

STATE OF MICHIGAN
COURT OF APPEALS

In re C. A. COUSINS, JR., Minor.

UNPUBLISHED
February 25, 2020

No. 349385
Van Buren Circuit Court
Family Division
LC No. 10-016896-NA

In re FORKER/FORKER-WALKER/COUSINS
Minors.

No. 349410
Van Buren Circuit Court
Family Division
LC No. 10-016896-NA

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father, C. Cousins, Sr., and respondent-mother, C. Forker, appeal as of right the trial court's orders terminating their parental rights to their respective minor children pursuant to MCL 712A.19b(3)(c)(i) and (j). We affirm.

I. BACKGROUND

Respondent Forker is the mother of the three children at issue in this case. Respondent Cousins is the father of the youngest child. In May 2016, after Forker and Cousins became involved in a verbal altercation that escalated into a physical fight, Forker stabbed Cousins in the chest in the presence of Forker's two children. The two children were removed and placed in foster care. Forker pleaded guilty to aggravated domestic violence and was sentenced to a jail term. The trial court asserted jurisdiction over the children pursuant to Forker's plea of admission. Forker was ordered to comply with a case-service plan that included mental health and domestic violence counseling. Forker completed a psychological evaluation that highlighted anger issues, emotional immaturity and impulsivity, and listed diagnoses of unspecified personality disorder and disruptive mood dysregulation disorder. The trial court issued personal protection orders (PPO) prohibiting contact between Forker and Cousins. Petitioner provided a supportive visitation

service in which a parenting coach provided one-on-one guidance to Forker during parenting time with her children. Forker consistently attended counseling and supportive visitation as soon as she was released from jail.

Cousins also was ordered to comply with services if he and Forker intended to resume their relationship. He did not comply with services and Forker continued to maintain a relationship with him. In October 2017, Cousins was arrested for a domestic violence incident in Forker's home. In February 2018, Forker gave birth to Cousins's child. Forker entered a plea of admission to a new petition against both Forker and Cousins, and the court acquired jurisdiction over the newborn child. Following a bench trial with respect to Cousins, the trial court found that Cousins's unresolved mental health and domestic violence issues, and his use of marijuana, supported grounds for jurisdiction under MCL 712A.2b(2). Cousins attended supportive visitation, but he did not participate in counseling or domestic violence therapy. He refused drug screening and announced his intent to continue her recreational use of marijuana. Cousins and Forker thereafter conceived another child, who is not at issue in these appeals.

The trial court held a hearing on petitioner's supplemental petition to terminate respondents' parental rights. The trial court found that although Forker cooperated with all services, she failed to rectify the mental health and domestic violence concerns that led to the children's removal. The court also found that Cousins had failed to rectify his domestic violence and mental health issues because he would not participate in therapy. The court found that statutory grounds for termination with respect to both respondents had been established under MCL 712A.19b(3)(c)(i) and (j), and further found that termination of respondents' parental rights was in the children's best interests. Respondents Cousin and Forker both appeal.

II. STANDARD OF REVIEW

In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination in MCL 712A.19b(3) exists. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). "Even if the trial court finds that the [petitioner] has established a ground for termination by clear and convincing evidence, it cannot terminate the parent's parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children." *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), citing MCL 712A.19b(5). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest under MCL 712A.19b(5)." *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012) (quotation marks and citation omitted). A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The question of whether a trial court may consider a parent's marijuana use to support a statutory ground for termination is a question of law. Questions of law are reviewed de novo on appeal. *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009). Unpreserved issues are reviewed for plain error affecting a party's substantial rights. *Id.*

III. DOCKET NO. 349385

In his sole issue on appeal, respondent Cousins argues that the trial court erroneously terminated his parental rights on the basis of his marijuana use, despite that marijuana use has been legalized in Michigan. We disagree because the basis of the termination was not the mere use of marijuana.

The trial court terminated Cousin's parental rights under MCL 712A.19b(3)(c)(i) and (j), which state:

(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.

* * *

(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.

Cousins suggests that the trial court considered his marijuana use as evidence supporting termination under § 19b(3)(c)(i), failure to rectify the conditions that led to the adjudication, because his controlled substance use was one of those conditions outstanding.

Contrary to Cousins's contention on appeal, the trial court's only reference to Cousins's marijuana use was its brief statement that his controlled substance use was a condition, among others, that existed at the time the court initially exercised jurisdiction. In its findings of fact, the trial court referenced the circumstances that led to the court's exercise of jurisdiction over Cousins's child, stating:

Mr. Cousins . . . was, at the time of this petition, there was a hearing and Mr. Cousins was found that he had continued to reside in a – or continued to use some controlled substances, did not have appropriate items that were necessary for a newborn. The he had a long history of domestic violence that had not been dealt with. And that he had not been complying with on-going services to treat his anger management and mental health issues. And, as was testified to by the caseworkers in this case, he's done little or nothing since the initial filing of this petition.

The court took jurisdiction in April 2018, which was before marijuana use was legalized in Michigan.¹ Nevertheless, the court did not refer to Cousins's marijuana use as a basis for finding that the statutory grounds for termination had been established. Rather, the court found that

¹ The Michigan Regulation and Taxation of Marijuana Act, MCL 333.27951 *et seq.*, became effective December 6, 2018.

statutory grounds for termination under MCL 712A.19b(c)(i) and (j) were established with respect to Cousins because of his failure to complete domestic violence treatment, his new misdemeanor charge of domestic violence in December 2018, his failure to participate in counseling, and his failure to cooperate “with any sort of a case services plan.” Cousins does not dispute these findings on appeal. Consequently, there is no basis in the record for concluding that the trial court relied on Cousins’s continued marijuana use, after it was decriminalized, as a factor supporting termination of his parental rights. The trial court instead determined that termination was justified because of Cousins’s unresolved propensity for domestic violence and poor mental health, and the fact that these issues were not likely to be resolved within a reasonable time considering his failure to participate in any services.

IV. DOCKET NO. 349410

Respondent Forker challenges the statutory grounds for termination in her case, whether petitioner gave reasonable efforts toward reunification, and whether termination was in the children’s best interests.

A. STATUTORY GROUNDS

Forker’s parental rights were terminated under the same statutory grounds as Cousins’s, MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and (j) (reasonable likelihood child will be harmed if returned home).

Initially, Forker notes that the trial court cited § 19b(3)(c) without specifying whether it was applying Subsection (c)(i) or (c)(ii). The difference between the two subsections is that the former refers to the conditions that led to the adjudication, whereas the latter refers to *other* conditions that would cause a child to come within the court’s jurisdiction. Although the trial court did not expressly identify which subsection it applied, it is apparent from the court’s findings that it applied Subsection (c)(i) because it stated, “It has certainly been more than 182 days since the initial dispositional order and we are still dealing with a lot of these same issues.”

Under MCL 712A.19b(3)(c)(i), the court properly found that the conditions that led to adjudication continued to exist. At the time of the termination hearing, Forker’s mental health issues were not significantly treated or abated. While her therapist testified favorably concerning Forker’s progress and commitment to her mental health, there was contrary testimony from the caseworker. The caseworker opined that Forker was not committed to mental health. While deference to the mental health specialist might have been preferable, we must defer to a trial judge’s determinations on the weight of evidence. *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014). The court’s reliance on Forker’s housing instability was supported by some evidence. It is undisputed that Forker’s current housing was precarious due to a foreclosure proceeding. However, the condition that led to the proceeding was that her housing situation failed to meet community standards. At the time of the termination hearing, Forker had transitioned to a mobile home which she had improved to an acceptable level and rid of animals. The slow progress was resource driven in large part as was the foreclosure. However, housing was not the sole basis for termination and we cannot say that the court clearly erred on the mental health issue.

With respect to § 19b(3)(j), the trial court found that Forker's continued relationship with Cousins and her housing situation placed the children at risk of harm if returned. Exposure to domestic violence was harmful to the children regardless of which adult inflicted the violence. Forker remained in her violent relationship with Cousins, which was marked by violations of PPOs and continued episodes of domestic violence that required police intervention. Although Forker stated throughout the case that she intended to end the relationship, she continued to stay in contact with him and conceived two children with him. Forker persisted in maintaining a relationship with Cousins despite his continued violence against her, including two incidents that occurred when she was pregnant. Although Forker presented her own testimony and her therapist's testimony that she conscientiously engaged in therapy, her failure to end the relationship with Cousins demonstrated her failure to benefit from therapy. In sum, the trial court did not clearly err by finding that the evidence supported termination of Forker's parental rights under § 19b(3)(c)(i) and (j).

B. REASONABLE EFFORTS

Here, Forker argues that because she diligently complied with her treatment plan, the failure to achieve reunification must have meant that the plan was inadequate.

After a child has been removed from a parent's custody, petitioner is generally required to make reasonable efforts to reunify the child and the family. MCL 712A.19a(2). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.) "While the [service provider] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Moreover, a respondent's mere participation in and completion of portions of a treatment plan is insufficient to avoid termination of parental rights if the respondent "fail[s] to demonstrate sufficient compliance with or benefit from those services specifically targeted to address the primary basis for the adjudication . . ." *Id.*

In this case, the evidence did show that Forker was diligent about participating in services, which the trial court acknowledged. However, abundant testimony showed that she did not substantially benefit from the services provided because she did not consistently apply concepts that were taught to her. The evidence does not show that petitioner failed to provide reasonable reunification services.

C. BEST INTERESTS

Forker also argues that the trial court erred by finding that termination of her parental rights was in the children's best interests. We again disagree. In *In re White*, this Court stated:

To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include 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. 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. [303 Mich App at 713-714 (citation and quotation marks omitted).]

In this case, the trial court's decision is supported by ample evidence that the children's development improved while in their foster care placement. Their behavior improved, and the older child made progress in bringing her school performance to an age-appropriate level. On the other hand, the children's bond with Forker had diminished. Neither of the children wanted visitation with Forker, and they showed signs of distress before and after visitation. Forker argues that she had enabled herself to be able to provide the children with a permanent and stable home, where she could rebuild her bond with them. Over three years, however, Forker failed to demonstrate a commitment to a lifestyle without an abusive and chaotic partner, and she left open the possibility of reuniting with Cousins, who had made no effort to address his own anger management and domestic violence issues. Forker's visitation record also was not favorable. She had difficulty dividing her attention among the three children, and she spoke inappropriately to the children. When Forker had visitation with the younger two children, she had difficulty focusing on the older child. A preponderance of the evidence supports the trial court's finding that termination of Forker's parental rights was in the children's best interests.

Affirmed.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Cynthia Diane Stephens