 712A.19b(3)(c)(*i*) when at least 182 days have passed since the initial disposition and "[t]he 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." The conditions that led to adjudication in this case—mother's untreated mental health issues and father's substance abuse—remained serious concerns by the time of termination. Father had participated in only three drug screens and did not complete substance abuse counseling. Mother continued to deny that she had any mental health issues and therefore had not begun psychotropic medication to treat her bipolar disorder. Because she scared off her therapists, mother had not completed counseling for her anger management issues. Given father's lack of motivation and mother's refusal to acknowledge her problems, the court properly determined that these conditions would not be rectified within a reasonable time.

Termination is supportable under factor (g) when "[t]he 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." Mother was unable to provide proper care and custody for JLC because lack of anger management skills and untreated mental health issues left her severely volatile. Although there is no record evidence that mother ever harmed her children or directed her anger at them, the court could reasonably infer that she would eventually as the children grew older. As mother had done nothing to rectify this condition, the court properly found termination supportable under factor (g).

Termination is supported under factor (i) when "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." Respondents conceded that they had previously lost their parental rights to three other children—QC, KC, and JC—due to serious neglect. The records establish that the DHHS provided extensive rehabilitative services in those child protective proceedings, with no success. For example, respondents "failed to substantially and consistently comply with the case plan or make sufficient progress to allow [QC] to be returned safely home." Just as in this case, mother refused to acknowledge her mental health issues and her need for services and father did not submit to drug screens or appear for appointments, resulting in the termination of their parental rights to QC. Respondents appear to have learned nothing from the prior terminations of their parental rights, and termination was supportable under this factor.

Finally, we discern no error in the court's reliance on factor (j) in terminating mother's parental rights. In this case, "[t]here 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." MCL 712A.19b(3)(j). Mother has exhibited extreme anger management problems throughout these proceedings. She physically assaulted JLC's foster father in the hallway outside the courtroom. She also assaulted MC's foster parents. Mother frightened away two therapists who were specially trained to treat individuals with anger management issues. Without treatment, it is reasonable to conclude that mother will eventually turn her anger on her child or that he may be emotionally or physically harmed by getting in the cross hairs.

V. BEST INTERESTS OF JLC

Respondents contest the circuit court's determination that termination of their parental rights was in JLC's best interests. They assert that the court failed to adequately consider the parent-child bond, the progress attained on their respective plans, and the ability to provide JLC with a home and his daily necessities of life.

"The strength of the child[]'s bond was only one factor among many" for the circuit court to evaluate. *White*, 303 Mich App at 714. JLC interacted with respondents during supervised parenting-time sessions. However, any bond JLC shared with his parents was superficial at best. JLC had been in the same foster home since a few days after his birth, he was thriving, and his foster parents wished to adopt him. As JLC aged, he began to appear uncomfortable around his parents.

Moreover, respondents were only minimally successful at complying with their parent-agency agreements. The only goal they met was completing parenting classes. Respondents did not consistently attend parenting time, with father ceding his allotted time with his children after mother's parenting time was suspended. Even before mother's suspension, respondents often left parenting-time sessions early and mother wasted sessions by arguing about the child protective proceedings with the caseworker. Overall, respondents cannot laud their progress when they made no effort to overcome their main obstacles—substance abuse and untreated mental illness.

We affirm in part, reverse in part and remand for further action consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle