

STATE OF MICHIGAN
COURT OF APPEALS

In re ALVAREZ, Minors.

UNPUBLISHED
November 26, 2019

No. 347810
Ingham Circuit Court
Family Division
LC No. 17-001070-NA

Before: TUKEL, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court’s order terminating her parental rights to the minor children, BA, JA, and CA, under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if returned to parent).¹

I. PERTINENT FACTS

Children’s Protective Services (CPS) first became involved with the family as a result of issues related to substance abuse. During CPS’s involvement, respondent underwent a psychological evaluation that identified that she has a mild intellectual deficit that impacted her ability to provide consistent parenting for the children. CPS referred the family to Families First, which provided in-home services to address the family’s needs. At the completion of the 28-day program, the risk of the harm to the children still was considered to be moderate to high. Eventually, the family became homeless, and respondent was unable to control her children’s behaviors. She voluntarily sought assistance from the Department of Health and Human Services (DHHS) in providing the children with care and custody.

DHHS eventually filed a petition requesting the removal of the children due to improper supervision, physical neglect, substance abuse, lack of housing, and lack of parenting skills.

¹ During the course of these proceedings, the children’s father relinquished his parental rights to the children. Accordingly, he is not a party to this appeal.

Respondent admitted her alcohol and substance use, and admitted that she had no place to go with the children given her inability to control them. A case service plan was developed to address respondent's barriers toward reunification, including substance abuse, housing, emotional stability behavior, and parenting skills. Further, respondent was advised by her caseworker that DHHS policy would not allow a recommendation for reunification while respondent remained involved in a relationship with the children's father due to his prior conviction of criminal sexual conduct involving his daughter from a prior relationship.

Respondent showed progress at first, but eventually she was ordered to show cause why she should not be held in contempt for failure to complete random drug screens and several positive test screens. Respondent admitted the allegations, and the trial court deferred respondent's 3-day jail sentence pending her completion of a substance abuse treatment program. DHHS continued to work with respondent on obtaining services and housing, through a referral to Michigan Rehabilitative Services (MRS), where individuals with learning disabilities could obtain assistance in finding housing, employment, and other services. Given the concerns with respondent's ability to control the children's behavior, respondent also was referred to multiple parenting-skills classes.

Respondent engaged in services, secured housing, and separated from the children's father. However, BA's therapist recommended that BA's parenting time be suspended because it was negatively affecting BA. Instead of addressing BA's behaviors, respondent would remind him that the visit was supervised and inform him that he would not come home due to his behavior. Respondent also withheld food or threatened to end visits early or cancel future visits as punishment. At that time, the caseworker reported that respondent had not shown sufficient improvement in her parenting skills to move to unsupervised parenting time, and respondent's parenting time with BA was ultimately suspended.

Respondent underwent an updated psychological evaluation which suggested that she was still involved with the children's father and did not understand the importance of protecting the children from him. Respondent missed drugs screens and tested positive on some occasions. Accordingly, the trial court ordered a goal change to adoption and ordered DHHS to begin termination proceedings. Following two days of termination hearings, the trial court terminated respondent's parental rights.

II. REASONABLE EFFORTS

Respondent first argues that DHHS failed to make reasonable efforts to reunify the family. We disagree.

Generally, the issue of whether petitioner made reasonable efforts to preserve and reunify the family is reviewed for clear error. See *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

DHHS has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights. MCL 712A.18f(3)(b) and (c); MCL 712A.19a(2). Reasonable efforts begin with the creation of a case services plan aimed at rectifying the conditions that caused the child's removal. *In re Fried*, 266 Mich App at 542; MCL 712A.18f(3)(d). Although DHHS "has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of the respondent[] to participate in the services that are offered" and "demonstrate that [she] sufficiently benefited from the services provided." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). To successfully claim a lack of reasonable efforts, a respondent must establish that she would have fared better if DHHS had offered other services. *In re Fried*, 266 Mich App at 543.

Respondent argues that DHHS failed to make reasonable efforts toward reunification because despite her diagnosis of an intellectual development disorder, DHHS did not modify her case service plan or provide additional services necessary to facilitate reunification and otherwise failed to address her disability. More specifically, she argues that DHHS failed to consider or offer supportive visitation to assist her with parenting-time visits and that she was not provided with assistance through MRS for the first eight months of the case. However, respondent failed to raise any objections to the service provided throughout the pendency of this case. Further, the record indicates that before removal proceedings were initiated, she participated in a 28-day program with Families First. At that time, Families First provided the family with help in the areas of parenting skills, organization, addressing the children's behavioral issues, budgeting, and other assistance as needed. However, despite respondent's progress during the program, at the completion of the program, the risk of harm to the children was still moderate to high. Moreover, at the time of the termination hearing, the testimony demonstrated that respondent was inconsistent with the children's discipline, was not always able to control the children, and had not benefited from services already provided. Respondent argues that she should have received similar hands-on support during her parenting time. However, she does not cite any authority for the proposition that DHHS was required to provide the same services that were already provided prior to the children's removal, and we find no support for this proposition. Accordingly, this argument is waived. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

III. STATUTORY GROUNDS

Respondent next argues that the trial court clearly erred by finding that clear and convincing evidence supported the termination of her parental rights. 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). The trial court's factual findings and findings that a ground for termination has been established are reviewed for clear error. MCR 3.977(K); *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297.

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide in relevant part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The 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 . . . the following:

(i) The 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.

* * *

(g) The parent, although, in the court's discretion, financially able to do so, 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.

* * *

(j) There 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.

Termination of parental rights is proper under MCL 712A.19b(3)(c)(i) when "the totality of the evidence amply supports that [the parent] had not accomplished any meaningful change in the conditions" that led to the court taking jurisdiction over the minor, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), 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)(i).

Respondent argues that the trial court erred in terminating her parental rights under MCL 712A.19b(3)(c)(i), because at the time of the termination hearing she had obtained housing and had maintained it for five months, was employed, was paying her bills, was attending weekly therapy sessions, had separated from the children's father, and had significantly improved her parenting skills. She contends that, given this progress, there was no evidence at the time of the termination hearing that she was unable to become a fit parent within a reasonable time.

The trial court recognized that, although respondent had alleviated her housing barrier, she had not completed her substance abuse treatment, continued to test positive for substances, had missed drug several screens, and still lacked insight about how her actions affected the children. The trial court also was concerned that she did not understand why her relationship with the children's father needed to be severed for the children's sake and that she lacked insight

into understanding the impact of her actions on the children. In light of these circumstances, the trial court did not err in determining that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the minor children's ages. MCL 712A.19b(3)(c)(i).²

IV. CONCLUSION

Affirmed.

/s/ Jonathan Tukel
/s/ David H. Sawyer
/s/ Michael J. Riordan

² Because we conclude that the trial court did not clearly err by finding that MCL 712A.19b(3)(c)(i) supported the termination of respondent's parental rights, we need not address the additional grounds. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). However, the trial court's finding that statutory grounds for termination pursuant to MCL 712A.19(3)(g) (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) was proper because respondent continued to abuse drugs in violation of the parent/agency agreement. *In re White*, 303 Mich App at 710 ("[a] parent's failure to comply with a parent/agency agreement pursuant to a court order is evidence that the parent will not be able to provide a child proper care and custody"). Additionally, statutory grounds for termination existed under MCL 712A.19(3)(j) (reasonable likelihood that the child will be harmed if returned to the home of the parent) because respondent lacked the capacity to control the children's behaviors and lacked insight into how her actions affected the children. She was unable to provide an emotionally safe environment, and therefore, the trial court did not err when it concluded that there was a reasonable likelihood that the children would be harmed if returned to respondent's home. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (the statute contemplates both physical and emotional harm).