

STATE OF MICHIGAN
COURT OF APPEALS

In re PISZKER-GARRISON/PISZKER/
GARRISON, Minors.

UNPUBLISHED
February 15, 2018

Nos. 339485; 339486
Berrien Circuit Court
Family Division
LC No. 2016-000061-NA

Before: MARKEY, P.J., and M. J. KELLY and CAMERON, JJ.

PER CURIAM.

In Docket No. 339485, respondent-father appeals as of right the termination of his parental rights to the minor children SP, AG, and LG, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), MCL 712A.19b(3)(c)(ii) (other conditions have not been rectified), and MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm.¹

In Docket No. 339486, respondent-mother appeals as of right the termination of her parental rights to all four minor children under MCL 712A.19b(3)(c)(i), (c)(ii), and (g). On appeal, she argues that termination was not in the best interests of the children, and she was denied reasonable efforts. We affirm.

I. BACKGROUND

Mother is the biological and legal mother of all four minor children. Father is the biological and legal father to SP, AG, and LG. Father had not signed an affidavit of parentage for RP and was not on RP's birth certificate because he was incarcerated at the time of her birth. However, both parents confirmed that he was RP's biological father and that he regarded RP as

¹ At the start of the case, father was named RP's putative father because he was incarcerated at the time of RP's birth and was, therefore, not identified as RP's legal father. During the preliminary hearing, both parents testified that he was her father, but when the termination petition was filed, John Doe was listed as RP's putative father because father failed to take any steps toward being recognized as RP's legal parent. The trial court terminated John Doe's parental rights to RP under MCL 712A.19b(3)(a)(i) (the child's parent is unidentified and unidentifiable). Because father has not raised any issues concerning RP, we decline to address the trial court's findings on this statutory ground.

his own child. At the time of the termination hearing, the trial court considered RP's father as John Doe because father had not taken the necessary steps to become RP's legal father.

Mother and father pleaded no contest to a petition that alleged that on April 26, 2016, AG, who was five years old at the time, was found wandering around unsupervised at the local public library, and she appeared dirty and unkempt. The parents had told SP, who was 12 years old at the time, to supervise AG at a friend's house, but AG had walked away. A library employee asked AG for the names of her parents and found mother and father's contact information in the library records. Attempts to contact mother and father were unsuccessful, so the Buchanan Police Department (BPD) was contacted. A BPD officer traveled to the address that was on file in the library records. Mother told the officer that AG was with SP at a friend's house, but SP was, in fact, already home. Mother stated that she could not leave the house at that time and asked SP to walk to the library to bring her sister home. The BPD officer escorted both girls home.

A Children's Protective Services (CPS) specialist investigated the family on April 28, 2016. She found the two older children, SP and RP, at school, and school staff reported that they had concerns about the children's hygiene and that attendance had previously been an issue, though it had recently improved. The CPS specialist went to mother and father's home and knocked on the door, but, despite hearing movement inside, no one answered. The CPS specialist called for police assistance, and an officer arrived. Mother allowed the CPS specialist and the officer into the home. The two younger children, AG and LG, were at the home with mother. The CPS specialist observed the home to be in deplorable condition. The floors were covered in dirty clothes, trash, and other debris that blocked passage through the house. The bathroom sink was full of stagnant water. The bathtub was filled with clothes, and it was evident that the bathtub had not been used recently. There was minimal food in the home and no working appliances or utilities. The family was running electricity from a neighbor's house and had received an eviction notice to vacate the home in less than two weeks. They had been living in the home for six or seven months, and mother stated she had no other place to go with the children, so the officer placed the children in protective custody.

After the children were removed from their parents' care, mother and father successfully addressed most of the issues concerning the home by August 2016. They maintained the cleanliness of the home, paid back rent so that they were no longer at risk of eviction, paid the overdue electricity bill to get the electricity turned back on, and were working toward the payment of their overdue gas bill. However, at that time, the caseworker reported that mother and father both tested positive for THC and opiates at random drug screens on May 25, June 17, and July 13, 2016. The parents were referred to individual counseling, parenting skills training, and substance abuse services.

Mother was arrested in September 2016 for a parole violation and was incarcerated in the county jail from September to November 2016. During that time, father continued to test positive for drugs and both parents missed several parenting times. After mother was released, she and father moved out of their rental house and into the house of a friend, but that housing arrangement only lasted until mid-December 2016.

At the time of the termination hearing in May 2017, mother and father were renting a three-bedroom house that the landlord was in the process of remodeling. The caseworker deemed the rental home unfit for the children at that time because there were no beds or other furniture, the kitchen cabinets were taken off the wall, and the washer and dryer were in the living room. Father had secured employment with sufficient income to support the family, and both parents had attended approximately half of the parenting time sessions. Father had tested clean of illicit substances since January 2017, and, according to the termination report, mother had tested clean since August 2016. However, the caseworker testified that mother tested positive for heroin and morphine the week before the termination hearing, though there was no documentation of the positive screen. Neither parent had engaged in any court-ordered services to which they were referred, despite the fact that they were told numerous times at previous hearings that they needed to begin services.

At the conclusion of the termination hearing, the trial court terminated mother's parental rights to all four children and father's parental rights to the children of which he was the legal father—SP, AG, and LG. The trial court also terminated John Doe's parental rights to RP.

II. FATHER

A. STATUTORY GROUNDS

Father first argues on appeal that the trial court clearly erred in finding a statutory ground for termination of the parental rights to SP, AG, and LG. 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 120, 139; 809 NW2d 412 (2011). “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests.” *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016) (quotation marks and citation omitted). “A finding is clearly erroneous [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (quotation marks omitted; alteration in original).

The trial court terminated father's rights to his legal children under MCL 712A.19b(3)(c)(i), (c)(ii), and (g). Under MCL 712A.19b(3)(c)(i), termination is appropriate if “182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds” that “[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.” Under MCL 712A.19b(3)(c)(ii), termination is appropriate if “[o]ther 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." And under MCL 712A.19b(3)(g), termination is appropriate if "[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." If this Court concludes that the trial court did not clearly err in finding one statutory ground for termination, it "need not consider the additional grounds upon which the trial court based its decision." *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

The trial court can find a statutory ground exists for termination under either MCL 712A.19b(3)(c)(i), (c)(ii), or (g) if "the totality of the evidence amply supports that [petitioner] had 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). Additionally, "[a] lack of cooperation with reunification services, or other court-ordered conditions, can bear on a termination decision, if that lack of cooperation relates to issues of abuse or neglect." *In re LaFrance*, 306 Mich App 713, 729; 858 NW2d 143 (2014). However, this Court warned in *LaFrance* that the failure to cooperate with reunification services "should not be over-emphasized and is not determinative of the outcome of the termination hearing." *Id.* (quotation marks, citation, and alterations omitted).

In this case, father had not completed a single parenting class, substance abuse class, or individual counseling. Additionally, at the time of the termination hearing, he had not obtained suitable housing for his children. We do acknowledge that some progress had been made. He had not tested positive for illicit substances since January 2017, had never refused a drug screen that was offered to him, attended every proceeding regarding his parental rights, and had obtained employment with sufficient income to support his family. However, considering the case had been open for over a year, and father had not rectified housing or worked toward improving his ability to parent his children, we are not left with a definite and firm conviction that a mistake has been made.

In its oral opinion, the trial court emphasized that the parents had not attended parenting classes or completed treatment for substance abuse or mental health. To the extent that the trial court found that termination was appropriate because of lack of participation in services, that finding was not clearly erroneous. It is true that participation in services should not be overemphasized. *In re LaFrance*, 306 Mich App at 729. However, a lack of participation still bears on the decision to terminate, and the fact remains that father had entirely failed to participate in services. In addition, he failed to secure housing after a year. Therefore, the trial court did not err in relying on the lack of services in its decision to terminate father's parental rights.

The petition, to which the parents pleaded no contest, alleged that the family home was in deplorable condition. There was stagnant water in the sinks, dirty clothes piled high in the bathtub, and no working appliances or utilities. The family was running electricity from a neighbor's house and was facing imminent eviction. At the time of the termination hearing, the parents were renting the same home, but it was under construction and was not appropriate for the children to reside. Considering the case had been open for over a year, the trial court

properly concluded that the housing situation would not be rectified in a reasonable time. In fact, the caseworker testified that she was unable to get a reasonable estimate for the completion of construction on the home such that it would be appropriate for the children to move back in.

Turning to supervision of the children, the caseworker's report concerning parenting time visits was relatively positive. However, father only attended half of the scheduled parenting time visits. The caseworker testified that she had seen slight improvement with father's parenting skills over the course of the case, but opined that she did not believe the children would be safe if left with father unsupervised. Not only had he failed to partake in any parenting skills classes, the caseworker expressed concern that father focused only on the youngest child and for the most part ignored the older three children.

In regard to substance abuse, father had tested negative for illicit substances since January 2017 and had never refused a drug screen. The caseworker testified that she tested him at every parenting time and at two or three unannounced home visits. However, the caseworker said the screens were not truly random because father did not have a phone and could not be reached to submit to a screen at any time of any day. She also indicated that father missed half of the scheduled parenting times, meaning he also missed half of the drug screens. Considering this, and that father did not participate in any substance abuse treatment, the trial court did not clearly err in concluding that the issues of substance abuse were not fully rectified. Overall, we conclude that the trial court did not clearly err in determining that the conditions preventing reunification had not been rectified and could not be rectified within a reasonable time. Compare *In re Mason*, 486 Mich at 162-163. Thus, termination of father's parental rights was proper under MCL 712A.19b(3)(c)(i), (c)(ii), and (g).

B. BEST INTERESTS

Father also challenges the trial court's best-interests analysis, arguing that termination was not in the best interests of the children. We disagree.

"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); MCR 3.977(E)(4). "The trial court must find by a preponderance of the evidence that termination is in the best interests of a child." *In re Jones*, 316 Mich App 110, 119; 894 NW2d 54 (2016).

"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*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption," *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014), and "whether it is likely that the child could be returned to her parents' home within the foreseeable future, if at all," *In re Jones*, 316 Mich App at 120 (quotation marks and citation omitted).

The trial court held that it was in the best interests of each child to terminate their parents' parental rights. First, the trial court explained it was crucial that the children have permanency, stability, and finality. The three oldest children were experiencing high anxiety due to the termination proceedings and the uncertainty of where they would live. The caseworker expressed concern that the children had behavioral problems—stemming in part from their anxiety—and the children needed special attention. SP had recently been assessed for special services and qualified for an individualized education plan. She also had another appointment for an overall psychological assessment. The two middle children were doing much better in school. Additionally, the foster parents explained that the youngest child was beginning to display behaviors similar to AP, and an infant mental health program was recommended. Given the specialized care that the children needed, the fact that father failed to participate in any parenting skills classes, and the imminent need for permanency, stability, and finality, the trial court did not err when it concluded that termination was in the children's best interests.

III. MOTHER

A. BEST INTERESTS

Mother also argues that the trial court clearly erred in its determination that termination was in the children's best interests.² We disagree.

As stated previously, “[o]nce 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 at 40, citing MCL 712A.19b(5); MCR 3.977(E)(4). “The trial court must find by a preponderance of the evidence that termination is in the best interests of a child.” *In re Jones*, 316 Mich App at 119.

The trial 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*, 297 Mich App at 41-42 (citations omitted). Additionally, “the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption,” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014), and “whether it is likely that the child could be returned to her parents' home within the foreseeable future, if at all,” *In re Jones*, 316 Mich App at 120 (quotation marks and citation omitted), are important considerations.

In this case, the trial court stated its best-interest findings were specific to each child individually. Importantly, the trial court explained that the children were each suffering from anxiety due to the uncertainty of where they would be. For that reason, the trial court explained

² Mother does not challenge the trial court's determination regarding statutory grounds, and therefore, we do not address the issue. See *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled on other grounds *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000) (stating that we may presume the trial court did not err in its determination on statutory grounds if not challenged on appeal).

that the need for stability, permanency, and finality were high. In order for the children to decrease the anxiety and improve the behavior issues, there needed to be a resolution as to their parents' rights. Mother was continuing to abuse drugs; the caseworker testified to a weak bond with the children—one which was growing weaker as the proceedings continued; mother did not have housing adequate for the children; and there was no relative family member that could take the children. For these reasons, the trial court did not err because it was in the children's best interests that mother's parental rights be terminated.

B. REASONABLE EFFORTS

Mother also argues that the Department of Health and Human Services (DHHS) did not make reasonable efforts to reunify her with her children for the two-month period that she was incarcerated. Because mother “failed to object or indicate that the services provided to [her] were somehow inadequate,” she “fail[ed] to preserve this issue.” *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Thus, we will review the issue for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). “Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *Id.* at 9. However, even if the trial court committed plain error, this Court will not reverse unless the “error seriously affected the fairness, integrity or public reputation of judicial proceedings[.]” *Id.* (quotation marks, citation, and alterations omitted).

“ ‘Reasonable efforts to reunify the child and family must be made in all cases’ except those involving aggravated circumstances,” *In re Mason*, 486 Mich at 152, quoting MCL 712A.19a(2), which are not present in this case. The trial court need not terminate parental rights if “the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child’s home.” *In re Rood*, 483 Mich 73, 105; 763 NW2d 587 (2009) (quotation marks and citation omitted). Moreover, “[t]he state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated.” *In re Mason*, 486 Mich at 152.

Mother's reliance on *Mason* is misguided for two reasons. First, the facts underlying *Mason* are distinguishable from the facts of this case, and, second, record evidence demonstrates that reasonable efforts were made to engage mother while she was incarcerated.

In *Mason*, the trial court terminated the father's parental rights while he was incarcerated. *Id.* at 146. But the father in *Mason* was only offered the opportunity to participate in two hearings that were 16 months apart and there was no evidence that he was ever presented with a case service plan. *Id.* at 154-157. Our Supreme Court concluded that under the facts of that case, the trial court erroneously terminated the father's rights *solely* because of his incarceration. *Id.* at 160. In contrast, mother was only incarcerated for two of the 12 months between the adjudication and the termination hearing, and she did not miss “the crucial, year-long review period during which the court was called upon to evaluate the parents' efforts and decide whether reunification of the children with their parents could be achieved,” as the father in *Mason* did. See *id.* at 155.

Moreover, the record does not support mother's claims that there was no evidence that the DHHS made reasonable efforts to reunite her and the children during the time she was

incarcerated. In fact, the caseworker acknowledged in her report that she had visited mother at least twice while mother was incarcerated, and the caseworker had told mother that substance abuse services would come to the jail. However, because mother would be released soon, mother declined to start services at that time. The caseworker also encouraged mother to participate in groups while incarcerated. Thus, the trial court did not plainly err in its finding that the DHHS had expended reasonable efforts to reunify mother and the children. See *In re Utrera*, 281 Mich App at 8.

Affirmed.

/s/ Jane E. Markey

/s/ Michael J. Kelly

/s/ Thomas C. Cameron