STATE OF MICHIGAN

COURT OF APPEALS

In re JONES/SMITH, Minors.

UNPUBLISHED
February 13, 2018

No. 339128
Jackson Circuit Court
Family Division
LC No. 03-003711-NA

In re JONES, Minors.

No. 339824
Jackson Circuit Court
Family Division
LC No. 03-003711-NA

Before: RONAYNE KRAUSE, P.J., and FORT HOOD and O'BRIEN, JJ.

PER CURIAM.

In Docket No. 339128, respondent-mother appeals as of right the trial court order terminating her parental rights to the minor children JAJ, JDJ, JEJ, and BGS under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist). In Docket No. 339824, respondent-father appeals as of right the trial court order terminating his parental rights to JAJ, JDJ, and JEJ under MCL 712A.19b(3)(c)(*i*). We affirm.

In Docket No. 339128, mother first argues that the trial court failed to hold permanency planning hearings as required under MCR 3.976(B)(2) and MCL 712A.19a(1). We disagree.

Mother did not preserve this issue in the trial court. This Court reviews unpreserved issues for "plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "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." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (quotation marks and citations omitted).

In pertinent part, MCL 712A.19a(1) states "if a child remains in foster care and parental rights to the child have not been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home." See also MCR 3.976(B)(2). MCR 3.976(B)(3) provides that

> During the continuation of foster care, the court must hold permanency planning hearings beginning no later than 12 months after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a review hearing.

The purpose of a permanency planning hearing is "to review the status of the child and progress being made toward the child's return home or to show why the child should not be placed in the permanent custody of the court." MCL 712A.19a(3). "At the conclusion of a permanency planning hearing, the court must order the child returned home unless it determines that the return would cause a substantial risk of harm to the life, the physical health, or the mental well-being of the child." MCR 3.976(E)(2).

> At the permanency planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing. The court shall obtain the child's views regarding the permanency plan in a manner appropriate to the child's age. The parties must be afforded an opportunity to examine and controvert written reports received by the court and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available. [MCR 3.976(D)(2).]

Furthermore, according to MCR 3.976(D)(3):

> The court, upon receipt of a local foster care review board's report, shall include the report in the court's confidential social file. The court shall ensure that all parties have had the opportunity to review the report and file objections before a dispositional order, dispositional review order, or permanency planning order is entered. The court may at its discretion include recommendations from the report in its orders.

Each parent is entitled to notice of the disposition review and permanency planning hearing and an opportunity to participate in that hearing. MCR 3.976(C)(1).

In this case, the trial court held the first dispositional review and permanency planning hearing on May 25, 2016. See MCR 3.976(B)(3). This was well within the 12-month deadline in MCR 3.976(B)(2) because the children were removed on December 15, 2015. Mother attended this hearing. The trial court stated that it reviewed the reports provided by the Department of Health and Human Services (DHHS) and asked if any of the parties had any questions or objections to the recommendations in the reports. The parties did not have any questions or objections to the recommendations. Therefore, the trial court implemented the recommendations in its order and set the next hearing. Thus, mother's contention that the trial

court failed to hold a permanency planning hearing is without merit, and she has not demonstrated plain error affecting her substantial rights. *In re Utrera*, 281 Mich App at 8.

Next, mother contends that the DHHS failed to provide accommodating services to reunify her with the children. We disagree.

Mother also failed to preserve this issue in the trial court. As a result, this Court will review this issue for "plain error affecting substantial rights." *Id*.

"When a child is removed from a parent's custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). However, "[w]hile 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).

At the outset, we note that mother does not identify any disability, what accommodations the DHHS should have offered to her, or how any additional accommodations would have made a difference in the trial court proceedings in this case.

Furthermore, the psychologist diagnosed mother with a personality disorder with features of narcissism, borderline, and paranoia. Mother was referred to individual counseling. However, she was discharged unsuccessfully after missing too many sessions. In addition, mother was referred to drug screenings, but missed between 25 and 30 screens. Finally, mother participated in parenting classes but she failed to show any benefit from those classes. As a result, the evidence does not support mother's contention that she would have benefited from additional services even if they were offered. See *id*. (stating that the respondent has the responsibility "to participate in the services that are offered"). Accordingly, the trial court did not commit plain error affecting mother's substantial rights in concluding that the DHHS made reasonable efforts for reunification. *In re Utrera*, 281 Mich App at 8.

Mother also argues that the trial court erred in terminating her parental rights under MCL 712A.19b(3)(c)(*i*). We disagree.

"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 at 139. This Court reviews "the trial court's findings of fact under the clearly erroneous standard." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009); MCR 3.977(K). "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).

Termination is appropriate under MCL 712A.19b(3)(c)(*i*) when the respondent parent has "not accomplished any meaningful change in the conditions existing by the time of the adjudication." *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

Here, the original dispositional order was entered on March 8, 2016, and the termination hearing was held on June 20, 2017. Thus, more than 182 days had "elapsed since the issuance of [the] dispositional order." MCL 712A.19b(3)(c)(*i*).

The record supports the trial court's conclusion that termination was proper under MCL 712A.19b(3)(c)(*i*). In this case, the conditions that led to the adjudication were chronic homelessness and physical neglect. At the termination hearing, the trial court's determination was largely based on the psychological evaluation. The psychologist testified that personality disorder is one of the hardest things to treat and that it would affect mother's ability to parent and put her children first. She opined that mother would have to be willing to engage in intensive therapy twice a week for 18 to 24 months.

Additionally, mother did obtain housing, but the caseworker believed that her home was too small for her and five children.[1] Futher, the evidence presented at the termination hearing showed that mother failed to successfully complete and benefit from any of the services offered in this case. Thus, she failed to rectify the conditions that led to adjudication. See *In re Trejo*, 462 Mich 341, 360 n 16; 612 NW2d 407 (2000) (stating that a respondent-parent's "failure to comply with [the parent-agency agreement is] indicative of neglect).

In addition, at the time of the termination hearing, JAJ was nine years old, JDJ was seven years old, JEJ was five years old, and BGS was two years old, and they had been in care for 18 months. The psychologist believed that mother would require 18 to 24 months of intensive therapy before the children could be returned to her. Thus, there was clear and convincing evidence to support the trial court's conclusion that the conditions that led to the adjudication continued to exist and there was no likelihood that they would be rectified within a reasonable time considering the children's ages. *In re VanDalen*, 293 Mich App at 139. Therefore, the trial court properly terminated mother's parental rights under MCL 712A.19b(3)(c)(*i*).

Finally, mother argues that the trial court erred in determining that termination of her parental rights was in the children's best interests.

"[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 the trial court's "decision regarding the child's best interest" for clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (citation and quotation marks omitted). "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 at 296-297.

"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 Minors*, 297 Mich App at 40. When the trial court considers a child's best interests, the focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "The trial

[1] Mother gave birth to an additional child during this case.

court should weigh all the evidence available to determine the child's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "In deciding whether termination is in the child's best interests, the court may consider 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 Minors*, 297 Mich App at 41-42 (citations omitted). A trial court can also consider the length of time the child "was in foster care or placed with relatives[,]" and whether it was likely that "the child could be returned to [the parent's] home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 248-249.

Contrary to mother's argument, the trial court did not only consider the amount of time that the children were in care when making its best-interests determination. Indeed, the trial court had "significant questions" regarding mother's parenting ability. The trial court noted that the children had been in care for 1½ years. It reasoned that the children needed permanency, stability, and finality, and that the foster-care homes were willing to provide the children with the required permanency. In addition, the trial court noted that children were loved and flourishing in their respective foster-care homes.

Mother has failed to demonstrate any error in the trial court's determination. The caseworker testified that there was not a strong bond between mother and the children, and that the children were all doing well in their respective, preadoptive foster homes. Further, mother participated in services in this case for 18 months and failed to successfully complete and benefit from any of the programs. Finally, testimony showed that mother would require 18 to 24 months of intensive therapy to treat her personality disorder, which affected her ability to successfully parent the children. Based on the record, the trial court did not clearly err in finding that termination of mother's parental rights was in the children's best interests. *In re Olive/Metts Minors*, 297 Mich App at 40.

In Docket No. 339824 father argues that the trial court erred in terminating his parental rights under MCL 712A.19b(3)(c)(*i*). We disagree.

Contrary to father's argument, the trial court did not terminate his parental rights based solely on his incarceration. In fact, the trial court did not mention father's incarceration in its ruling. Like mother, the trial court based its determination on the results of father's psychological evaluation. Father was diagnosed with a personality disorder with anti-social and dependent features. The psychologist stated that father's disorder was more difficult to treat than mother's and that it would probably take more than 18 to 24 months of intensive therapy to overcome it. The trial court reasoned that the likelihood of mother or father overcoming their personality disorders to the point that they were capable of parenting the children was uncertain and it was unwilling to wait an additional 18 to 24 months (or longer) to assess whether mother or father would be able to effectively parent the children after the children had already been in care for 18 months.

In addition, similar to mother, father failed to make any progress in this case. In the three months that father was released from jail, he failed to participate in and benefit from services. Father was ordered to complete a substance-abuse assessment, participate in random drug screens, and complete parenting classes. He missed drug screenings on three occasions, he tested positive for heroin at one drug screen, and he tested positive for alcohol at another. He

participated in two parenting times, but he had not seen his children since March 2, 2016. Father did not complete a substance-abuse assessment or participate in any parenting classes. Finally, he was arrested following a domestic violence incident and incarcerated at the time of the termination hearing. See *In re White*, 303 Mich App at 710 ("A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide proper care and custody.").

Finally, the caseworker testified that even if father was released in August 2017, he would have to start at the "beginning" because he had not participated in any services. As discussed above, at the time of the termination hearing, JAJ was nine years old, JDJ was seven years old, and JEJ was five years old, and they had been in care for 18 months. Thus, there was no reasonable expectation that father would be able to provide proper care and custody within a reasonable time considering the children's ages. Accordingly, the trial court did not clearly err in concluding that termination was proper under MCL 712A.19(b)(3)(c)(*i*).

In addition, father argues that the DHHS failed to make reasonable efforts to reunify him with his children. We disagree.

Father failed to preserve this issue in the trial court. Therefore, this Court will review this issue for "plain error affecting substantial rights." *In re Utrera*, 281 Mich App at 8.

At the outset, father does not specify what additional services he should have been offered or that any of these unspecified services would have made a difference in the outcome in the trial court proceedings, especially considering the psychological evaluation. In addition, father was released for three months of this case, and he was ordered to participate in services. Father minimally participated, but he did not benefit from services. Therefore, he failed to show that he would have participated in and benefited from additional services even if they were offered. *In re Frey*, 297 Mich App at 248. Accordingly, the trial court did not clearly err in finding that the DHHS made reasonable efforts to secure reunification. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). Thus, father has not shown plain error, and he is not entitled to relief. *In re Utrera*, 281 Mich App at 8.

Lastly, father contends that the trial court erred in finding that termination was in his children's best interests.

In regard to the children's best interests, the trial court explained that it had "significant questions" concerning father's parenting skills. The trial court also noted that the children had been in care for 18 months, that they required stability, and that all the children were flourishing in their preadoptive foster-care homes.

The trial court's ruling in this regard was brief; however, we do not believe that this establishes a ground for reversal considering the history of this case. First, the children had been in care for 18 months and were doing well in their preadoptive foster-care homes. Second, father failed to participate in or benefit from services even when he was released from jail. Instead, he was again arrested following a domestic violence incident and sentenced to prison. Finally, the psychologist testified that father would require intensive therapy for at least 18 to 24 months to treat his personality disorder, but there was no guarantee that the children could be returned at

that time. The psychologist also testified that father essentially refused to participate in therapy. Considering the evidence offered at the termination hearing, the trial court did not clearly err in finding that termination of father's parental rights was in his children's best interests. *In re Olive/Metts Minors*, 297 Mich App at 40.

Father also argues that the trial court erred in not deciding the best interests of each child individually. See *In re Olive/Metts*, 297 Mich App at 42. However, *In re White*, 303 Mich App at 715-716, this Court explained 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." Father has not articulated any significant differences between his children that would require the trial court to make individualized best interests findings for each child. Therefore, he has not demonstrated any error requiring reversal.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Karen M. Fort Hood
/s/ Colleen A. O'Brien