

STATE OF MICHIGAN
COURT OF APPEALS

In re GANZIE, Minors.

UNPUBLISHED
November 21, 2019

No. 348535
Wayne Circuit Court
Family Division
LC No. 17-001119-NA

Before: JANSEN, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor children OMG and SIG, under MCL 712A.19b(3)(c)(i) (failure to rectify conditions that led to adjudication), (c)(ii) (failure to rectify other conditions), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to parent). Review of the record reveals no clear error and we affirm.

I. PROCEDURAL HISTORY

Petitioner filed an original petition to remove the children from respondent's custody, alleging that respondent, while under the influence, physically abused SIG by punching SIG in the face and throwing a beer can and shoes at SIG, resulting in hospitalization and injury. Respondent also had a long history of substance abuse. A service plan was implemented for respondent, which required her to participate in parenting classes, substance abuse treatment, drug screens, and psychological and psychiatric assessments. Respondent also had to maintain suitable housing and a legal source of income.

Thereafter, petitioner filed a supplemental petition for permanent custody because respondent did not complete parenting classes, went through the early termination process several times for individual and substance-abuse counseling for failing to appear, did not comply with family therapy, did not comply with drug screens, did not complete the psychiatric assessment, did not provide a signed lease for housing, failed to attend 53 visits with the minor children, and did not provide proof of a legal source of income.

The trial court found that statutory grounds existed to terminate respondent's parental rights and that termination was in the children's best interests.

II. DISCUSSION

On appeal, respondent argues that the trial court clearly erred in finding that the services offered to respondent were reasonable, the statutory bases for termination were proven by clear and convincing evidence, and termination was in OMG and SIG's best interests by a preponderance of the evidence. We disagree.

A. STANDARDS OF REVIEW

We review “for clear error a trial court’s factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We also review the trial court’s best interests determination for clear error. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). A trial court’s decision “is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

To preserve a challenge to the adequacy of services provided to a respondent, the respondent must object or otherwise indicate that the provided services were somehow inadequate at the time they were offered. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Our Supreme Court has expressed skepticism “of this categorical rule,” but has not overturned it. See *In re Hicks/Brown*, 500 Mich 79, 88-89; 893 NW2d 637 (2017). Respondent did not challenge the adequacy of the services when the service plan was adopted with the exception of asking for petitioner’s assistance with transportation to visit her children. It was not until closing argument at the termination hearing that respondent challenged the adequacy of the services provided. Because respondent failed to timely challenge the adequacy of the services, this issue is unpreserved. We review unpreserved issues for plain error that affects substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). “Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *Id.* at 9.

B. REASONABLE SERVICES

Respondent argues that petitioner failed to provide her with adequate services, considering her diminished mental capacity. We disagree.

Petitioner “has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights.” *Hicks/Brown*, 500 Mich at 85. Part of making a reasonable effort is the creation of a service plan, which outlines the steps that petitioner and respondent will take to achieve reunification. *Id.* at 85-86. Petitioner also has obligations under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, to provide reasonable modifications to the services or programs offered to a disabled respondent. *Id.* at 86. “[E]fforts at reunification cannot be reasonable . . . if the Department has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA.” *Id.*

Here, although a foster care worker testified that respondent had unresolved mental health issues, respondent did not establish that she had a qualifying disability under the ADA.

Instead, the evidence demonstrated that respondent fluctuated between being “calm and normal” and able to comprehend what the foster care worker said to being “very hyper, jumping from topic to topic,” and unable to focus on what the foster care worker was telling her. The foster care worker stated that she did not know what respondent’s diagnosis was and respondent had failed to attend her psychiatric evaluation. This does not establish that petitioner knew that respondent was disabled and petitioner “cannot accommodate a disability of which it is unaware.” *Id.* at 87. Thus, the trial court did not plainly err in failing to require petitioner to account for respondent’s alleged disability in offering her services.

Indeed, it is unlikely that respondent would have participated in any additional or modified services because she did not participate in any of the services petitioner offered. *Utrera*, 281 Mich App at 9. Respondent failed to appear for her psychiatric evaluation, which may have identified any purported disability. Thus, respondent’s failure to take the actions necessary to ascertain her specific needs is attributable to her rather than the alleged inadequacy of petitioner’s services. Furthermore, respondent does not identify what additional services petitioner should have offered or how petitioner should have modified the service plan to accommodate respondent’s alleged comprehension issues. Accordingly, respondent has failed to establish that the trial court plainly erred in failing to require a modification in the service plan based on her alleged disability.

C. STATUTORY GROUNDS

Respondent argues that petitioner failed to establish that statutory grounds for termination existed by clear and convincing evidence. We disagree.

In order to terminate parental rights, a trial court must find that a statutory ground has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “If a statutory ground for termination is established and the trial court finds ‘that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights. . . .’ ” *Id.* at 32-33, quoting MCL 712A.19b(5).

The trial court terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Respondent does not specifically argue why there was not clear and convincing evidence to support each individual statutory ground. Instead, respondent argues generally that there was evidence that she was a fit parent. After review of the record, we conclude that the trial court did not err in terminating respondent’s parental rights.

1. MCL 712A.19b(3)(c)(i)

The trial court may terminate parental rights when:

(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 either of 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.

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

Here, respondent's substance abuse, which led to the adjudication, continued to exist at the time of termination. At the pretrial hearing, respondent admitted that she had a history of substance abuse, specifically marijuana and crack cocaine. Respondent also admitted that, after she consumed several beers, she "gave [SIG] a whooping" after SIG and OMG were "tussling around." Respondent's actions resulted in SIG's hospitalization with abrasions and swelling. At the termination hearing on February 19, 2019, which was held more than 182 days after the initial August 25, 2017 order of disposition, a foster care worker testified that respondent never appeared for her drug screens. The only two drug screens that respondent participated in were directly after a court hearing. On one occasion, respondent tested positive for cocaine; on the other, the worker believed respondent tested positive for marijuana. Respondent also failed to regularly attend her substance abuse counseling. Because respondent utterly failed to address her substance abuse issues, the trial court did not clearly err by terminating her parental rights under MCL 712A.19b(3)(c)(i).

Moreover, respondent acknowledged that petitioner provided services for her, including individual counseling, parenting classes, and a psychiatric evaluation. Respondent was also required to maintain suitable housing, a legal source of income, and to regularly attend parenting time. A review of the record establishes that respondent completely failed to attend most of the services: respondent was placed on early termination of individual counseling three times because of her failure to attend; respondent was referred five times for parenting classes, but never completed a single one; and respondent was referred for a psychiatric evaluation, which she did not attend. Additionally, respondent represented that she maintained a home, but failed to provide a copy of her lease and she would not answer the door when the foster care worker visited. Similarly, respondent told the worker that she received social security income, but never gave her documentation to demonstrate this. Finally, respondent had 71 opportunities to attend parenting time with her children. Respondent only attended approximately 20 parenting visits, many times without providing an excuse for her absence despite petitioner providing respondent with bus passes to assure transportation accessibility. Thus, respondent's failure to take advantage of any of the services offered further demonstrates that the conditions leading to adjudication were unlikely to be rectified.

Accordingly, there was clear and convincing evidence for the trial court to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i). Because we have determined that

the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), we need not address the remaining grounds. See *Ellis*, 294 Mich App at 32.¹

D. BEST INTERESTS

The court concluded that termination was in OMG's best interest because respondent "has done very little [to] be reunified with her daughter," respondent failed to complete any services, and any bond with OMG was weakened because of respondent's failure to visit. The court separately concluded that termination was in SIG's best interest for the same reasons. Respondent argues that termination of her parental rights was not in OMG and SIG's best interests. We disagree.

After a trial court finds that a statutory basis for termination exists by clear and convincing evidence and that a preponderance of the evidence shows "that termination of parental rights is in the best interests of a child, the court must terminate the respondent's parental rights to that child." *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Moss*, 301 Mich App at 90.

"The trial court should weigh all the evidence available to determine the children's best interests." *White*, 303 Mich App at 713. The trial court must consider the best interests of each child individually. *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). However, the trial court does not err "if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child's best interests." *White*, 303 Mich App at 716. The trial 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." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with . . . 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." *White*, 303 Mich App at 714. When the trial court considers a

¹ We do however note that MCL 712A.19b(3)(g) was amended effective June 12, 2018. See 2018 PA 58. The amended version of the statute added "although, in the trial court's discretion, financially able to do so" in place of the prior language, which stated "without regard to intent." See 2018 PA 58. Both the supplemental petition that sought termination of respondent's parental rights and the trial court relied on the pre-amendment version of the statute after the amended version was effective. Consequently, the trial court did not explicitly make any findings of fact regarding respondent's finances other than mentioning that she might be receiving social security income even though she had failed to provide verification of this. Because the trial court never addressed the applicable statutory language, it did not find that MCL 712A.19b(3)(g), as amended, was established by clear and convincing evidence. Thus, it erred in terminating respondent's parental rights under the version of MCL 712A.19b(3)(g) that was no longer in effect. But because at least one statutory ground was established by clear and convincing evidence, this error was harmless.

child's best interests, the focus must be on the child and not the parent. *Moss*, 301 Mich App at 87-88.

The trial court did not clearly err in determining that termination of respondent's parental rights was in OMG and SIG's best interests. Respondent admitted that she had a substance abuse problem, but she demonstrated a lack of commitment to addressing it through substance abuse counseling. And, as already discussed, respondent showed no commitment to attending any of the services offered through the case service plan. *White*, 303 Mich App at 714.

Respondent argues that the trial court clearly erred in finding that termination was in the children's best interests because she was bonded with the children and interacted appropriately with them during parenting visits. But respondent fails to acknowledge that she only attended approximately 20 of the 71 visits scheduled. Respondent initially explained her absences by blaming a lack of transportation despite petitioner providing her with bus passes. Respondent eventually stopped trying to explain her absences, failed to consistently attend the services offered, and missed the final two court hearings in this case. And although there was testimony that respondent played and interacted appropriately with the children and that she had a bond, there was evidence that her bond was considerably weakened due to her failure to regularly visit with her children. *Olive/Metts*, 297 Mich App at 41-42. Specifically, the foster care worker testified that the children became upset when respondent failed to attend scheduled visits. Respondent's disinterest in parenting her children deprived them of stability and consistency. *Moss*, 301 Mich App at 87-88.

Respondent next argues that the trial court did not need to terminate her parental rights because the children could be placed with their father. "[B]ecause a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *Olive/Metts*, 297 Mich App at 43 (quotation marks and citation omitted). "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.* However, MCL 712A.13a(1)(j) defines "relative," and biological father is not included in the definition. See MCL 712A.13a(1)(j); *Schadler*, 315 Mich App at 413.

Here, father's potential success for reunification with the children does not obviate the propriety of the termination of respondent's parental rights or weigh against the trial court's best-interests determination because he is not considered a "relative." *Olive/Metts*, 297 Mich App at 43; *Schadler*, 315 Mich App at 413. In any event, the trial court did explicitly consider the children's placement with the father, and still determined that termination was in the children's best interests. Indeed, father no longer lived with respondent, had nearly completed his case service plan, and was close to being reunified with the children. In stark contrast, respondent had not completed her service plan, had shown disinterest in parenting, failed to attend a majority of the visits, and deprived her children of stability as a result. Thus, the trial court did not clearly err in finding that termination was in the best interests of both children.

III. CONCLUSION

The trial court did not err in determining that petitioner offered reasonable services to respondent. There was clear and convincing evidence supporting termination of respondent's parental rights under MCL 712A.19b(3)(c)(i). And there was a preponderance of the evidence that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark T. Boonstra
/s/ Anica Letica