

STATE OF MICHIGAN
COURT OF APPEALS

In re VILLAREAL, Minors.

UNPUBLISHED
March 15, 2018

No. 340263
Saginaw Circuit Court
Family Division
LC No. 16-034911-NA

Before: SAWYER, P.J., and BORRELLO and SERVITTO, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to her two children¹ pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

On June 3, 2016, petitioner filed a petition seeking to remove the minor children and obtain jurisdiction because respondent had been incarcerated and had no plans for the children's care. The petition included further allegations that respondent had serious, untreated mental health diagnoses, including diagnoses of schizophrenia and bipolar disorder. The petition also alleged that respondent had a criminal history, refused to allow her family to interact with the children, and had struck the older child with a belt. The trial court authorized the children's removal and adjourned the proceedings pending appointment of an attorney for respondent.

At a preliminary hearing on June 10, 2016, counsel for respondent indicated that respondent had refused to discuss the matter because she was fixated on the criminal charges against her. The trial court adjourned the proceeding and ordered that a guardian ad litem be appointed for respondent. At the continued preliminary hearing on June 15, 2016, respondent was able to participate remotely from the jail, and the trial court authorized the petition.

¹ The trial court also terminated the parental rights of "any named or unnamed putative father(s)." There was testimony that each child had a different father, and respondent testified that she did not know the name of either child's father. Nobody came forward and claimed to be the father of either child in response to the publication of notice, and there is no father involved in the instant appeal.

The lawyer-guardian ad litem (LGAL) for the children subsequently moved to suspend respondent's parenting time. At a hearing on September 13, 2016, Jennifer Irish-Beaudo, the foster-care case manager, testified that respondent had been released from jail in mid-July and began participating in parenting sessions, which Irish-Beaudo supervised. Irish-Beaudo indicated that the older child was causing physical harm to herself before and after the sessions. Irish-Beaudo stated that respondent completed an intake session with community mental health but failed to keep a scheduled appointment for a psychological assessment. At times, Irish-Beaudo had to call security because respondent became hostile and aggressive during parenting time sessions. Respondent had threatened to leave parenting time visits with the children and take them home, and there was an incident where respondent tried to grab the younger child from Irish-Beaudo while they were in the elevator. Irish-Beaudo testified that respondent had also reportedly threatened to kill the foster parents. Respondent testified that the older child had not harmed herself before being placed in care. Respondent admitted that she became loud and aggressive at one parenting time session, but explained that she was concerned about the older child's injuries.

Additionally, at the September 13, 2016 hearing, respondent pleaded to the following allegation in the petition, which was a slightly modified version of the allegation as it had appeared in the original petition:

[Respondent] has history of mental illness with a diagnosis of schizophrenia and bi-polar and has not participated in mental health treatment or taken her medication in approximately four years which negatively impacts her ability to parent her children.

The court accepted the plea and took jurisdiction of the children. The court also temporarily suspended respondent's parenting time until respondent began counseling.

At the dispositional hearing on October 19, 2016, respondent's parent-agency treatment plan was discussed, pursuant to which, respondent was to participate in mental health treatment services and parenting education services. Respondent was also to complete a psychological assessment, which apparently had been completed shortly before the hearing. The lower court indicated that supervised parenting time sessions could resume when respondent showed that she was participating in and benefitting from mental health services and when the older child's therapist approved the appropriateness and conditions of respondent's parenting.

By the time of the next review hearing on January 11, 2017, respondent was incarcerated again. She participated in the hearing from the county jail by video conference. Irish-Beaudo testified that respondent was offered services, including being referred for a psychological assessment with David Breyer, which respondent completed. Breyer recommended that respondent complete a mental health intake and participate in psychiatric care. According to Irish-Beaudo, respondent completed the mental health intake, but she did not fully engage with services through Saginaw Psychological Services because she only attended "a couple sessions." Respondent completed one parenting class, after which respondent could not be reached by the facilitator of that class for some reason. Additionally, Irish-Beaudo testified that at some point after the older child was hospitalized during the reporting period, respondent went to the hospital and was escorted out of the hospital by security. According to Irish-Beaudo, there were

subsequent reports that respondent was making threats about getting a gun and taking the oldest child, which resulted in a lockdown at the Department of Health and Human Services (DHHS) office building. Irish-Beaudo did not think respondent would benefit from services until respondent adequately participated in mental health services. Respondent testified that she went to her classes, but she was unable to complete them due to her incarceration beginning on approximately December 5, 2016. Respondent further testified that she went to counseling and saw a psychiatrist.

At the next review hearing on April 3, 2017, Irish-Beaudo testified that respondent was released from jail on March 8, 2017. Respondent had been scheduled for two appointments through Saginaw Psychological Services—one with a psychiatrist and one with a therapist. However, Irish-Beaudo had been unable to verify whether respondent attended those appointments. Respondent had met with her case manager at Saginaw Psychological Services, Tracie Bellhorn. Irish-Beaudo further testified that respondent still had to participate in counseling and show benefit from doing so in order to have her parenting time reinstated and to participate in other services. Respondent testified that she attended her appointments with the psychiatrist and therapist as scheduled and that she was given medication. The court noted that the issues that led to the initiation of these proceedings were still ongoing, but respondent would have the opportunity to show consistent participation in services before the next hearing occurred.

The trial court held a permanency planning hearing on May 31, 2017. Irish-Beaudo testified that respondent had been diagnosed with schizophrenia and bi-polar disorder and that she was not taking her medications as prescribed for these conditions. Respondent had attended one parenting class through the Child Abuse and Neglect Council. No other services had been offered because respondent needed to show that her mental health had stabilized before other services would be offered. According to Irish-Beaudo, the services being offered by Saginaw Psychological Services were thorough. Also, it was noted that Saginaw Psychological Services was offering transportation services for respondent to attend her appointments. However, respondent missed her May 17 psychiatric appointment that was intended for a medication review. Additionally, the court report prepared for the hearing, which was admitted as an exhibit, indicated that respondent also missed two recent therapy sessions. Respondent acknowledged that she had missed two therapy appointments and one psychiatric appointment, and she also admitted that she had forgotten to take her medication on a few occasions. Respondent testified that she was otherwise taking her medication as prescribed. Respondent's friend, David Whitman,² testified that he had gone to many of respondent's appointments with her, that she had become "more calm, more rational," and that he frequently reminded her to take her medications, although he did not see her every day to ensure that she took her medication.

² According to Irish-Beaudo, it was a domestic violence incident between respondent and Whitman that led to respondent's incarceration from December 6, 2016 to March 8, 2017.

The court ordered petitioner to file a petition to terminate respondent's parental rights and indicated that respondent's parenting time would remain suspended.

At the termination hearing that began on August 8, 2017, Lessie Lee, respondent's therapist at Saginaw Psychological Services, testified that he began treating respondent in March 2017 and had completed a total of five sessions with respondent. Lee testified that respondent would miss appointments and then appear at his office unannounced at some later date. If his schedule permitted, Lee would have a session with respondent when she showed up at his office, even if she did not have an appointment. On at least one occasion, a month passed between respondent's missed appointment and her unannounced arrival at Lee's office. Respondent was scheduled to meet with Lee once every two weeks. Based on the therapy sessions that occurred, Lee stated that respondent's thoughts were often unfocused, that respondent was "delusional," and that he was unable to get a baseline for treatment because she would not give a concrete explanation as to why her children were removed from her care. Lee further testified that respondent's treatment plan involved her goals of working on anger management and communication skills, taking her medication, and attending her scheduled appointments. However, respondent did not comply with this plan because she missed appointments, including the last two appointments with the doctor who prescribed her medication. Lee acknowledged that respondent had made some progress on managing anger but needed more work on communication skills, and overall, she had not completed her treatment goals or fully benefitted from the counseling services.

Vera Harrison, program director with the Child Abuse and Neglect Council, testified that respondent was enrolled in a parenting class. Harrison stated that respondent had attended 14 of 15 class sessions. According to Harrison, respondent had made some progress, but she needed more work on communication skills.

Bellhorn, respondent's case manager at Saginaw Psychological Services, testified that she started working with respondent in March 2017. Bellhorn testified that respondent missed multiple appointments with her, the psychiatrist, and the therapist. According to Bellhorn, respondent claimed that she missed appointments because she forgot or did not have a ride. Bellhorn had completed paperwork for respondent that would have allowed her to be transported to her appointments by taxi, but respondent did not take advantage of this opportunity. Whitman brought respondent to appointments. Bellhorn believed that respondent was not taking her medication regularly because respondent had not gotten her medications refilled as prescribed, and respondent had been verbally aggressive on the telephone with Bellhorn. Bellhorn had observed respondent exhibit signs of paranoia, such as constantly looking out the window as if somebody was watching her or indicating that somebody was out to get her. Bellhorn had also observed and heard respondent talk to herself. However, these signs of paranoia eventually subsided. According to Bellhorn, respondent was staying at the homes of various friends and did not have stable housing. Bellhorn stated that she had not seen any improvement in respondent's mental condition, and she did not think respondent had made much progress because she was failing to take her medication to control her psychiatric symptoms and failing to keep all of her psychiatric appointments where her medication could be adjusted.

Breyer, a psychologist, testified as an expert in the field of clinical psychology and indicated that he conducted a psychological evaluation of respondent on September 23, 2016.

Breyer stated that respondent was not cognitively impaired but would be considered a slow learner. Breyer found respondent's thoughts to be "substantially disturbed" and that respondent exhibited suspiciousness and paranoia. Breyer testified that respondent's profile was consistent with diagnoses of schizophrenia, paranoid type as well as schizoid personality or paranoid personality. Breyer stated respondent's mental illness was her primary challenge, that respondent needed psychiatric care and medication, and that medication was the best method for treating her particular condition. Breyer indicated that if respondent did not obtain this mental health treatment, the children would be at significant risk in her care. Breyer testified that respondent's severe paranoia made it difficult for respondent to maintain perspective and to control her emotions, and the children could be at risk if respondent targeted them with her paranoia.

Irish-Beaudo testified that in her opinion, respondent had not benefitted from services because she had not addressed her mental health issues. Specifically, respondent had not consistently participated in the various services through Saginaw Psychological Services. Respondent also failed to bring her medication to her meetings with Irish-Beaudo and Bellhorn, as respondent had been instructed, to verify that she was taking her medication. Further services had not been put in place because respondent first had to stabilize her mental health through medication and therapy, and respondent had failed to do so.

Irish-Beaudo indicated that the older child had been diagnosed with post-traumatic stress disorder and that the younger child had been diagnosed with epilepsy. Irish-Beaudo opined that respondent would be unable to follow through with the children's mental health and medical needs because respondent was not able to follow the treatment plan for her own mental health issues. Irish-Beaudo also testified that the older child was placed with her grandmother and that the younger child was in a foster home; placing the girls together was not recommended because the older child was aggressive toward the younger child. The older child had stopped engaging in self-harming behaviors after parenting time was suspended. Irish-Beaudo opined that respondent could not correct the conditions that led to the children's removal within a reasonable time considering their ages and that termination of respondent's parental rights was in the children's best interests.

Respondent testified that she was released from jail in March 2017 and wanted a chance to show that she could address her issues. Respondent further testified that she knew when she was released that she needed to participate in services in order to have her children returned, and respondent was referred to complete mental health services at Saginaw Psychological Services. According to respondent, she completed her intake and was participating in her services by meeting with Lee and Bellhorn. Respondent admitted missing three appointments with Bellhorn, although she claimed to have rescheduled her appointments. She also admitted missing two doctor's appointments. Respondent testified that she had been taking her medication as prescribed, that she had refilled her prescription as necessary, and that her mood was more stable since she started taking medication. She admitted, however, to missing some doses of her medication. Respondent also indicated that she had completed a parenting class several days before the hearing and that her living arrangement with Whitman was temporary. Respondent acknowledged that she was convicted of assault and battery in January 2017, but she could not recall the identity of the victim. According to respondent, she was incarcerated for smashing

Whitman's cell phone. Respondent stated that she was not employed, but she received disability income in an unknown amount.

The court found that clear and convincing evidence supported the termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), and the trial court determined that termination of respondent's parental rights was in the children's best interests. This appeal followed.

II. DISCUSSION

A. STATUTORY GROUNDS

Respondent first argues that the trial court erred in finding that there were statutory grounds to support termination.

"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). This Court "review[s] for clear error [] the court's decision that a ground for termination has been proven by clear and convincing evidence" *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), abrogated by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 83, 88; 836 NW2d 182 (2013). " '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 Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (citation omitted; alteration in original). This Court gives due regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

Under MCL 712A.19b(3)(c)(i), the trial court may terminate parental rights if "[t]he 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 . . . [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." We have previously affirmed termination pursuant to MCL 712A.19b(3)(c)(i) when "the totality of the evidence amply supports that [respondent] had not accomplished any meaningful change in the conditions existing by the time of the adjudication." *In re Williams*, 286 Mich App 253, 272, 278; 779 NW2d 286 (2009).

In this case, the conditions that led to respondent's adjudication involved respondent's history of untreated mental illness that negatively impacted her ability to parent her children. Respondent's parenting time was suspended early in the case based on the hostile and aggressive behavior she exhibited toward others during her parenting time sessions—behavior that required case manager Irish-Beaudo to call security. Respondent was informed that she needed to show that she was participating in and benefitting from her mental health services in order to have supervised parenting time reinstated. Respondent was offered various mental health services throughout the duration of the case, including a psychological assessment, therapy sessions, and psychiatric appointments to address medication. Breyer, who conducted respondent's

psychological evaluation, testified that her profile was consistent with a diagnosis of schizophrenia, paranoid type. He further testified that medication was the best method for treating respondent's condition and that the children would be at a severe risk of harm if respondent did not adequately address her mental illness, especially if respondent's paranoia was focused on the children. According to Breyer, respondent's paranoia made it difficult for her to maintain perspective and control her emotions.

Yet, the record reflects that throughout the pendency of the case, respondent continued to engage in threatening, aggressive, and violent behavior; missed multiple therapy and psychiatric appointments; exhibited unfocused and delusional thinking during therapy sessions; and was unable to explain to her therapist why her children had been removed from her care. Furthermore, respondent was prescribed medication to address her mental illness, but the record supports the conclusion that she was not taking her medications as prescribed, even if she sometimes took her medication. Respondent personally admitted to missing doses, and respondent missed appointments with her prescribing psychiatrist where the medication dosage could be adjusted. There was testimony that overall, respondent had failed to comply with her treatment plan regarding mental health services, that she had not completed her treatment goals or stabilized her mental health, and that she had not fully benefitted from these services. Respondent's parenting time was never reinstated. In addition to the risk of harm presented to the minor children by respondent's inadequately treated mental illness, respondent's inability to follow her own mental health treatment plan by missing necessary appointments and neglecting to take her medication as prescribed demonstrated that she would be unlikely to follow treatment plans to address the mental health and medical needs of the minor children, which were significant. Accordingly, the totality of the evidence showed that there was no meaningful change in the condition that led to the adjudication because respondent continued to neglect the necessary treatment of her mental illness that impaired her ability to care for the minor children. *In re Williams*, 286 Mich App at 272. In light of respondent's actions and considering that the minor children were four years old and 21 months old at the time of the termination hearing and had been out of respondent's care for 14 months, there was no reasonable likelihood that the condition would be rectified within a reasonable time considering the ages of the children. More than 182 days had passed since the initial disposition. Therefore, for all of the above reasons, the trial court did not clearly err by terminating respondent's parental rights under MCL 712A.19b(3)(c)(i). *In re Rood*, 483 Mich at 91. Because there was at least one statutory ground to properly support termination, we need not consider the additional grounds relied upon by the trial court. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

To the extent that respondent makes a cursory argument that petitioner failed to make reasonable efforts at reunification and to reasonably accommodate respondent's mental health disability, we reject this argument.

Our Supreme Court has explained that “[u]nder Michigan’s Probate Code, the Department has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights,” but the “Department also has obligations under the [Americans With Disabilities Act (ADA)] that dovetail with its obligations under the Probate Code.” *In re Hicks*, 500 Mich 79, 85-86; 893 NW2d 637 (2017). Accordingly, “[p]ublic entities, such as the Department, must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless . . . the

modifications would fundamentally alter . . . the service provided.” *Id.* at 86 (quotation marks and citation omitted; ellipses in original). “[E]fforts at reunification cannot be reasonable under the Probate Code if the Department has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA.” *Id.* Nonetheless, “[w]hile the DHS 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). This includes the requirement that the respondent “sufficiently benefited from the services provided.” *Id.*

It was clear from the beginning of this case that respondent’s mental illness was a primary issue, and services were offered to address this issue throughout the proceedings below. Specifically, respondent was offered therapy sessions and a separate, additional case manager through Saginaw Psychological Services. Bellhorn was specifically focused on coordinating respondent’s mental health services and any other services. Appointments with a psychiatrist were also scheduled for respondent, and she was prescribed medication. Indeed, it was recognized that respondent needed to stabilize her mental health through participation in services directed at her mental illness before any other types of services could provide sufficient benefits. Respondent testified that she knew that she was required to participate in services. However, there was substantial testimony demonstrating that respondent missed multiple appointments with her therapist and psychiatrist and that respondent failed to take her medication as prescribed. There was additional testimony that respondent was offered transportation services but failed to take advantage of this option, choosing instead to rely on friends for rides, who were apparently unreliable. Respondent’s argument on appeal essentially amounts to a complaint that the services offered were somehow not good enough and that she should have been provided different or “better” services. Yet, in light of respondent’s failure to fully participate with the services that were offered, there is no reason to believe that she would have fared better if she was referred to a different provider for her various mental health services: she failed to attend the appointments that were scheduled for her and failed to take her medication as prescribed. Consequently, her mental illness remained inadequately treated as a result of her own rejection of the services that were specifically made available to her for this issue.

Given respondent’s failure to take responsibility for participating in services that were offered and failure to show sufficient benefit from those services, there was no failure on the part of petitioner to make reasonable efforts at reunification. *In re Frey*, 297 Mich App at 248. As this Court has previously stated, “[a]fter [respondent’s] children have come within the jurisdiction of the family court, a parent, whether disabled or not, must demonstrate that she can meet their basic needs before they will be returned to her care,” and “[i]f 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.” *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (quotation marks and citation omitted). Here, as previously discussed, respondent failed to show that she could meet the basic needs of her children by neglecting to sufficiently address her own mental illness in order to remove this risk of harm to her children, and the trial court did not err by placing the needs of the children first in finding that a statutory ground had been established. See *id.* Respondent is not entitled to relief on this issue.

B. BEST INTERESTS

Next, respondent argues that the trial court erred by finding that termination was in the children's best interests. Respondent's writings on this issue are tantamount to a restatement of her issues previously raised in her brief.

"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 35, 40; 823 NW2d 144 (2012). "[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). A trial court's best-interests decision is also reviewed for clear error. *In re Trejo*, 462 Mich at 356-357.

At the best-interest stage, the focus is on the child and not the parent. *In re Moss*, 301 Mich App at 87. "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). Considering the child's need for "a permanent, safe, and stable home," the trial court may also consider the length of time that a child has spent in foster care or placed with relatives and the likelihood that the child could be returned to the parents in the foreseeable future. *In re Frey*, 297 Mich App at 248-249.

In this case, at the time of the termination hearing, the older child was four years old, and the younger child was almost two years old. The children had been in care for over a year. Although respondent asserts that she shared a bond with the children, parenting time visits were suspended in September 2016 and had not been reinstated before the termination hearing in August 2017. The older child had been diagnosed with post-traumatic stress disorder, and the younger child had been diagnosed with epilepsy. The evidence showed that each child was in an appropriate placement. The record also showed that respondent had made very minimal progress with her treatment plan in addressing her mental illness and was not taking her medication as prescribed even though it was the most effective method for treating her condition. There was testimony that respondent's mental illness, if left untreated, presented a risk of harm to the minor children if they were in her care. Considering the young children's need for permanency and stability, along with respondent's demonstrated inability to address her own mental health so as to be able to effectively parent her children, the trial court did not clearly err by determining that termination was in the minor children's best interests. *In re Olive/Metts Minors*, 297 Mich App at 41-42. Accordingly, respondent is not entitled to relief on this issue.

Affirmed.

/s/ David H. Sawyer
/s/ Stephen L. Borrello
/s/ Deborah A. Servitto