

STATE OF MICHIGAN
COURT OF APPEALS

In re M. M. CASON, Minor.

UNPUBLISHED
December 20, 2018

No. 343733
Genesee Circuit Court
Family Division
LC No. 12-129129-NA

Before: MURRAY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Respondent mother appeals as of right the order terminating her parental rights to her daughter, MMC, under MCL 712A.19b(3)(c)(ii) (failure to rectify other conditions), and MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned to parent).¹ We affirm.

Respondent mother argues that the trial court erred when it took jurisdiction, and when it determined that statutory grounds existed to terminate her parental rights pursuant to MCL 712A.19b(3)(c)(ii) and (3)(j) solely on the lack of bond between respondent mother and MMC.

The trial court must find that a statutory ground for termination is established by clear and convincing evidence. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). A trial court's ruling that a statutory ground for termination was established is reviewed for clear error. *Id.* See also MCR 3.977(K). “ ‘A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.’ ” *In re Schadler*, 315 Mich App at 408, quoting *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

I. JURISDICTION

Although respondent mother's stated argument only challenges whether statutory grounds exist to support termination, in the course of the argument she also asserts that the trial

¹ The parental rights of respondent father were terminated in the same order, but he has not filed an appeal.

court erred when it took jurisdiction over MMC based on the lack of bond with the child because it was an insufficient basis, and petitioner created the grounds for removal.

Child protective proceedings include two phases: adjudication and disposition. *In re Kanjia*, 308 Mich App 660, 663; 866 NW2d 862 (2014). The court determines whether it may assert jurisdiction over the child during the adjudicative phase. *Id.* The circuit court derives jurisdiction in termination proceedings from statutes, and the Michigan constitution. MCL 712A.2(b); *In re LE*, 278 Mich App 1, 17; 747 NW2d 883 (2008). MCL 712A.2(b) provides, in relevant part:

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

A respondent may admit the allegations in the petition, plead no contest to the allegations, or demand a trial. *In re Kanjia*, 308 Mich App at 664. To determine whether a child falls within the court's jurisdiction, the court must make a finding of probable cause that the facts alleged in the petition are true, and if proven at trial, would fall under MCL 712A.2(b). *In re LE*, 278 Mich App at 17.

Respondent mother is precluded from bringing this appellate collateral attack on the trial court's assertion of jurisdiction at adjudication. " '[A]n adjudication cannot be collaterally attacked following an order terminating parental rights' " unless " 'termination occur[ed] at the initial disposition as a result of a request for termination contained in the original, or amended, petition[.]' " *In re Kanjia*, 308 Mich App at 667 (citation omitted). In other words, a challenge to the trial court's assertion of jurisdiction may only be asserted on direct appeal of the jurisdictional decision. *Id.* See also *In re Hatcher*, 443 Mich 426, 437; 505 NW2d 834 (1993).

Here, respondent mother pleaded no contest to the first paragraph of the petition, which indicated that she had possible warrants, was arrested, and MMC was left without proper care and custody when respondent mother was sentenced to jail. The court determined that respondent mother offered the no contest plea freely, willingly, and voluntarily. Respondent mother made no direct appeal of the court's adjudication decision. Thus, she is precluded from asserting her jurisdictional challenge on appeal. *In re Kanjia*, 308 Mich App at 667.

Moreover, “ ‘[w]hen the petition contains allegations of abuse or neglect against a parent, MCL 712A.2(b)(1), and those allegations are proved by a plea . . . at the [adjudication] trial, the adjudicated parent is unfit.’ ” *Id.* at 663 (citation omitted). Respondent mother entered a no contest plea to the allegation in the petition that she failed to provide proper care and custody. Thus, the court properly took jurisdiction over MMC after respondent mother entered her no contest plea.

II. STATUTORY GROUNDS

A. MCL 712A.19b(3)(c)(ii)

The trial court did not err in finding that MCL 712A.19b(3)(c)(ii) provided a statutory basis for termination of respondent mother’s parental rights. A trial court may terminate a respondent’s parental rights under MCL 712A.19b(3)(c)(ii) if 182 days have passed since the initial dispositional order, and the trial court finds by clear and convincing evidence that

[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. [MCL 712A.19b(3)(c)(ii).]

The court entered an order of disposition regarding respondent mother on April 19, 2016, so more than 182 days passed when the court entered the order terminating her parental rights on April 27, 2018. Additionally, as explained below, the trial court did not err when it determined that the lack of bond between respondent mother and MMC was the other condition that was not rectified.

Sufficient evidence existed to support the trial court’s determination that statutory grounds existed to terminate respondent mother’s parental rights pursuant to MCL 712A.19b(3)(c)(ii) because of respondent mother’s failure to establish a bond. The evidence revealed that respondent mother received many services to rectify this condition, including infant mental health and intensified infant mental health, but she failed to rectify the condition because she failed to establish a bond. Respondent mother participated in services for almost two years, and specifically in infant mental health services for over one year. Thus, there is no reasonable likelihood that the condition would be rectified within a reasonable time considering MMC’s young age. MCL 712A.19b(3)(c)(ii). Respondent mother even testified that it would take another six months to one year for her to form a bond with MMC.

The trial court only needs to find clear and convincing evidence of one statutory ground in MCL 712A.19b(3) to terminate parental rights. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). This determination requires us to go no further to affirm the termination

order.² Nonetheless, we will still determine whether the other statutory ground was properly decided.

B. MCL 712A.19b(3)(j)

The trial court did not err in terminating respondent mother's parental rights under MCL 712A.19b(3)(j). A trial court may terminate a respondent's parental rights under MCL 712A.19b(3)(j) if the trial court finds by clear and convincing evidence that "[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." This includes a risk of emotional, as well as physical, harm to the child. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (where the children were deprived of a normal home due to the respondent's behavior, and the respondent committed first-degree criminal sexual conduct of her own child, the children were at risk of emotional harm if returned to the respondent's care). The court's determination that MMC's emotional well-being would be at serious risk of harm due to respondent mother and MMC's inability to bond was not in clear error. Respondent mother was unable to form a bond with MMC, despite participating in services specifically designed to do so. Respondent mother seemed to gain reflective capacity, but did not implement the skills that she learned from Melanie Foley during parenting time without Foley being present. Bridget Hayes had to coach respondent mother on how to comfort MMC when MMC was distressed. Hayes testified that respondent mother tried to form a bond, but ultimately was unable to due to missed opportunities and "lack of skill."

As mentioned earlier, MMC experienced emotional turmoil as a result of visitation with respondent mother. She worried so much about parenting time that she would cry, throw up, and refuse to get out of the car. MMC was described as fearful, scared, and oppositional to parenting time. She became aggressive in the foster home before and after visits, would hide and not speak, and bit down on the window blinds. MMC had difficulty sleeping and eating during the periods that respondent mother had parenting time. During the first suspension of respondent mother's parenting time, MMC's sleeping and eating improved, and she cried less at the foster home. But when respondent mother's visitation rights were reinstated, MMC's behaviors returned and intensified. After parenting time, MMC would be exhausted, and it would take her the rest of the day and into the next day to act normal. When respondent mother's parenting time was suspended in August 2017, MMC's behavior again began to improve.

Therefore, the trial court did not err when it determined that, based on the conduct or capacity of respondent mother, namely, her inability to form a bond with MMC, there was a reasonable likelihood that MMC would experience emotional harm if returned to respondent mother's care. MCL 712A.19b(3)(j).³

² No argument is made regarding the child's best interests.

³ Additionally, there are other instances of respondent mother's conduct in the record that indicate that MMC would be at a risk of harm if returned to respondent mother's care: respondent mother's continuing conflicted relationship with respondent father that interfered

Affirmed.

/s/ Christopher M. Murray

/s/ Douglas B. Shapiro

/s/ Michael J. Riordan

with her ability to parent, and respondent mother's failure to provide any evidence of housing or a legal source of income. Respondent mother's failure to maintain housing and income, and her relationship with respondent father, romantic or otherwise, demonstrates a reasonable likelihood that MMC would be harmed if returned to respondent mother's care. MCL 712A.19b(3)(j).