STATE OF MICHIGAN

COURT OF APPEALS

In re K. PETROELJE, Minor.

UNPUBLISHED
October 22, 2019

Nos. 347747; 347748
Kent Circuit Court
Family Division
LC No. 17-052933-NA

Before: MARKEY, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

In Docket No. 347747, respondent-father appeals by right the order terminating his parental rights to his daughter, KP, under MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist), (c)(*ii*) (failure to rectify other conditions), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent). Likewise, in Docket No. 347748, respondent-mother also appeals by right the order terminating her parental right to KP under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). We affirm.

In October 2017, KP was removed from respondents' care as a result of unsanitary living conditions, including standing water and feces on the floor, trash and rotting food on the ground and counters, and clutter throughout the house.[1] While the case was ongoing, respondents

[1] The following allegations, to which respondents later admitted, were contained in the petition:

> The home was found to be in deplorable, unsanitary conditions on 10/21/2017. The home had feces covering a large portion of the floor. The plumbing was not operational. There was standing water and feces mixtures on the floor. The floor was covered with trash and the room where the mother and [KP] slept had feces and water leading into the entry way and clutter/trash up to the waist level. There was trash covering the ground as well as cats, feces, moldy and rotting food throughout the home and on the kitchen counter/sink. The home environment is endangering the health and welfare of the children at this time. The parents portrayed a limited understanding of the severity of the home's conditions.

moved into a new home, and although there was improvement in the living conditions, the new house had a cockroach infestation, fire safety concerns, was cluttered, and there were still unresolved cleanliness issues. Aside from the living conditions, the other major barrier to KP's reunification with respondents, which became apparent during the case, was respondents' inability to adequately meet KP's considerable needs. KP, who has been diagnosed with autism, shows significant developmental delays in fine and gross motor skills, communication, cogitation, and social development. She receives services to help improve her physical skills like standing and walking, her communication skills through the use of sign language, and her other motor skills. KP also receives services to assist her in the activities of daily life. Despite services aimed at reunification, respondents failed to rectify the various problematic issues, and in January 2019, the trial court terminated respondents' parental rights under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). Respondents now appeal by right.

I. REASONABLE EFFORTS

On appeal, respondents argue that the Department of Health and Human Services (DHHS) failed to make reasonable efforts toward reunification, including reasonable accommodations for their disabilities as required by the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. In particular, respondents both assert that they should have been provided with a home economics intervention class to address the condition of their home. Father also argues that he should not have been required to learn sign language in light of his disability, and mother contends that she should have been provided additional services and time to address her parenting skills. These arguments lack merit.

A trial court's determination that reasonable efforts were made to reunify the family is reviewed for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). Under Michigan's Probate Code, the DHHS has an "affirmative duty" to make reasonable efforts toward reunification before seeking to terminate a parent's rights. *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). As a public entity, the DHHS also has an obligation under the ADA to make reasonable accommodations to the services or programs offered to a disabled parent. *Id*. at 86. These obligations "dovetail" insofar as "efforts at reunification cannot be reasonable under the Probate Code if the [DHHS] has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA." *Id*. Absent reasonable efforts toward reunification, termination of parental rights is considered premature. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). See also *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991) (concluding that statutory grounds for termination had not been shown because reasonable efforts had not been made).

Although the DHHS has a duty to make reasonable efforts toward reunification, parents have a commensurate responsibility to participate in, and benefit from, the services offered. *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014); *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). "[A] parent, whether disabled or not, must demonstrate that she can meet their basic needs before they will be returned to her care." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). "If 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." *Id*. (quotation marks omitted).

In this case, father and mother both assert that they have cognitive disabilities.[2] In this regard, father's psychological evaluation indicated that father reported having an eleventh grade education and being involved in special education while in school because of "learning problems." The evaluation further revealed that father showed "no overt difficulties with attention, concentration, or memory." According to the test results in the psychological evaluation, however, father's reading scores were in the second percentile, indicating a reading ability akin to a third-grader, and he "likely has a below average intellect." On appeal, mother describes her cognitive disability as a mild intellectual disability. Unlike father's psychological evaluation, there are no test results or statements reflecting that mother's intelligence is below average. The psychological evaluation indicated that mother showed "no overt difficulties with attention, concentration, or memory." Mother's psychological evaluation, however, also revealed that she reported being "involved in special education for learning and behavior problems" and that she "dropped out of school in the 9th grade when she was pregnant."

With regard to the services provided, respondents received psychological evaluations, counseling, supervised parenting time, applied behavior analysis (ABA) recommendations that were reviewed with them by the foster-care workers, hands-on Ken-o-sha parenting sessions with KP, a budgeting class, chore charts for their home, one-on-one ABA instruction through Wedgwood's Autism Center, information on sign language, and the opportunity for one-on-one sign language instruction with one of the caseworkers. To accommodate any cognitive limitations, including father's reading difficulties, caseworkers and service providers verbally reviewed information with respondents multiple times and answered any of their questions.

Despite these services, respondents assert on appeal that the DHHS could have done more to work toward reunification. First, respondents both fault the DHHS for not providing a home economics class or hands-on instruction on how to clean the house. In support of this argument, respondents note that their psychological evaluations indicated that they could benefit from a home economics class. The evidence, however, reflected that the possibility of a home economics class was investigated by the caseworker, and unfortunately, a suitable class simply did not exist. The DHHS certainly did not withhold the class from respondents because of a disability, and the DHHS cannot be faulted for not providing services that are not available. See *In re Terry*, 240 Mich App at 27 ("Petitioner had no other services available that would address respondent's deficiencies while allowing her to keep her children.").

In the absence of an available class, caseworkers made home visits, discussed the condition of the home with respondents, and provided respondents with daily and weekly chore charts to remind them of the chores that needed to be completed. Despite reminders, respondents failed to actually complete the chores, and they stopped handing the charts into the caseworker. Although father now claims that he needed instructions on how to clean, in the trial court he

[2] Father also claims that he has a mental health-related disability. But he does not develop this argument on appeal or explain how the counseling services provided were inadequate to address his mental health concerns. Mother also has mental health diagnoses, but she does not dispute that the counseling and medication she received were appropriate.

testified that he did not need someone to show him how to clean his house. And a caseworker testified that respondents appeared to understand what she was asking of them and that they never indicated that they needed instructions on cleaning. Furthermore, respondents both received counseling to address mental health issues, including any issues related to cleanliness and hoarding. On the whole, respondents were not denied reasonable services toward rectifying the unfit condition of their home. Instead, despite counseling and other assistance, they failed to adequately benefit from the services provided, and they failed to rectify the unfit condition of their home. See *In re TK*, 306 Mich App at 711; *In re Frey*, 297 Mich App at 248.

Next, respondents challenge the services provided to help them obtain the skills needed to parent KP. Specifically, mother emphasizes that her psychological evaluation stated that she "needs to be involved in a parenting education class," and mother argues that she should have been provided a parent-support partner and infant mental health services. Mother also asserts that the timing of the services provided was unfair insofar as the one-on-one ABA sessions through Wedgwood did not begin until after the DHHS's goal had changed from reunification to adoption. In comparison, father contends that he should not have been required to learn sign language because he was intellectually unable to do so, and his disability should have been accommodated by allowing him to communicate with KP through Picture Exchange Communication (PEC).

In reviewing the trial court's determination regarding the reasonableness of the efforts made by the DHHS in this case, we begin by emphasizing KP's unique needs. See *Matter of Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). She has significant developmental delays in fine and gross motor skills, communication, cogitation, and social development. KP does not speak, and she has difficulty walking. In this context, contrary to mother's arguments, the DHHS was not unreasonable in concluding that a parenting class focused on typical childhood development would not benefit respondents in working toward reunification with KP. The caseworker looked for a parenting class that would benefit respondents in light of KP's particular needs, but she was unable to find such a course. Instead, respondents received weekly sessions through Ken-o-sha during which they worked directly with KP and received "parent coaching." KP's ABA therapist also provided respondents with a list of recommendations to implement with KP. Foster-care workers explained these recommendations to respondents repeatedly, and respondents received supervised parenting time during which to implement these techniques. Respondents were also provided with resources—including handouts and video links—to help them learn the "very basic" signs used by KP. Later, respondents received one-on-one instruction on ABA therapy and the opportunity for one-on-one instruction in sign language. Overall, respondents received far more individualized instruction than they would have received in a general parenting class.

Despite these efforts, respondents were inconsistent in implementing the ABA recommendations, caseworkers remained concerned about respondents' ability to monitor KP for her safety, and respondents were reluctant to change their routines for KP's benefit. For example, they were reluctant to move from communicating through the PEC book to sign language. The caseworker opined that it would be a very long time, even years, before respondents could meet KP's needs. More generally, respondents were prone to angry outbursts when interacting with caseworkers and others, and they failed to complete their community service requirement relative to a criminal matter because of attitude and attendance problems.

Given respondents' lack of progress despite the considerable individualized instruction, there is no merit to mother's claim that she was denied reasonable services; rather, the evidence shows that, despite reasonable services, mother, as well as father, failed to benefit. See *In re TK*, 306 Mich App at 711; *In re Frey*, 297 Mich App at 248. And, on this record, mother's claim that more parenting services, such as a parent-support partner, were required fails because the evidence does not support the position that respondents would have "fared better" with more services. See *In re Fried*, 266 Mich App at 542-543.

Additionally, although the one-on-one ABA sessions did not begin until later in the case, this does not undermine the reasonableness of the services provided. First, mother's timing argument ignores the fact that respondents received the ABA recommendations as well as detailed explanations from the caseworkers early in the case. These ABA recommendations were "not complicated therapy," and respondents had the opportunity to implement the relatively simple ABA techniques during parenting time. Second, despite the somewhat delayed timing, respondents received the one-on-one ABA instruction that mother claims was required, and they still showed insufficient progress. Again, estimates were that it would be a very long time, even years, before respondents could meet KP's particularized needs. When considering whether a reasonable amount of time was spent providing services, KP's unique needs must also be considered, and it is simply not reasonable to expect KP to continue to wait when it is apparent that respondents, despite services, will not be able to meet those needs for a very long time. See *Matter of Dahms*, 187 Mich App at 647.

To the extent father claims that he should have been exempt from learning sign language, we believe his claim lacks merit. The ADA requires reasonable accommodations for parents; it does not exempt parents from demonstrating that they can meet the basic needs of their children. See *In re Terry*, 240 Mich App at 27-28. While KP previously communicated through use of a PEC book, she has since progressed to the use of sign language, and sign language is her "most effective" means of communication. The signs used by KP are "very basic," and to aid father in learning these signs while accounting for his difficulties reading and learning, he was provided with handouts, video links, and the opportunity for one-on-one instruction in sign language. But father refused one-on-one instruction, and he failed to implement sign language with KP. Whether unable or unwilling to learn sign language, father's failure to learn sign language directly impacts his ability to communicate with and parent KP. This inability to meet KP's basic needs despite numerous opportunities to learn sign language cannot be ignored, and it actually supports the trial court's decision to terminate father's parental rights.

On this record, the trial court did not clearly err by concluding that the DHHS made reasonable efforts toward reunification.

II. STATUTORY GROUNDS AND BEST INTERESTS

Next, respondents contend that the trial court clearly erred by finding that the grounds for termination in MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j) were established by clear and convincing evidence and by concluding that termination was in KP's best interests. We disagree.

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

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); see also MCR 2.613(C). 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).

In this case, with respect to MCL 712A.19b(3)(c)(*i*), we must conclude that the conditions leading to adjudication were the unsanitary and uninhabitable conditions of KP's home as well as respondents' mental health issues. Despite time to make changes and the opportunity to participate in a variety of services, see *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014), respondents' home remained unfit for KP more than 16 months after her removal. Although there had been some improvement, the house was infested with cockroaches; there were fire safety concerns, including that respondents used a blow torch to open the outside door during cold weather; the house was cluttered such that KP could not move safely around the home, and there were still major, unaddressed cleanliness issues. Given respondents' failure to both make the home safe for KP and benefit from counseling services, we agree that the trial court did not clearly err by concluding that clear and convincing evidence showed that the conditions that led to adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering KP's age. Accordingly, the trial court did not clearly err by terminating respondents' parental rights under MCL 712A.19b(3)(c)(*i*).

With respect to MCL 712A.19b(3)(c)(*ii*), the trial court recognized that KP had autism and profound disabilities requiring a level of care that respondents were unable or unwilling to provide despite the DHHS's "significant efforts to educate and model parenting skills." In this regard, as discussed earlier, respondents received numerous services to help them gain the parenting skills necessary to meet KP's particular needs. Nevertheless, respondents struggled to implement the ABA recommendations; they showed themselves reluctant to change their "routine" to account for KP's progress, and they failed to provide the high level of supervision and "hyperawareness" needed to monitor KP and keep her safe. In fact, father fell asleep during several parenting-time visits. Given respondents' progress thus far, the caseworker believed that it would be "a very long time," even years, before respondents could adequately address all of the barriers to reunification and provide for KP's specific needs to ensure her continued progress. On the whole, despite the opportunity to rectify shortcomings, respondents did not do so, and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering KP's age. Accordingly, the trial court did not clearly err by concluding that clear and convincing evidence supported termination under MCL 712A.19b(3)(c)(*ii*).

The same evidence supporting termination under MCL 712A.19b(3)(c)(*i*) and (c)(*ii*) also supports the trial court's conclusions under MCL 712A.19b(3)(g) and (j). After more than 16 months, respondents were unable to provide KP with a safe and clean home environment, and they remained unable to provide the level of care necessary to meet KP's considerable needs. Respondents showed relatively little progress despite services, and they were prone to lash out in anger at the foster-care workers and others. In light of their lack of progress as well as the unsuitability of their home and their inability to provide the care KP needed, we conclude that the trial court did not clearly err by finding that respondents failed to provide proper care and custody and that there was no reasonable expectation that they would be able to do so within a reasonable time considering KP's age. MCL 712A.19b(3)(g). Likewise, given the evidence in this case, the trial court did not clearly err by concluding that there was a reasonable likelihood KP would be harmed if returned to respondents' care. MCL 712A.19b(3)(j).

In disputing the trial court's determinations regarding the statutory grounds, respondents contend that termination under the relevant subsections was not appropriate because they were not provided with reasonable services and adequate time to work toward reunification. As discussed, however, the DHHS fulfilled its obligation to make reasonable efforts toward reunification, including its obligation to make reasonable accommodations required by the ADA. Bearing in mind that respondents received appropriate services, the trial court's findings related to the statutory grounds were not clearly erroneous, and termination of respondents' parental rights was proper under the applicable subsections.

Finally, respondents assert that the trial court clearly erred by concluding that termination of their parental rights was in KP's best interests. Respondents contend that they have a bond with KP, that they showed significant progress during the case, and that they should be afforded more time to work toward reunification. With respect to a child's best interests, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. In assessing a child's best interests, a trial court may consider such factors as a "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 35, 41-42; 823 NW2d 144 (2012) (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 at 714. A trial court can additionally consider the length of time a 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. At this stage, the interest of the child in living in a stable home is superior to any interest of the parent. *In re Medina*, 317 Mich App 219, 237; 894 NW2d 653 (2016).

In this case, the trial court did not clearly err by concluding that termination of respondents' parental rights was in KP's best interests. The trial court considered a wide variety of factors, including KP's bond to respondents to the extent that respondents love KP and KP "looks forward" to seeing them. With regard to mother in particular, the trial court noted—on the basis of the evidence presented—that mother reported having a "weak" bond with KP. The trial court's findings regarding KP's bond to respondents, and mother in particular, were not clearly erroneous. Further, although KP had some bond with respondents, the trial court did not

err by concluding that this bond did not outweigh the numerous factors demonstrating that termination was in KP's best interests, including respondents' poor parenting skills and their inability to meet KP's special needs. Weighing KP's need for permanency, stability, and finality, the trial court reasoned that respondents should not be given additional time to work on their case service plan considering their poor progress during the 16 months KP had already spent in care. In contrast to respondents' inability to provide appropriate care for KP, KP made outstanding progress while in foster care.[3] Her foster parents showed an ability and willingness to meet KP's needs, and they were able to provide her with a clean and safe home environment. Given all these factors, the trial court did not clearly err by ruling that a preponderance of the evidence showed that termination of respondents' parental rights was in KP's best interests. Accordingly, the trial court did not clearly err by terminating respondents' parental rights. See MCL 712A.19b(5).

We affirm.

/s/ Jane E. Markey
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra

[3] On appeal, in challenging the trial court's statutory grounds and best-interest analyses, mother contends that it was unfair to consider KP's progress in foster care as compared to her progress while in respondents' care. Although it would be improper to consider a foster-care placement when deciding whether statutory grounds for termination have been shown, the trial court did not do so in this case; instead, the trial court permissibly considered the advantages of KP's foster-care placement when addressing her best interests. See *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009). Thus, there was no error in this regard.