STATE OF MICHIGAN

COURT OF APPEALS

In re BROWN, Minors.

UNPUBLISHED
October 22, 2019

No. 348130
Wayne Circuit Court
Family Division
LC No. 15-521399-NA

Before: CAVANAGH, P.J., and BECKERING and GADOLA, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court order terminating her parental rights to two of her children. The trial court found that MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (3)(c)(*ii*) (new conditions that arose remain unrectified), and (3)(j) (reasonable likelihood of harm), provided the statutory grounds for termination and that a preponderance of the evidence established that termination was in the children's best interests. Respondent does not challenge the trial court's statutory grounds finding. Instead, she asserts on appeal that petitioner's efforts to reunify her with her children did not reasonably accommodate her mental health issues. She also contends that the trial court erred in finding that termination was in the children's best interests. Because the record establishes that petitioner's reunification efforts accommodated respondent's mental health needs, and that the trial court did not clearly err in its statutory grounds and best-interests determinations, we affirm the trial court's termination order.

I. BASIC FACTS AND PROCEDURAL HISTORY

In November 2015, Child Protective Services received a referral alleging that respondent physically abused her two minor children, AB and WB. An investigation substantiated the allegations, and the Department of Health and Human Services ("DHHS" or "petitioner") filed a petition alleging, among other things, that respondent physically abused AB and WB, that the

children's legal father failed to protect them from respondent's abuse,[1] and that respondent appeared to have untreated mental health issues.[2] The court authorized the petition, and respondent admitted to reporting that she had a mental health history, that she was not in counseling or taking medication for her mental health issues, and that she had slapped AB across the face as a form of discipline. The trial court ordered initial services for respondent that included parenting classes, a "psychological and psychiatric [examination] if recommended," individual counseling, and family counseling when appropriate. The court also ordered respondent to sign all necessary releases and consents and maintain suitable housing and a legal income, and it granted respondent supervised parenting time of one hour per week.

Although cautious optimism characterized early dispositional review hearings, it soon became apparent that respondent, although compliant with services, was not benefitting from them. Respondent was not applying what she was learning in parenting classes to her visits with the children and, at family team meetings, seemed unaware of what was going on and why her children were in care. A psychological evaluation resulted in diagnoses of "Bipolar Disorder/Manic/Moderate Unspecified Adjustment Disorder with Affective Symptoms." Respondent began counseling, but her therapist suspended services until respondent could get psychiatric treatment. Caseworkers also concluded that respondent's services should be put on hold until she received a psychiatric evaluation and began to engage in any recommended mental health treatment. Accordingly, the trial court ordered petitioner to refer respondent for a psychiatric evaluation.

Respondent missed the first two appointments for psychiatric evaluations and the responsible agency terminated her from psychiatric services because it could not contact her. Eventually, however, respondent participated in a psychiatric evaluation. She received diagnoses of "Paranoid Schizophrenic; Schizoaffective Disorder Bipolar type, and Borderline Personality Disorder," and recommendations that included following up with a psychiatrist who would treat her paranoia symptoms and help her stabilize her depression, and individual and group therapy. Subsequently, Kathleen McCormick, a foster care case manager for Forever Families, sought and obtained an order from the court for respondent to "participate in a community mental health program or an N[eighborhood] S[ervices] O[rganization] Program that will provide her with regular psychiatric care, medication if needed and medication follow-ups if needed." McCormick had earlier testified that she wanted to give respondent time to benefit from

[1] The children's father had sole physical and legal custody of the children, but routinely left them with respondent. Although the father was a respondent in this proceeding, he successfully completed his services and removed the barriers to reunification. Consequently, the court granted petitioner's request to separate his case from respondent's and to dismiss him from the supplemental petition. The father is not a party to this appeal, and his involvement in the proceeding is irrelevant to respondent's appeal.

[2] According to the petition, respondent was "subject to a 2012 petition to declare her a legally incapacitated adult and appoint her a legal guardian." Throughout this proceeding, respondent was represented by both an attorney and a legal guardian ad litem.

psychiatric services and that relatives had told her that respondent does well when she is on medication.

Respondent resisted McCormick's efforts to participate in NSO Life Choices, first by refusing additional services on the ground that she had completed enough services and did not believe that she needed any "specialized services," then by failing to go to the appointment that would have completed her registration for Life Choices. Petitioner next referred respondent to Family Care Network for specialized parenting classes. Respondent did not participate in those, either, insisting that she had already completed parenting classes, and the service provider terminated her from services. Eventually, Forever Families succeeded in helping respondent complete an intake process to receive mental health treatment at Detroit East Mental Health, but respondent did not follow up with subsequent appointments for psychiatric care. During the process of trying to get respondent engaged in mental health services, McCormick went more than once to respondent's house to take her to psychiatric appointments. Respondent knew that McCormick was coming but refused to answer the door. Throughout this child protective proceeding, respondent insisted that she did not have a mental health problem, resisted receiving services for her mental health issues, and attributed her behavior to past drug abuse and petitioner's removal of her children.

Respondent's mental health issues also affected her parenting-time visits with the children. Testimony at the dispositional review hearings revealed that respondent could be aggressive, combative, and unforgiving toward the foster parent and the children. Regarding the visits themselves, McCormick said there did not appear to be a parent-child bond between respondent and the children. She explained:

> The children are pretty disengaged, off doing their own thing. [Respondent] tends to read to the children despite them asking her not to, and so usually the visits are – once they're calmed down because sometimes they can be quite chaotic, [Respondent] reading aloud and the children doing whatever else they would like to do.

McCormick said that respondent does what she wants, regardless of what the children want, and that she intervenes and redirects respondent throughout the parenting-time visit. She also reported that AB had asked for the visits to stop.

The court ordered additional support for visitations to see if personal coaching would benefit respondent. Foster care supportive coach specialist Danyelle Kelley met respondent half an hour before the visit to go over a parenting lesson, observed the visit and intervened when necessary, and then spent half an hour after parenting time debriefing the visit. Kelley testified at an April 2018 dispositional review hearing that she had only been with respondent for nine sessions, but she had seen no progress; she could not remember a single visit that had been completely positive. Her biggest concern was respondent's negative interactions with AB. Kelley said that once AB does something respondent does not like, respondent is unable "to forgive [AB] for doing it." Kelley said that WB often tells respondent to "drop it," but she cannot. Such incidents usually leave AB in tears, or sitting in a corner, ignoring respondent and waiting for her father, whose visits began after respondent's concluded. Responding to petitioner's suggestion, the trial court next had Kelley work with respondent one on one with

each of the children. This, too, was unsuccessful, as a representative for Forever Families testified at the next dispositional hearing that respondent had completed the supportive visitation program without benefit, and that their request for an extension was denied because respondent was not complying with mental health services.

Kelley offered substantially the same testimony at respondent's bifurcated termination hearing. She said that every visit proceeded along the same lines: respondent brought food and tried to engage the children, but the visits invariably turned negative, especially with regard to AB and her hair, with which respondent never seemed to be satisfied. Kelley said that respondent was not usually receptive to redirection and was unable to recover once matters escalated. During the post-visit debriefings, respondent could recognize that the visits were negative, but was unable to identify anything that she could have done differently; instead, she routinely blamed the children's behavior for the negative visits. Kelley testified that she tried to prepare respondent ahead of the visits by going over what to do if a negative interaction occurred, but respondent was not able to employ these skills during the visit. Based on her observations, Kelley opined that the children did not have a bond with respondent, and that respondent would not have progressed much even if services had been extended.

Rhiannon Pniewski, the foster-care worker supervisor, testified at the termination hearing that she believed respondent's mental health was the primary barrier to reunification. She testified to the agency's repeated and largely unsuccessful efforts to engage respondent in mental health services, and said she knew of no other services the agency could offer respondent to address her mental health issues and of no programs more intensive than supportive visitation coaching to address her parenting issues. Pniewski opined that respondent would not be able to benefit from any services until she was under the care of a psychiatrist.

Pniewski indicated that the same issues had plagued parenting throughout this proceeding; specifically, respondent has repeatedly berated AB about her hair and her glasses, and the fact that she had to repeat kindergarten. Pniewski confirmed that AB had indicated that she does not want to visit with her mother, and attributed this reluctance to respondent's obsessive and continuous focus on AB's appearance. Of late, testified Pniewski, respondent had expanded her negative focus to include WB. For example, at a recent visit, respondent asked WB to comb his hair so he could show her that he knew how. WB told her that he did not want to, but respondent continued berating him about it until the caseworker stepped in and threatened to stop the visit if respondent could not "let this go." In addition, Pniewski reported that respondent's house was "in deplorable condition," that respondent had yet to provide documentation verifying that she receives social security disability income, and that she had missed four of the last 12 parenting time visits.[3]

Against the advice of counsel and of her LGAL, respondent opted to testify. Her testimony was at times rambling, repetitive, and nonresponsive, but she conveyed several relevant points nonetheless. Respondent insisted that she had completed a parenting program,

[3] Respondent's attendance at parenting time was never an issue at any of the dispositional review hearings.

did not think she needed more parenting classes or services, and acknowledged that she had refused to attend another parenting program. However, she said she would participate in another parenting program if it would help her case. She believed that she had completed all the services related to psychiatric care that the agency and the court had required of her and did not need mental health services; but she knew how to get to Detroit East Mental Health by bus and would participate in services if it would help her keep her children. She thought the fact that some parenting visits went well while others did not was to be expected, but said she was always happy to see the children and believed they were happy to see her. During her testimony about parenting time, respondent explained at some length about an incident involving AB's hair. Respondent said she had tried to braid AB's hair, but AB did not want it braided, and that was fine. Respondent admitted that she could go on about things long after she ought to have let them go, but she could stop that behavior. She returned to this topic during cross-examination of her participation in mental health services, stating, "I don't think that I need any medication, any more cause I'm trying to explain to you about – what happened about her hair. It's just that she didn't want it done. I understand that . . . ."

After the court found that clear and convincing evidence established statutory grounds to terminate respondent's parental rights, the court ordered a Clinic for Child Studies evaluation to assist with the best-interests determination. When the termination hearing continued, the court received the report of the clinician's family assessment into evidence without objection. The report noted that during the clinician's observation of respondent with her children, "there was no demonstration of positive nurturing, affection[,] or support[,]" that the children did not appear to have a strong bond with respondent, and that AB "displayed no interaction with [respondent] during the observation." The clinician further noted that both children seemed relieved when respondent left, and when asked how they were doing with their father, "their faces lit up and they smiled. After hearing closing arguments, the trial court reiterated the report's observation about the lack of interaction between respondent and the children and testimony from the termination hearing indicating that visitations had traumatized both children. Noting the emotional harm caused by the children's visits with respondent, as well as the severely diminished parent-child bond, the court found by a preponderance of the evidence that termination was in the best interests of the children.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews the trial court's findings that a ground for termination has been established and that termination is in the child's best interests under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91 (CORRIGAN, J.); 126 n 1 (YOUNG, J., concurring in part); 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich, 142, 152; 782 NW2d 747 (2010). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich, 624, 633; 593 NW2d 520 (1999). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. STATUTORY GROUNDS

Respondent contends that petitioner failed to provide services that accommodated her mental health issues. Specifically, respondent asserts that she made good progress on her service plan during the first 15 months of this proceeding, but suffered a break in her mental state in late 2016, and received serious mental health diagnoses in April 2017. Given respondent's diagnoses and lack of insight into the condition of her mental health, petitioner should have "more aggressively served" respondent. We disagree.

Barring certain exceptions not applicable in the instant case, 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). *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637, 639 (2017). In addition, DHHS "has obligations under the ADA [Americans with Disabilities Act, 42 USC 12101 *et seq*.] that dovetail with its obligations under Michigan's Probate Code." *Id*. 86. Accordingly, DHHS 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. *Hicks/Brown*, 500 Mich at 86, quoting 28 CFR 35.130(b)(7). In other words, in order for reunification services to be reasonable, they must accommodate the known disabilities of the recipient. See *Hicks/Brown*, 500 Mich at 86-87. Although respondent has not raised an explicit challenge under the ADA, such challenge is implied, as the issue presented is whether DHHS provided services that accommodated respondent's mental health issues.

As an initial matter, the record belies respondent's assertion that she made good progress during the first 15 months of this proceeding. The record shows that respondent struggled with untreated mental health issues from the beginning to the end of this proceeding and that her mental health negatively affected her ability to benefit from services and to adequately parent her children during parenting time.

The record also shows the extent to which petitioner made efforts to accommodate respondent's mental health issues. Forever Families arranged for respondent to have a psychiatric evaluation. After the court incorporated the evaluation's recommendations into the parent-agency agreement, petitioner and Forever Families then worked with respondent to obtain the recommended mental health services, despite respondent's insistence that she did not need mental health treatment or specialized services. McCormick successfully worked with her to get an intake appointment with NSO Life Choice, but respondent lost that referral due to nonparticipation. The agency then succeeded in getting respondent into specialized parenting classes at Family Care Network and psychiatric services at Detroit East Mental Health. However, once again, respondent refused to participate or did not follow up with services. McCormick went to respondent's home to take her to psychiatric services, but still respondent refused to participate. Petitioner had a duty to provide reasonable services, but respondent had a corresponding duty to participate in the services offered. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Respondent argues that her mental illness prevented her from acknowledging that she had a mental illness and that, under such circumstances, petitioner should have been more aggressive. Specifically, respondent suggests that petitioner should have continued making psychiatric

appointments. However, the problem was not a lack of appointments, but respondent's unwillingness to engage in those services. The record belies respondent's implication that, if petitioner had repeatedly presented respondent with psychiatric appointments, she would eventually have given in and followed through. Petitioner made appointments with more than one mental health care or special services provider, but respondent refused to participate and insisted that she did not need the care or the specialized services. Respondent has cited no authority allowing a court in circumstances such as these to order petitioner to force persons to engage in mental health care services and to take medication that would enable them to benefit from services in a child protective proceeding.

On this record, we cannot say that petitioner failed to make reasonable efforts at reunification. Quite the contrary; the record shows that the court was aware of the governing law and ensured that petitioner's efforts at reunification were reasonable in light of respondent's mental health issues. Because respondent does not challenge the trial court's determination that statutory grounds were established by clear and convincing evidence, we need not address the trial court's related findings.

C. BEST INTERESTS

Respondent contends that the trial court erred in finding that termination was in the children's best interests because she visited the children, loved them, and shared a parent-child bond with them, and the children wanted a relationship with her. Further, adoption was not an issue because the children lived with their father. Under these circumstances, termination was not in the children's best interests. We disagree.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "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*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). When making its best-interests determination, the court must consider whether the record as a whole proves by a preponderance of the evidence that termination is in the best interests of the child. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

The trial court did not clearly err by finding that termination was in the children's best evidence by a preponderance of the evidence. The only evidence respondent advances as weighing against termination being in the children's best interest is WB's statement to the Center for Child Study clinician that, while he does not want to live with respondent, he would like to visit her. While this is certainly a consideration, it does not negate the fact that the record, viewed as a whole, see *id*., more than establishes that termination of respondent's parental rights was in the children's best interests. No one who observed respondent with her children testified to the existence of a parent-child bond or to an improvement in respondent's parenting abilities. The record shows that the children were thriving with their father. According to the evaluation of the Clinic for Child Study, they reported feeling "loved [and] safe," they had their own rooms, and they had enough food and clothing. These are clear advantages over respondent's home,

which the children described as dirty and bug-infested. In addition, with their father, the children may experience the type of permanency and stability unavailable with respondent. Thus, despite WB's stated desire to have visits with respondent, the preponderance of the evidence supports the trial court's decision to terminate respondent's parental rights.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jane M. Beckering
/s/ Michael F. Gadola