STATE OF MICHIGAN

COURT OF APPEALS

In re J. RODRIGUEZ, Minor.

UNPUBLISHED
November 27, 2018

No. 343564
Van Buren Circuit Court
Family Division
LC No. 16-018602-NA

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to her minor son, JR, pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood of harm if child is returned to parent). We affirm.

Respondent-mother's parental rights to two of her other children were previously terminated pursuant to the grounds at issue here, MCL 712A.19b(3)(g) and (j), along with MCL 712A.19b(3)(b)(*ii*) (child has suffered physical injury or abuse and parent who had opportunity to prevent the injury or abuse failed to do so). The parental rights of the father of those two children were also terminated; he is not JR's father. This Court affirmed the termination orders as to respondent-mother and the father of the two children. *In re Saldana Minors*, unpublished per curiam opinion of the Court of Appeals, issued June 14, 2018 (Docket Nos. 340639 and 340640).[1] The two children were placed with the maternal grandparents, and subsequently JR

[1] With respect to respondent-mother, the other panel, in upholding the trial court's findings, stated:

> In regard to the statutory ground for termination under § 19b(3)(b)(*ii*), mother claims that there was no evidence to support any intentional act by her that caused injury to TS and that she had no reason to suspect that father would abuse TS. . . . .
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> In this case, the trial court found that father's intentional acts caused TS's brain injuries—whether it was actual child abuse, getting into a car accident with the children while TS was unrestrained, overly aggressive resuscitation techniques, or discontinuing use of the sleep apnea monitor and then inappropriate bottle-propping. Moreover, there were additional fractures and injuries of varying

was also placed with those grandparents after first being in the custody of his father, whose parental rights to JR were also terminated; his rights are not at issue in this appeal.

The evidence presented below revealed that JR suffered significant stress and trauma from physical and emotional abuse at the hands of his stepmother while in the care of his father and stepmother. Additional stress and trauma resulted from JR witnessing respondent-mother being physically abused by the father of respondent-mother's two other children discussed above. To be clear, there was no evidence that respondent-mother ever physically abused JR. The trial court rejected terminating respondent-mother's parental rights to JR under MCL 712A.19b(3)(b)(*ii*), finding that the stepmother and the father of her other two children were no longer in the picture.[2]

The evidence further reflected that respondent-mother failed to engage in services in any meaningful manner, participating incompletely and sporadically without benefit, provided false information to caseworkers at times, missed many visitations or left them early, lacked stable housing and employment, did not have adequate parenting skills, and struggled with substance abuse, missing 224 drug screens during the pendency of the proceedings, including 17 missed screens between the first day of the termination hearing on February 14, 2018, and the second and final day on March 28, 2018. She had tested positive for marijuana and cocaine when all three of her children first came into care. There was evidence that JR was progressing and thriving, along with bonding with his siblings, while in the care of his grandparents and that he would regress after visits with respondent-mother. The trial court found that MCL 712A.19b(3)(g) and (j) were proven by clear and convincing evidence and that termination of respondent-mother's parental rights was in the best interests of JR. She now appeals.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence

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> ages that Dr. Brown testified could not be explained as resulting from any sort of accidental cause.
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> The trial court found that mother was aware that father had issues in caring for TS. She herself was physically abused by father. There were injuries of multiple ages, so there was physical injury or abuse before the incident that brought TS to the hospital. Mother also admitted that she did not usually leave TS alone with father. Mother further knew that father had stopped using the monitor and engaged in bottle-propping, in which she also engaged against medical advice. [*Saldana Minors*, unpub op at 4-5.]

[2] Respondent-mother testified that the father of her other children moved to Virginia a couple of months before the termination hearing. There was some evidence indicating that respondent-mother continued to have contact with the father even after TS was injured by way of the father's abuse or neglect.

that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss,* 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "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 Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding . . . is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]" *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court must "state on the record or in writing its findings of fact and conclusions of law[,] [and] [b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1).

On appeal, respondent-mother first argues that the trial court committed clear error in terminating her parental rights under MCL 712A.19b(3)(g), which provided for termination when a "parent, without the 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."[3] Respondent-mother focuses on the requirement to show that there was no reasonable expectation that she would have been able to provide proper care and custody within a reasonable time considering JR's age. On that matter, respondent-mother contends that the trial court relied almost entirely on the speculative, hearsay testimony of a social worker, which testimony covered just a small four-month period in 2017 when the social worker was in charge of supervised visitations.

First, in examining the trial court's ruling regarding MCL 712A.19b(3)(g), we see no mention in the transcript of the social worker's testimony. Second, when the trial court did discuss her testimony earlier in its opinion, the court expressed some serious concerns with the genuineness and reliability of her views and opinions. Third, respondent-mother fails to identify the particular testimony by the social worker that she finds offensive relative to hearsay or speculation, and she provides no legal analysis or citation in support of her position.[4] Fourth, there was an abundance of testimony supporting the trial court's determination that there was no reasonable expectation that respondent-mother would have been able to provide proper care and

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[3] On June 12, 2018, after termination here, an amended version of MCL 712A.19b(3)(g) took effect, 2018 PA 58, requiring consideration of a parent's financial ability in assessing an alleged failure to provide proper care or custody.

[4] " 'It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.' " *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) (citation omitted).

custody within a reasonable time considering JR's age, including testimony by the foster-care specialist and respondent-mother herself.[5]

Respondent-mother also argues that she demonstrated partial compliance with the treatment plan and that there was no indication that she ever abused JR. The trial court never suggested that respondent-mother physically abused JR, but the court was concerned about the past history in which respondent-mother failed to protect JR's sibling, TS. Additionally, partial compliance with the treatment plan is not full compliance with the plan, nor does it overcome the evidence that respondent-mother failed to benefit from services that were provided. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012) (parent must not only participate in services, he or she must sufficiently benefit from the services). "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014).

Given the past history of a failure to protect a child,[6] the remarkable number of missed drug screens, occurring in part during the pendency of the termination hearing, the poor visitation history, the failure to fully engage in and benefit from services, the lack of stable housing and employment, the deceit in communications with caseworkers, and the inadequate parenting skills, we cannot conclude that the trial court clearly erred in finding clear and convincing evidence in support of termination pursuant to MCL 712A.19b(3)(g).

With respect to MCL 712A.19b(3)(j), it provides for termination of parental rights when "[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." The evidence discussed above in relation to MCL 712A.19b(3)(g) equally supports the trial court's ruling under MCL 712A.19b(3)(j). See *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014) (discussing anticipatory neglect); *White*, 303 Mich App at 711 ("a parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home"). Respondent-mother repeats her arguments made in connection with the social worker and her challenge under MCL 712A.19b(3)(g), which fail for the same reasons expressed earlier. The main thrust of her challenge with respect to MCL 712A.19b(3)(j)

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[5] Respondent-mother appears to make a hearsay argument in connection with a report prepared by the foster-care specialist that was admitted into evidence without objection. Once again, no legal analysis or citation is provided, nor is it apparent that the court relied on the report. Regardless, with respect to dispositional hearings, "[a]ll relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value." MCR 3.973(E)(2). Furthermore, MCR 3.977(H)(2), which regards termination, as here, that does not occur at the initial dispositional hearing and does not concern a supplemental petition on the basis of different circumstances, provides that "[t]he Michigan Rules of Evidence do not apply, other than those with respect to privileges."

[6] The doctrine of anticipatory neglect provides that the manner in which a parent treats one child is probative of how that parent may treat other children. *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014).

is that she herself did not commit any physical abuse. Nevertheless, considering all of the other evidence of respondent-mother's shortcomings, we cannot conclude that the trial court clearly erred in finding clear and convincing evidence in support of termination pursuant to MCL 712A.19b(3)(j).

Finally, in a cursory, conclusory argument absent any elaboration, respondent-mother contends that her attorney below was ineffective for not calling any lay or expert witnesses to confront petitioner's case against her. "The principles applicable to claims of ineffective assistance of counsel in the arena of criminal law also apply by analogy in child protective proceedings; therefore, it must be shown that (1) counsel's performance was deficient, falling below an objective standard of reasonableness, and that (2) the deficient performance prejudiced the respondent." *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016). Respondent-mother's attorney challenged petitioner's case through cross-examination of petitioner's witnesses, and respondent-mother fails to identify who counsel should have called to the stand and the nature of their potential testimony. The factual predicate of respondent-mother's argument is nonexistent, she has failed to overcome the strong presumption that counsel's performance constituted sound trial strategy, and she cannot establish the requisite prejudice. See *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering